



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, August 13, 2021.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on September 14, 2021, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - [729](#) [Online agenda updated as needed](#)

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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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VOLUME 48, NUMBER 3– SEPTEMBER 1, 2021

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



Administrative Regulation Review Subcommittee TENTATIVE Meeting Agenda Tuesday, September 14, 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 002:220E. Emeritus Certificate. (Filed with Ordinary) ("E" expires 03-22-2022)

016 KAR 002:230E. Exception Certificate. (Filed with Ordinary) ("E" expires 03-22-2022)

STATE BOARD OF ELECTIONS

Statewide Voter Registration

031 KAR 003:010. Current address of Kentucky registered voters and distribution of voter registration lists. (Deferred from August)

Forms and Procedures

031 KAR 004:195E. Consolidation of precincts and precinct election officers. (Filed with Ordinary) ("E" expires 03-20-2022)

031 KAR 004:200E. Chain of custody for records during an election contest. (Filed with Ordinary) ("E" expires 03-20-2022)

Voting

031 KAR 005:025E. Ballot standards and election security. (Filed with Ordinary) ("E" expires 03-20-2022)

DEPARTMENT OF LAW

Attorney General

040 KAR 001:040E. Standardized Open Records Request Form. (Filed with Ordinary) ("E" expires 03-25-2022)

FINANCE AND ADMINISTRATION CABINET

State-owned Buildings and Grounds

200 KAR 003:020E. Use of state-owned facilities and grounds. (Filed with Ordinary) ("E" expires 03-28-2022)

Kentucky Infrastructure Authority

200 KAR 017:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program. (Filed with Ordinary)
(Deferred from August pursuant to KRS 13A.270(9), no notice received)

200 KAR 017:110. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:270. Expungement.

201 KAR 002:360. Naloxone dispensing.

201 KAR 002:420. Administration of vaccines.

Board of Dentistry

201 KAR 008:520. Fees and fines.

Board of Medical Licensure

201 KAR 009:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. (Amended After Comments)

Board of Embalmers and Funeral Directors

201 KAR 015:030E. Fees. (Filed with Ordinary) ("E" expires 03-27-2022)

201 KAR 015:040E. Examination. (Filed with Ordinary) ("E" expires 03-27-2022)

201 KAR 015:050E. Apprenticeship and supervision requirements. (Filed with Ordinary) ("E" expires 03-27-2022)

201 KAR 015:110E. Funeral establishment criteria. (Filed with Ordinary) ("E" expires 03-27-2022)

201 KAR 015:125E. Surface transportation permit. (Filed with Ordinary) ("E" expires 03-27-2022)

Board of Nursing

201 KAR 020:471. Repeal of 201 KAR 020:470.

201 KAR 020:472. Initial approval for dialysis technician training programs.

201 KAR 020:474. Continuing approval and periodic evaluation of dialysis technician training programs.

201 KAR 020:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

Board of Chiropractic Examiners

- 201 KAR 021:035. Seal.
- 201 KAR 021:054. Emergency orders.
- 201 KAR 021:070. Licensing examination requirements.
- 201 KAR 021:090. Pre-chiropractic education requirements.
- 201 KAR 021:100. Minimum standards for recordkeeping or itemized statements.

Board of Licensure for Professional Art Therapists

- 201 KAR 034:070. Inactive status. (Not Amended After Comments)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Fish

- 301 KAR 001:012. Boating, swimming and water skiing and other activities n department-owned or controlled lakes.
- 301 KAR 001:016. Use of lands and waters on lakes owned or controlled by the department.
- 301 KAR 001:018. Use of boating access areas.
- 301 KAR 001:019. Cedar Creek Lake.
- 301 KAR 001:031. Land Between the Lakes provisions.
- 301 KAR 001:050. Small state-owned lakes, special administrative requirements of.
- 301 KAR 001:082. Frog season; limits.
- 301 KAR 001:120. Live fish scales and handling; licensure.
- 301 KAR 001:125. Transportation of fish.
- 301 KAR 001:140. Special commercial fishing permit for Kentucky and Barkley lakes.
- 301 KAR 001:152. Harvest and sale of Asian carp.
- 301 KAR 001:210. Free fishing days.

Game

- 301 KAR 002:015. Feeding of wildlife.
- 301 KAR 002:041. Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season.
- 301 KAR 002:050. Land Between the Lakes hunting requirements.
- 301 KAR 002:084. Importation of game birds.
- 301 KAR 002:111. Deer and turkey hunting on special areas.
- 301 KAR 002:230. Shoot-to-retrieve field permits and procedures.
- 301 KAR 002:260. Crow hunting season.

TRANSPORTATION CABINET

Department of Vehicle Regulation

Motor Vehicle Commission

- 605 KAR 001:030. Applications. (Deferred from August)
- 605 KAR 001:035. Facilities requirements. (Deferred from August)
- 605 KAR 001:130. Procedures. (Deferred from August)
- 605 KAR 001:215. Licensing fees. (Filed with Emergency) (Deferred from August)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

School Terms, Attendance, and Operation

- 702 KAR 007:150. Home or hospital instruction.

Office of Learning Support Services

- 704 KAR 007:121. Repeal of 704 KAR 007:120.

Exceptional and Handicapped Programs

- 707 KAR 001:340. Procedural safeguards and state complaint procedures. (Not Amended After Comments)

LABOR CABINET

Department of Workplace Standards

Labor Standards; Wages and Hours

- 803 KAR 001:005. Employer-employee relationship.
- 803 KAR 001:025. Equal pay provisions, meaning and application.
- 803 KAR 001:060. Overtime pay requirements.
- 803 KAR 001:063. Trading time.
- 803 KAR 001:065. Hours worked.
- 803 KAR 001:066. Recordkeeping requirements.
- 803 KAR 001:070. Executive, administrative, supervisory or professional employees; salesmen.
- 803 KAR 001:075. Exclusions from minimum wage and overtime.
- 803 KAR 001:080. Board, lodging, gratuities and other allowances.
- 803 KAR 001:090. Workers with disabilities and work activity centers' employee's wages.

LABOR CABINET

Department of Workplace Standards

Occupational Safety and Health

- 803 KAR 002:325. General industry standards. (Deferred from August)

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Department of Workers' Claims

- 803 KAR 025:165. Electronic data interchange vendor approval. (Amended After Comments)
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) (Deferred from August)

PUBLIC PROTECTION CABINET

Department of Insurance

Fees and taxes

- 806 KAR 004:010. Fees of the Department of Insurance. (Deferred from August)

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)

Rates and Rating Organizations

- 806 KAR 013:150. Property and casualty rate and rule filings. (Deferred from August)

Health Insurance Contracts

- 806 KAR 017:070. Filing procedures for health insurance rates. (Deferred from August)
806 KAR 017:085. Minimum standards for short-term nursing home insurance policies. (Deferred from August)
806 KAR 017:100. Certificate of filing for provider-sponsored networks. (Deferred from August)
806 KAR 017:150. Health benefit plan rate filing requirements. (Deferred from August)
806 KAR 017:230. Requirements regarding medical director's signature on health care benefit denials. (Deferred from August)
806 KAR 017:240. Data reporting requirements.
806 KAR 017:260. Conversion policy minimum benefits.
806 KAR 017:270. Telehealth claim forms and records.
806 KAR 017:280. Registration, utilization review, and internal appeal.
806 KAR 017:290. Independent External Review Program.
806 KAR 017:370. Standardized health claim attachments.
806 KAR 017:450. Insurance purchasing outlet requirements.
806 KAR 017:470. Data reporting to an employer-organized association health benefit plan.
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. (Deferred from August)

Liability Self-insurance Groups

- 806 KAR 046:050. Liability self-insurance group rate, underwriting and evidence of coverage filings.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Communicable Diseases

- 902 KAR 002:212E. Covering the face in response to declared national or state public health emergency.

Department for Medicaid Services

Payment 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)
907 KAR 003:060. Ambulance provider assessment program. (Amended After Comments)

Division of Policy and Operations

- 907 KAR 023:0020E. Reimbursement for outpatient drugs. (Filed with Ordinary) ("E" expires 03-26-2022)

Department for Community Based Services

Family Support

- 921 KAR 001:020. Child Support Enforcement Program; confidentiality, program administration contracts, and agreements.
921 KAR 001:390. Child Support Enforcement Program paternity establishment.
921 KAR 001:400E. Establishment, review, and modification of child support and medical support orders. (Filed with Ordinary) ("E" expires 03-26-2022)

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

- 921 KAR 002:015E. Supplemental programs for persons who are aged, blind, or have a disability. (Filed with Ordinary) ("E" expires 03-26-2022)

Supplemental Nutrition Assistance Program

- 921 KAR 003:027. Technical requirements. (Filed with Emergency)

Energy Assistance Program/Weatherization

- 921 KAR 004:116E. Low Income Home Energy Assistance Program or "LIHEAP". (Filed with Ordinary) ("E" expires 03-28-2022)

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Child Care

922 KAR 002:160E. Child Care Assistance Program. (Filed with Ordinary) ("E" expires 03-28-2022)

3. REGULATIONS REMOVED FROM SEPTEMBER'S AGENDA

ENERGY AND ENVIRONMENT CABINET

Public Service Commission

Utilities

807 KAR 005:015. Access and attachments to utility poles and facilities. (Comments Received; SOC ext. due 09-15-2021)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Supplemental Nutrition Assistance Program

921 KAR 003:060. Administrative disqualification hearings and penalties. (Comments Received; SOC ext. due 09-15-2021)

Child Welfare

922 KAR 001:300. Standards for child-caring facilities. (Comments Received; SOC ext. due 09-15-2021)

922 KAR 001:380. Standards for emergency shelter child-caring facilities. (Comments Received; SOC ext. due 09-15-2021)

922 KAR 001:390. Standards for residential child-caring facilities. (Comments Received; SOC ext. due 09-15-2021)

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

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed AFTER noon, July 15, 2019
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note on state and local government; and, if applicable, a federal mandate comparison and any required incorporated material. Administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on a proposed administrative regulation, which shall be held between the 21st and the last workday of the month following the month of publication. Written comments shall also be accepted until the end of the calendar month in which the public hearing was scheduled.

Information about the public comment period shall include: the place, time, and date of the hearing; the manner in which a person may submit written comments or a notification to attend the hearing; a statement specifying that unless a notification to attend the hearing is received no later than 5 workdays prior to the hearing date, the hearing may be cancelled; the deadline for submitting written comments; and the name, position, and contact information of the person to whom notifications and written comments shall be sent.

Public comment periods are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

The administrative body shall notify the Compiler, by letter, whether the hearing was held or cancelled and whether or not written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the close of the public comment period.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation will be tentatively scheduled for review at the next meeting of the Administrative Regulation Review Subcommittee. After review by the subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. If a quorum is present, unless the administrative regulation is deferred or found deficient, the administrative regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee meets or 90 days after being referred by LRC, whichever occurs first.

STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed under Senate Bill 2, 2021 Regular Session
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note on state and local government; and, if applicable, a federal mandate comparison and any required incorporated material. Administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register. Emergency administrative regulations become effective upon filing.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on a proposed administrative regulation. The public hearing is held between the 21st and the last workday of the month in which the public comment period ends. Information about the public comment period shall include: the place, time, and date of the hearing; the manner in which a person may submit written comments or a notification to attend the hearing; a statement specifying that unless a notification to attend the hearing is received no later than 5 workdays prior to the hearing date, the hearing may be cancelled; the deadline for submitting written comments; and the name, position, and contact information of the person to whom notifications and written comments shall be sent.

Public comment periods for ordinary regulations end on the last day of the month following publication; whereas, public comment periods for emergency regulations run through the last day of the month in which the regulation was published. For other ordinary regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

The administrative body shall notify the Compiler whether the hearing was held or cancelled and whether or not written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the close of the public comment period.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation will be tentatively scheduled for review at the next meeting of the Administrative Regulation Review Subcommittee. After review by the subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. If a quorum is present, unless the regulation is deferred or found deficient, an ordinary regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee or 90 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS

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

STATEMENT OF EMERGENCY 201 KAR 002:411E

This emergency administrative regulation establishes requirements that the Board of Pharmacy shall implement in order to comply with 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 52136 and 86 Fed. Reg. 9516, 10588 and 14462. 85 Fed. Reg. 15198, 52136 and 86 Fed. Reg. 9516, 10588, 14462 and 41977 have been promulgated in response to the public health emergency invoked by 42 U.S.C. 247d-6d to address COVID-19. This emergency administrative regulation is necessary, pursuant to KRS 13A.190(1)(a)3. and 4., to ensure continued compliance with federal law and to protect human health. This emergency administrative regulation will ensure that state law remains congruent with emergency federal regulations, and responds to the current COVID-19 public health emergency. An ordinary administrative regulation is not a sufficient avenue to address the current emergency due to the emergency being temporary. This emergency administrative regulation will not be replaced by an ordinary administrative regulation due to the scope of the administrative regulation only existing and being needed for the duration of the state of emergency.

ANDY BESHEAR, Governor
LARRY HADLEY, R.Ph., Executive Director

BOARDS AND COMMISSIONS Board of Pharmacy (New Emergency Administrative Regulation)

201 KAR 002:411E Ordering and administering vaccinations.

EFFECTIVE: August 10, 2021

RELATES TO: KRS 39A.180, 315.010, 315.020, 315.050, 315.065, 315.135, 315.205, 315.500, 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 52136, 79190, 86 Fed. Reg. 7872, 9516, 10588, 14462 and 41977

STATUTORY AUTHORITY: KRS 315.500, 315.505

NECESSITY, FUNCTION, AND CONFORMITY: 85 Fed. Reg. 15198, 85 Fed. Reg. 52136 and 86 Fed. Reg. 9516, 10588 and 41977 require the Board of Pharmacy to promulgate an administrative regulation to conform state law to federal law during the period of this public health emergency resulting from the coronavirus (COVID-19) pandemic. KRS 315.010(22) does not authorize pharmacists to order vaccinations nor does KRS 315.010(22) authorize the use of prescriber-approved protocols for pharmacists or pharmacist interns to administer vaccinations to children under the age of nine (9). 85 Fed. Reg. 52136, requires that state-licensed pharmacists be authorized to order and to administer vaccinations to children between the ages of three (3) and seventeen (17) and that state-registered pharmacist interns and pharmacy technicians be authorized to administer vaccinations to children between the ages of three (3) and seventeen (17). 85 Fed. Reg. 79190, published on December 3, 2020 and effective on February 4, 2021, requires that technicians be authorized to administer childhood vaccinations and COVID-19 vaccinations and requires that state law establish a training requirement for all pharmacists, technicians, and interns that will be ordering or administering vaccinations pursuant to the declaration. Moreover, on August 4, 2021, 86 FR 41977 was released requiring that pharmacists be authorized to order the seasonal flu vaccine for individuals aged nineteen and over and that interns and technicians be authorized to administer the seasonal flu vaccine. The Prep Act (42 U.S.C. 247d-6d(8)) preempts any state law that would prohibit or effectively prohibit activities authorized by the secretary in a PREP Act Declaration. This administrative regulation establishes

requirements for Kentucky to comply with 85 Fed. Reg. 15198, 52136, 79190 and 86 Fed. Reg. 7872, 9516, 10588, 14462 and 41977.

Section 1. Definitions. (1) "Administer" is defined by KRS 315.010(1).

(2) "Pharmacist" is defined by KRS 315.010(17).

(3) "Pharmacist intern" is defined by KRS 315.010(18).

(4) "Pharmacy technician" is defined by KRS 315.010(21).

(5) "Prescribe" means to issue an original or new order from a pharmacist for an FDA-approved or authorized vaccination or medication to treat emergency reactions to vaccines.

Section 2. Pharmacist Requirements. (1) A pharmacist may administer a vaccine to an individual pursuant to the Advisory Committee on Immunization Practices (ACIP) standard immunization schedule in accordance with KRS 315.010(22).

(2) A pharmacist may administer a vaccine to a child, age three (3) through eight (8), pursuant to a prescriber-approved protocol.

(3) A pharmacist may prescribe and administer a vaccine to an individual eighteen (18) and under, pursuant to the ACIP standard immunization schedule or a seasonal flu vaccine to any individual aged nineteen and over or a COVID-19 vaccine to any individual, if the pharmacist:

(a) Completes, or has completed practical training on administering vaccinations. This may include:

1. Completion of a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines;

2. Graduation from an ACPE-approved pharmacy school in which hands-on immunization training was part of the curriculum; or

3. Training via hands-on experience immunizing in current or previous pharmacy practice; and

(b) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 3. Pharmacist Intern Requirements. A pharmacist intern under the general supervision of a pharmacist may administer a vaccine to an individual if the pharmacist intern:

(1) Completes, or has completed as part of pharmacy school curriculum, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

(2) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 4. Pharmacy Technician Requirements. A pharmacy technician may administer a vaccine under the general supervision of a pharmacist to an individual, if the pharmacy technician:

(1) Completes a minimum of two (2) hours of immunization-related continuing education accredited by the Accreditation Council for Pharmacy Education (ACPE) per each state registration period;

(2) Completes, or has completed, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

(3) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 5. Effective Date. (1) This administrative regulation shall become effective at 5 p.m. on the date it is filed.

(2) 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).

(3) The Board of Pharmacy 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.

LARRY HADLEY, R.Ph, Executive Director

APPROVED BY AGENCY: August 10, 2021

FILED WITH LRC: August 10, 2021 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 2021 at 9 a.m. Eastern Time via zoom teleconference. A link to the public hearing shall be provided on the Board's Web site no fewer than (5) days before the hearing. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is received. 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes pharmacists to order and to administer vaccinations to individuals three (3) and older, pursuant to specific requirements. This administrative regulation also authorizes pharmacy technicians and pharmacist interns to administer vaccinations to individuals three (3) and older, pursuant to specific requirements.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.500 and KRS 315.505 authorize the Board of Pharmacy to promulgate regulations during a state of emergency pursuant to KRS 39A.100 within the scope of the enumerated reasons listed in KRS 315.500, including administering immunizations to children pursuant to protocols established by the Centers for Disease Control and Prevention, the National Institutes of Health, or the National Advisory Committee on Immunization Practices or determined to be appropriate by the commissioner of public health or his or her designee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for vaccinations that are recommended by the Advisory Committee on Immunization Practices' (ACIP) standard immunization schedule, including COVID-19 vaccinations and seasonal flu vaccinations to be ordered and administered by a greater number of individuals.

(2) If 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 regulation impacts any pharmacist, pharmacist intern or pharmacy technician that desires to order or to administer vaccinations to individuals three and up.

(4) Provide an analysis of how the entities identified in question (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 requirement for pharmacists, pharmacy technicians or pharmacist interns to order or to administer vaccinations; however, this administrative regulation provides pharmacists with an authorization to order and to administer vaccinations pursuant to this administrative regulation's requirements and for pharmacy technicians and pharmacist interns with an authorization to administer vaccinations pursuant to this administrative regulation's requirements. Should the pharmacist, pharmacist intern or pharmacy technician choose to order or to administer vaccinations, the pharmacist, pharmacist intern or pharmacy technician shall meet the conditions set forth in this regulation, including completing a training, being CPR certified and other conditions specifically enumerated.

(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 does not require pharmacists, pharmacist interns or pharmacy technicians to order or to administer vaccinations and therefore this administrative regulation does not create any cost to the potentially impacted individuals. However, should the pharmacist choose to order or to administer vaccinations or the pharmacist intern or pharmacy technician choose to administer vaccinations, those individuals will have the cost of training, potential yearly continuing education requirements and the cost of becoming CPR certified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The ability to vaccinate more individuals age three and up. Not only will this improve vaccination rates, ensuring a healthier Commonwealth, but the qualified individuals ordering or administering the vaccination will potentially garner greater business as well as increased revenue streams for the companies or organizations in which they are employed.

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

(a) Initially: No cost to the administrative body.

(b) On a continuing basis: No 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 Board of Pharmacy will inspect pharmacies, pharmacist practice and pharmacist intern and pharmacy technician practices to ensure compliance with this administrative regulation. The Board of Pharmacy already employs inspectors, and this regulation will not increase any cost of enforcement for the Board of Pharmacy.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation does not mandate that any pharmacist, pharmacist intern or pharmacy technician order or administer vaccines, it simply provides an opportunity for those qualified individuals to do so if they choose.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There will be no impact on local or state government outside of the Board of Pharmacy's enforcement of the 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. 247d-6d, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, 86 Fed. Reg. 9516, 10588, 14462 and 41977, KRS 315.500, KRS 315.505.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 the expenditures and revenue of a state or local government agency.

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

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

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

(d) How much will it cost to administer this program for subsequent years? This regulation will not generate 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. 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, 86 Fed. Reg. 9516, 10588, 14462 and 41977. This is an emergency federal mandate only in effect during the national state of emergency.

(2) State compliance standards. Without this administrative regulation, the Commonwealth is not in compliance with the federal mandate.

(3) Minimum or uniform standards contained in the federal mandate. That pharmacists shall be authorized to order and to administer vaccinations to individuals ages three (3) and up and that pharmacist interns and technicians be authorized to administer vaccinations to individuals ages three (3) and up.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements than the federal mandate. Rather, this administrative regulation will be more permissive than the federal mandate in that it allows for pharmacists to order and to administer vaccinations to all individuals three and older. It allows for pharmacists to order vaccines or to use prescription drug orders or prescriber-approved protocols. The conditions for pharmacists to be authorized to order and administer vaccinations are fewer in this administrative regulation than the federal mandate. Moreover, pharmacist interns have been authorized to administer vaccinations to individuals three and older. The conditions for pharmacist interns and technicians to administer vaccinations are fewer in this administrative regulation than the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. If this regulation were to mirror the federal regulations, it would have the effect of severely limiting the number of pharmacists that could order and administer vaccinations due to the majority of Kentucky pharmacists not having completed a twenty-hour training program on immunizing. Therefore, it was critical that federal floor standards be

adopted, but with fewer conditions than the federal regulation.

STATEMENT OF EMERGENCY 603 KAR 10:011E

This emergency repealer is being promulgated in order to repeal three (3) obsolete administrative regulations identified as 603 KAR 10:002 (Definitions for 603 KAR Chapter 10) 603 KAR 10:010 (Static advertising devices), and 603 KAR 10:021 (Electronic advertising devices). These regulations are being replaced by 603 KAR 10:040E which is being filed pursuant to the requirements established within House Bill 328 from the 2021 Regular Session of the General Assembly effective as the result of an emergency provision on March 18, 2021. House Bill 328 was precipitated by an April 24, 2020 decision of the 6th Circuit Federal Court which found KRS 177.830 through 177.890 and 603 KAR 10:002, 10:010, and 10:021 as unconstitutional on their face. The General Assembly directed that the administrative regulation associated with House Bill 328 be promulgated on or before August 1, 2021 and that reasonable standards for advertising devices be enacted to ensure the continued safety of the traveling public. In response to this directive, it was determined that the ordinary administrative regulation process required a longer period of time to complete than was allotted by the General Assembly and as such, implementation of this emergency repealer is required to meet the general assembly deadline. With the establishment of new guidelines and requirements to regulate advertising devices provided for within 603 KAR 10:040E, the immediate repeal of 603 KAR 10:002, 10:010, and 10:021 should be implemented pursuant to this emergency repealer to eliminate conflicts of law. An ordinary administrative regulation will not be filled with this emergency repealer.

ANDY BESHEAR, Governor

JIM GRAY, Secretary

TRANSPORTATION CABINET Department of Highways Division of Maintenance (Emergency Repealer)

603 KAR 10:011E. Repeal of 603 KAR 10:002, 10:010, and 10:021.

EFFECTIVE: July 30, 2021

RELATES TO: KRS 177.572 - 177.576, 177.830 - 177.890, 177.990(2), 23 C.F.R. Part 750, 23 U.S.C. 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. These administrative regulations are being repealed because they are obsolete and no longer necessary and because a new administrative regulation will govern this subject matter.

Section 1. The following administrative regulations are hereby repealed:

- (1) 603 KAR 10:002, Definitions for 603 KAR Chapter 10;
- (2) 603 KAR 10:010, Static advertising devices; and
- (3) 603 KAR 10:021, Electronic advertising devices.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: July 27, 2021

FILED WITH LRC: July 30, 2021 at 9:22 a.m.

VOLUME 48, NUMBER 3– SEPTEMBER 1, 2021

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 the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on 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: 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.

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 repeals three (3) administrative regulation: 603 KAR 10:002, 603 KAR 10:010, and 603 KAR 10:021.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal three (3) obsolete administrative regulations that are being replaced by 603 KAR 10:040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to KRS 177.860 by establishing parameters of both prohibited and conforming activities relative to advertising devices and the safety of the users of the highways

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repealer will remove three (3) administrative regulation that are obsolete or no longer necessary to the operations of the Transportation Cabinet.

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

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

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

(c) How the amendment conforms to 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: Advertising Device Owners, Landowners, Advertisers, KYTC, County & City Municipalities

(4) Provide an analysis of how the entities identified in question (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: Advertising devices will be now be regulated by 603 KAR 10:040.

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

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

(5) Provide an estimate of how much it will cost the

administrative body to implement the administrative regulation:

(a) Initially: There are no costs for this repealer.

(b) On a continuing basis: There are no costs for this repealer.

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

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

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

(9) TIERING: Is tiering applied? No, this is a repealer of three (3) obsolete administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Highways, Division of Maintenance, KYTC District Offices, KYTC Office of Legal Services, and County and City Local Municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310 authorizes the cabinet to repeal an 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. This administrative regulation repealer will not affect expenditures or revenues.

(a) How much 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 repealer will not generate revenue.

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

(c) How much will it cost to administer this program for the first year? There are no costs involved in this regulation repealer.

(d) How much will it cost to administer this program for subsequent years? There are no costs involved in this regulation repealer.

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 603 KAR 10:040E

This new emergency administrative regulation is being promulgated in order to establish the guidelines and requirements for advertising devices erected, maintained, and situated in protected areas along controlled routes within the state of Kentucky. This action was initiated pursuant to specific requirements set forth within House Bill 328 from the 2021 Regular Session of the General Assembly wherein the General Assembly directed that the administrative regulation associated with House Bill 328 be promulgated on or before August 1, 2021 and that reasonable standards for advertising devices be enacted to ensure the continued safety of the traveling public. House Bill 328 was precipitated by an April 24, 2020 ruling of the 6th Circuit Federal Court which found KRS 177.830 through 177.890 and 603 KAR 10:002, 10:010, and 10:021 as unconstitutional on their face. As such House Bill 328 was provisioned with an emergency

enactment clause and pursuant to this provision upon passage was enacted into law on March 18, 2021. The perceived intent and urgency of the General Assembly to quickly effectuate corrective legislation is further demonstrated by the directive to promulgate associated administrative regulations on or before August 1, 2021. In response to this directive it was determined that the ordinary administrative regulation processes required a longer period of time to complete than was allotted by the General Assembly and as such, implementation of this new emergency administrative regulation is required to meet the general assembly deadline. This new emergency administrative regulation replaces the previous administrative regulations and incorporates the alternative compensation based regulatory scheme as established by House Bill 328 to provide a content-neutral method for regulatory oversight of advertising devices. This new emergency administrative regulation additionally incorporates the requirements of House Bill 328 to implement procedures for the assessment of permit fees for advertising devices. This new emergency administrative regulation creates a new advertising device classification to identify advertising devices erected subsequent to the April 24, 2020 6th Circuit Federal Court decision and prior to the effective date of House Bill 328. This new emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with this new emergency administrative regulation. The ordinary administrative regulation is identical to this new emergency administrative regulation. An emergency repealer for 603 KAR 10:002, 10:010, and 10:021 will also be filed simultaneously.

ANDY BESHEAR, Governor
JIM GRAY, Secretary

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(New Emergency Administrative Regulation)

603 KAR 10:040E. Advertising devices.

EFFECTIVE: July 30, 2021

RELATES TO: KRS 177.572 - 177.576, 177.830 - 177.890, 177.990(2), 23 C.F.R. Part 750, 23 U.S.C. 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for static and electronic advertising devices.

Section 1. Definitions.

(1) "Abandoned" means that, for a period of one (1) year or more, an advertising device previously lawfully erected has:

- (a) Not displayed advertising;
- (b) Displayed obsolete advertising; or
- (c) Needed substantial repairs due to lack of maintenance.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage, and process areas that are integral and essential to the primary business activity that takes place on the property.

(3) "Advertiser" means a person or entity entered into a contractual agreement with the owner of an advertising device for advertisement services in the advertiser's interest that is displayed upon the subject advertising device at the time of violation.

(4) "Advertising device" is defined by KRS 177.830(5).

(5) "Business device" means a device for advertising for which no compensation is derived, received, or exchanged for its use.

(6) "Centerline of the highway" means a line:

(a) Equidistant from the edges of the median separating the main traveled ways of a divided:

- 1. Interstate;
- 2. Parkway;
- 3. National highway system; or
- 4. Federal-aid primary highway; or

(b) That is the centerline of the main traveled way of a non-divided:

- 1. Interstate;
- 2. Parkway;
- 3. National highway system; or
- 4. Federal-aid primary highway.

(7) "Commercial or industrial activities" is defined by KRS 177.830(9).

(8) "Commercial or industrial land use":

(a) Means an activity, in a zoned area within 660 feet of the interstate or parkway right-of-way, engaged in for financial gain; and

(b) Does not mean:

- 1. The leasing of property for residential purposes;
- 2. An activity conducted in a building principally used as a residence;
- 3. An agricultural, forestry, ranching, grazing, farming, or related enterprise, including a wayside fresh produce stand;
- 4. Operation, maintenance, or storage of an advertising device;
- 5. A railroad track or minor siding; or
- 6. A facility generally recognized as a utility such as a cell tower.

(9) "Commercial or industrial zone" means an area adjacent to a highway zoned to allow business, commerce, or trade as established in local ordinance or regulation.

(10) "Compensation" is defined by KRS 177.830(11).

(11) "Conversion" or "converted" means to legally modify or change a legal permitted static advertising device to a legal permitted electronic advertising device or a legal permitted electronic advertising device to a legal permitted static advertising device and can include the replacement of the device face, facing, or structure.

(12) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(13) "Destroyed" means a nonconforming advertising device damaged beyond substantial repair due to weather related events, vandalism, or other criminal or tortious acts.

(14) "Electronic advertising device":

(a) Means an advertising device that changes its message or copy by programmable electronic or mechanical processes; and

(b) Does not mean a numerical display changed by an electronic or mechanical process not exceeding one-half of the face.

(15) "Enlargement" means an addition to the permitted area of the facing of an advertising device.

(16) "Erect":

(a) Means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or bring into being or establish; and

(b) Does not mean routine maintenance, including changing of a message or copy.

(17) "Exchange credit" means a singular allotment of value assigned by the department for the removal of an approved eligible advertising device that can be transferred or redeemed by its owner in exchange for future qualification of an electronic advertising device permit.

(18) "Extension" means a temporary addition to an advertising device for a message or copy.

(19) "Face" means the part of the advertising device including trim and background that contains the message, copy, and informative content.

(20) "Facing" means the face or faces displayed on the same advertising device and oriented in the same direction of travel.

(21) "Federal-aid primary highway" is defined by KRS 177.830(3) and, pursuant to 23 U.S.C. 131, refers to the existence of the highway on June 1, 1991.

(22) "FHWA adjusted urban area boundaries" means a

boundary, in addition to the urban area boundary, established by the department designed to encompass areas outside municipal boundaries that have urban characteristics with residential, commercial, industrial, or national defense land uses.

(23) "Highway" means:

(a) An interstate, parkway, national highway system, or federal-aid primary highway located within the boundaries of the state of Kentucky and being further depicted by the Transportation Cabinet on <http://maps.kytc.ky.gov/PAFOA/>; and

(b) A public road maintained by the department.

(24) "Interstate highway" is defined by KRS 177.830(2).

(25) "Lawfully erected" means erected in compliance with law and administrative regulations in effect at the time of erection or as later allowed by law.

(26) "Legal permit" means written authorization granting the erection or continued existence of an advertising device in compliance with current state law and administrative regulation.

(27) "Main traveled way":

(a) Means the traveled way of a highway on which through traffic is carried; and

(b) Does not mean frontage roads, turning roadways, or parking areas.

(28) "Nit" means a unit of measurement of luminance used to specify the brightness or the intensity of visible light from a device.

(29) "Noncompliant advertising device" means an advertising device that was erected within a protected area between the dates of April 24, 2020 and March 18, 2021 and that does not comply with current state law or this administrative regulation.

(30) "Noncompliant permit" means written authorization allowing the continued existence of a noncompliant advertising device, subject to current state law and this administrative regulation.

(31) "Nonconforming advertising device" means an advertising device that was once lawfully erected but does not comply with:

(a) Current state law or this administrative regulation; or

(b) Changed conditions such as:

1. A change in zoning;
2. The relocation or reclassification of a highway;
3. A change in restriction on size, space, or distance; or
4. The abandonment of required business or businesses.

(32) "Nonconforming permit" means written authorization allowing the continued existence of a nonconforming advertising device, subject to current state law and this administrative regulation.

(33) "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.

(34) "Permit" means written authorization allowing the erection or continued existence of an advertising device, subject to current state law and this administrative regulation.

(35) "Protected area" means the area adjacent to the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway, and being:

(a) Within 660 feet from the edge of the right-of-way in an area defined as an urban area; and

(b) Extending beyond 660 feet from the edge of the right-of-way outside of an area defined as an urban area.

(36) "Scenic byway" is defined by KRS 177.572.

(37) "Scenic highway" is defined by KRS 177.572.

(38) "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message or copy but can include a numerical display changed by an electronic or mechanical process that does not exceed one-half of the face.

(39) "Substantial repair" means the cost to repair the advertising device would exceed sixty (60) percent of the costs to replace it with an advertising device of the same basic construction using new materials and at the same location.

(40) "Substantial structure" means an affixed, solid, or strong permanent construction.

(41) "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.

(42) "Unzoned commercial or industrial area" is defined by

KRS 177.830(8).

(43) "Urban area" is defined by KRS 177.830(10) as well as any adjacent geographical area identified as FHWA Adjusted Urban Area Boundaries.

(44) "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

Section 2. Conditions Relating to Static and Electronic Advertising Devices Located in a Protected Area.

(1) A static or an electronic advertising device located in a protected area of an interstate, parkway, national highway system, or federal-aid primary highway displaying copy or a message, whether or not legible, that is visible from the main traveled way shall require a permit issued by the department.

(2) A permit shall only be issued for a device in a protected area of:

(a) An interstate or parkway being erected or maintained fifty (50) feet or more from the edge of the main traveled way or turning roadway that:

1. Is zoned commercial or industrial and was an incorporated municipality on or before September 21, 1959; or

2. Was zoned commercial or industrial and included a commercial or industrial land use on or before September 21, 1959; or

(b) A national highway system or federal-aid primary highway being erected or maintained in:

1. A commercial or industrial zone; or

2. An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway; and

(c) Complies with applicable county or city zoning ordinance and regulations.

(3) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured horizontally and at a right angle to the centerline of the interstate, parkway, national highway system, or federal-aid primary highway.

(4) The erection or existence of an advertising device shall be prohibited in a protected area if the device:

(a) Is abandoned;

(b) Is not clean and in good repair;

(c) Is not securely affixed to a substantial structure permanently attached to the ground;

(d) Directs the movement of traffic;

(e) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(f) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(g) Is erected or maintained upon a tree;

(h) Is erected upon or overhanging the right-of-way;

(i) Is mobile, temporary, or vehicular;

(j) Is a static advertising device and painted or drawn on rocks or another natural feature; or

(k) Is a static advertising device and includes or is illuminated by flashing, intermittent, or moving lights.

(5) The spacing between static and electronic advertising devices per direction of travel on:

(a) Interstates, parkways, national highway systems, or limited access federal-aid primary highways shall be a minimum of:

1. 2,500 feet between electronic advertising devices;

2. 500 feet between an electronic advertising device and a static advertising device; or

3. 500 feet between a static advertising device and another static advertising device; and

(b) Non-limited access federal-aid primary highways shall, pursuant to KRS 177.863(2)(a), be a minimum of:

1. 300 feet between advertising devices, unless separated by a building, natural obstruction, or roadway, in a manner so that only one (1) sign located within the required spacing distance shall be visible from the highway at any one time; or

2. 100 feet between advertising devices if located within an incorporated municipality.

(6) An advertising device displaying copy or message, whether or not legible, that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements of this section for each highway independently.

(7) An electronic advertising device shall only be erected or maintained within an urban area located within 660 feet of right-of-way of a highway.

(8) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to Section 8 of this administrative regulation.

(9) An electronic advertising device shall not be converted to a static advertising device prior to receiving a permit pursuant to Section 8 of this administrative regulation.

(10) Lighting used for a static advertising device shall be:

(a) Only white;

(b) Effectively shielded to prevent a beam of light from being directed at the interstate, parkway, national highway system, or federal-aid primary highway;

(c) Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; and

(d) Of a luminance less than 300 nits.

(11) An electronic advertising device erected or maintained in a protected area shall:

(a) Not have a facing larger than 672 square feet;

(b) Not have more than one (1) face per facing;

(c) Not contain extensions to the face;

(d) Not have interior angles between two (2) facings that exceed forty-five (45) degrees; and

(e) Be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.

(12) The message or copy on an electronic advertising device shall:

(a) Be static for at least eight (8) seconds;

(b) Change from one (1) message or copy to another in less than two (2) seconds;

(c) Not blink, scroll, or contain animation or video; and

(d) Be programmed to freeze in a static display if a malfunction occurs.

(13) A static advertising device:

(a) Shall not:

1. Exceed the maximum size of 1,250 square feet per facing as established in KRS 177.863(3)(a);

2. Contain more than two (2) advertisements or faces per facing pursuant to KRS 177.863(3)(b); or

3. Have interior angles between two (2) facings that exceed forty-five (45) degrees; and

(b) May contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size limits of the facing of the device established in KRS 177.863(3)(a).

(14) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.

(15) The name of the owner of an advertising device shall:

(a) Be legible from the main traveled way;

(b) Not be larger than twenty (20) square feet;

(c) Be shown without other owner information; and

(d) Not be considered an advertisement.

Section 3. Exchange of Advertising Device for Permit.

(1) An advertising device proposed for exchange shall require eligibility approval by the department pursuant to subsections (3), (4), and (5) of this section prior to removal.

(2) The owner of an approved advertising device exchange shall receive an exchange credit by the department upon verification of removal.

(3) An advertising device eligible for exchange shall be:

(a) Currently nonconforming as established in Section 4 of this administrative regulation or pursuant to local regulations;

(b) Not less than fifty (50) square feet per facing; and

(c) Situated in an unpermissible location in a protected area; or

(d) Observable from a scenic highway.

(4) The submittal of six (6) exchange credits shall be required for one (1) new electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(5) The submittal of five (5) exchange credits shall be required for the conversion of an existing legal permitted static advertising device in an urban area to an electronic advertising device.

(6) If an Application for Electronic Advertising Device is denied by the department, the department shall hold and apply any exchange credits pending the outcome of any subsequent appeal or until exchange credits can be applied toward another approved application.

(7) If the permittee voluntarily removes an advertising device and receives an exchange credit, the permittee shall thereby waive any right or claim to any additional compensation from the department for that device.

(8) The ownership of an exchange credit may be transferred with acknowledgment of the department and shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.

Section 4. Nonconforming Static and Electronic Advertising Devices.

(1) A nonconforming advertising device in a protected area shall require a nonconforming permit.

(2) A nonconforming advertising device permit shall be required to be renewed annually pursuant to Section 8 of this administrative regulation.

(3) A nonconforming advertising device may remain in place if the device:

(a) Is not abandoned;

(b) Has been subjected to only routine maintenance as established in subsection (6) of this section;

(c) Was in compliance with state law and KAR Title 603 as well as local zoning, sign, or building restrictions at the time of erection; and

(d) Remains unaltered beyond the extent of routine maintenance as it was on the effective date of the state law or requirement of KAR Title 603 that made the device nonconforming.

(4) An owner may conduct routine maintenance of a nonconforming advertising device. Routine maintenance shall include:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing existing nonstructural light fixtures for energy efficiency;

(d) Replacement of nuts, bolts, or nails;

(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers;

(f) Rebuilding a destroyed advertising device; or

(g) Changing an advertising message or copy on an advertising device.

(5) An owner shall not conduct non-routine maintenance of a nonconforming advertising device. Non-routine maintenance shall include:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of bracing, guy wires, or other reinforcement;

(d) A change in the location or configuration of the device;

(e) A change in the direction of the face or faces;

(f) The addition of a light or lights, either attached or unattached, to help illuminate the nonconforming static advertising device structure that previously had no lighting for illumination; or

(g) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process on a static advertising device.

(6) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation and result in the loss of nonconforming classification and action pursuant to Section 10 of this administrative regulation.

Section 5. Business Devices.

(1) A business device that complies with this administrative regulation shall only be erected in a protected area if the device complies with county or city zoning ordinances but shall not require a permit from the department.

(2) A business device shall only be erected upon the property parcel where the business or businesses are located as is demarcated by the unique Parcel Identification Number utilized and assigned by the Property Valuation Administration Office of jurisdiction and:

- (a) Inside the activity boundary line; or
- (b) No further than 400 feet from the activity boundary line.

(3) A business device placed within fifty (50) feet of the activity boundary line shall not exceed 1,250 square feet, including border and trim excluding supports. An entrance or exit on the property shall be considered within the activity boundary line.

(4) If further than fifty (50) feet outside the activity boundary line, a business device shall not exceed:

- (a) Twenty (20) feet in length, width, or height; and
- (b) 150 square feet in area, including border and trim and excluding supports.

(5) No more than one (1) business device shall be located at a distance greater than fifty (50) feet outside of the activity boundary line.

(6) If taking measurements for the placement of a business device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.

(7) A business device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside the activity boundary line of the property parcel.

(8) If taking measurements for the placement of business device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(9) A business device erected for a shopping center, mall, or other combined business location shall either:

- (a) Identify a business or businesses situated upon the same property parcel; or
- (b) Display business activities being conducted upon the same property parcel.

(10) A business device shall not:

- (a) Be of such intensity as to cause glare or impair the vision of a driver;
- (b) Move, or have moving or animated parts;
- (c) Be erected or maintained on a tree; or
- (d) Be erected upon or overhanging the right-of-way.

(11) An electronic business device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.

(12) A business device shall not affect the spacing requirements of an advertising device as established in Section 2(5) of this administrative regulation.

(13) Extensions of a facing up to fifteen (15) percent shall be allowed but shall not exceed the maximum size of the facing of the device as established this section.

(14) The owner of a business device shall be subject to revolving compensation compliance reviews and upon request shall provide to the department all requested documentation relevant to certify the continued compliance of a business device such as:

(a) A signed affidavit in which the device owner shall attest to the device's compliance to current law and this administrative regulation;

(b) Financial records or statements relevant to compliance certification; and

(c) PVA parcel data.

(15) If the device is determined to be an advertising device, paragraphs (a) through (d) of this subsection shall apply.

(a) The department shall send notice by certified letter to the owner of a business device that becomes subject to this chapter. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.

(b) The device owner shall apply for and obtain an advertising device permit in accordance with the provisions of this administrative regulation within sixty (60) days of notice.

(c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.

(d) If the owner of a device as established in paragraph (a) of this subsection does not obtain an advertising device permit within sixty (60) days of the notice, the owner shall be subject to:

- 1. A fine of \$500 per violation pursuant to KRS 177.990(2); and
- 2. Provisions as established in KRS 177.870.

(16) If the device is found to be out of compliance with current business device requirements, paragraphs (a) through (d) of this subsection shall apply.

(a) The department shall send notice by certified letter to the owner of a business device stating the required corrective action or actions to become compliant with the provisions of this section. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.

(b) The device owner shall implement required corrective actions or actions within sixty (60) days of notice.

(c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.

(d) If the owner of a device as established in paragraph (a) of this subsection does not correct the violation or violations within sixty (60) days of notice, the owner shall be subject to:

- 1. A fine of \$500 per violation pursuant to KRS 177.990(2); and
- 2. Action pursuant to Section 10 of this administrative regulation.

Section 6. Noncompliant Static and Electronic Advertising Devices.

(1) A noncompliant advertising device in a protected area shall require a noncompliant permit.

(2) A noncompliant advertising device permit shall be required to be renewed annually pursuant to Section 8 of this administrative regulation.

(3) A noncompliant advertising device may remain in place if the device:

- (a) Is not abandoned;
- (b) Has been limited to maintenance activities as established in Section 4(6) (b) through (f) of this administrative regulation to correct hazardous conditions determined to be in the interest of the safety of the traveling public; and
- (c) Was in compliance with local zoning, sign, or building restrictions at time of erection.

(4) A noncompliant advertising device in a protected area shall be granted a legal permit if the device is in compliance with current state law and this administrative regulation.

(5) Except as established in subsection (3)(b) of this section, maintenance on a noncompliant advertising device shall constitute a violation of KRS 177 and this administrative regulation and shall result in the loss of noncompliant classification and action pursuant to Section 10 of this administrative regulation.

(6) Noncompliant advertising devices shall not be eligible as an exchange credit.

Section 7. Scenic Highways and Byways.

(1) Subsequent to the designation of a scenic highway by the Transportation Cabinet, additional static or electronic advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for a static or electronic advertising device located on a scenic byway as a static or electronic advertising device located on a scenic highway.

(3) Only routine maintenance as established in Section 4(3) shall be performed on a static or electronic advertising device legally in existence on the date of the scenic highway designation.

Section 8. Permits, Renewals, and Transfers.

(1) The requirements of this section shall apply to legal, nonconforming, and noncompliant advertising devices within a protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(2) A permit shall be required from the department for a legal, nonconforming, or noncompliant advertising device located within a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within three (3) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.

(4) An application for a static or an electronic advertising device permit shall be submitted on a completed Application for Static Advertising Device, TC Form 99-221 or Application for Electronic Advertising Device, TC Form 99-222.

(5) Application for an advertising device permit and annual permit renewal shall require a fee pursuant to KRS 177.860(1) and as established in Section 9 of this administrative regulation.

(6) The timing of issuance of an advertising device permit shall be determined based on the order in which a completed application and payment of applicable fees are made to the department.

(7) The permit issued for the erection of a static or electronic advertising device that has not been constructed prior to the renewal date shall be revoked.

(8) If an advertising device is erected or maintained without an approved permit, the department shall issue a notice of violation to the owner of the device. If the owner of the device cannot be identified, the department shall send notice to the landowner of record.

(9) If a violation is not cured within sixty (60) days of the date of receipt of the notice, the owner or landowner shall be subject to:

(a) A fine of \$500 per violation pursuant to KRS 177.990(2); and

(b) Action pursuant to Section 10 of this administrative regulation.

(10) Beginning in 2023, between the renewal period of November 1 and December 31, a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, and applicable photographs shall be submitted. An incomplete or inaccurate submission shall not be considered by the department.

(11) Annual permit renewals shall require a fee in the amount of \$100 per each static or electronic advertising device pursuant to KRS 177.860(1).

(12) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees within thirty (30) days of the expiration of the permit shall result in:

(a) The owner of the legal, nonconforming, or noncompliant advertising device being fined \$500 per permit violation pursuant to KRS 177.990(2); and

(b) Conditional suspension of the permit.

(13) Upon receipt of a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration, the suspended permit shall be reinstated if compliant with current law and this administrative regulation.

(14) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration of the permit shall result in:

(a) Revocation of the permit;

(b) Loss of nonconforming or noncompliant classification for a

nonconforming or noncompliant advertising device; and

(c) Action pursuant to Section 10 of this administrative regulation.

(15) A static or electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location or configuration shall not be changed. A transfer of ownership for an advertising device shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.

(16) Notification of a substantial change to an approved static or electronic advertising device permit shall be submitted to the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) The addition of bracing, guy wires, or other reinforcement;

(e) A change in the location of the device;

(f) A change in the direction or configuration of the face or faces; or

(g) The addition of a light or lights, either attached or unattached, to help illuminate a static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit.

(17) Making a substantial change to a device without first submitting notification to the department constitutes a violation of this administrative regulation and shall result in action pursuant to Section 10 of this administrative regulation.

(18) Issuance of a permit under this administrative regulation shall not create a contract or property right in the permit holder.

Section 9. Permit Fees.

(1) Beginning on January 1, 2023, pursuant to KRS 177.860, permit fees and annual renewals fees shall be assessed, including:

(a) \$250 for an Application for Electronic Advertising Device permit;

(b) \$150 for an Application for Static Advertising Device permit; and

(c) \$100 for the Advertising Device Annual Permit Renewal Request.

(2) A fee established by this section shall be payable by cashier's check or electronic payment.

(3) A fee paid to the department established in this section shall be nonrefundable.

Section 10. Notice of Violations; Appeals.

(1) The department shall notify the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2) If device continues to be in violation thirty (30) days after notice, the department shall notify the landowner, the advertiser, and the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(3) The landowner, the advertiser, or the owner of an advertising device aggrieved by the findings of the department may request an administrative hearing. An administrative hearing shall be pursuant to KRS Chapter 13B.

(a) The request shall be in writing and within thirty (30) days of the certified letter.

(b) A request for a hearing shall thoroughly state the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(4) If the landowner, the advertiser, or the owner of an advertising device fails to request an administrative hearing or fails to cure the violation within thirty (30) days of notice, the department

shall proceed pursuant to KRS 177.870.

Section 11. Penalties.

(1) The owner of an advertising device in violation of a provision of KRS Chapter 177 or of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application or renewal contains false or materially misleading information.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Static Advertising Device", TC Form 99-221, July 2021;

(b) "Application for Electronic Advertising Device", TC Form 99-221, July 2021;

(c) "Advertising Device Annual Permit Renewal Request", TC Form 99-223, July 2021;

(d) "Advertising Device or Exchange Credit Ownership Transfer", TC Form 99-224, July 2021; and

(e) The formal designation of interstates, parkways, national highway system, and federal-aid primary highways by the Kentucky Transportation Cabinet may be found on the department's website at: <http://maps.kytc.ky.gov/PAFOA/>.

(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. to 4:30 p.m.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: July 27, 2021

FILED WITH LRC: July 30, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 AM on September 22, 2021 at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622.

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

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 amended provisions to correct first amendment constitutional issues as prescribed by the 6th Circuit Federal Court and defines prohibited and conforming activities relative to outdoor advertising in protected areas.

(b) The necessity of this administrative regulation: The administrative regulation is required by KRS 177.860 and as further demonstrated by directive of the General Assembly to promulgate the amended regulation herein.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to KRS 177.860 by

establishing parameters of both prohibited and conforming activities relative to advertising devices and the safety of the users of the highways.

(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 advertising devices located within the protected area.

(2) If 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 amended regulation removes the elements found by the court as being unconstitutional and provides the framework for an alternative, content-neutral compensation based regulatory model.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the framework of an enacted content neutral compensation based regulatory model.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation amendment furthers the statutory intent of establishing a content neutral, compensation based regulatory scheme.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will further establish parameters of both prohibited and conforming activities relative to advertising devices in protected areas.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Advertising Device Owners, Landowners, Advertisers, KYTC, County & City Municipalities

(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:

Advertising Device Owners will be required to submit annual permit renewal documentation and the associated annual device renewal fee.

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

Advertising Device Owners: Applicable fees as established by KRS 177.860.

Landowners: There are no known direct financial impacts

Advertisers: There are no known direct financial impacts

KYTC: Approximately \$350,000 annually

County & City Municipalities: There are no known direct financial impacts.

(c) As a result of compliance, what benefits will accrue to the entities: Compliant industry stakeholders will be provided the benefit and protection of conducting business within a regulated industry.

(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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Statutory authority providing for the assessment of permit fees, pursuant to KRS 177.860.

(7) Provide an assessment of whether an 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 will continue be administered pursuant to terms of the Federal/State Agreement. The statutory authorization to assess permit fees for advertising devices is expected to cover the administrative costs relative to regulating advertising devices.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Statutory authority providing for the assessment of permit fees, KRS 177.860 was enacted. This administrative regulation further prescribes the application of the fee assessment.

(9) TIERING: Is tiering applied? No, all advertising devices 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? KYTC Department of Highways, Division of Maintenance, KYTC District Offices, KYTC Office of Legal Services, and County and City Local Municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.860 and 23 U.S.C. 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. 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? Approximately \$300,000

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$300,000

(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

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

702 KAR 1:191E

This emergency administration regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, welfare, or the environment. The regulation is necessary to mitigate the spread of COVID-19 in Kentucky public schools, specifically by providing quarantine leave to school district employees during the 2021-2022 school year. Due to promulgation time, an ordinary regulation would not be effective for the majority of the upcoming school year resulting in potential hardship to school districts and quarantined employees. As the school year begins and COVID-19 cases are on the rise again, school districts currently lack the ability to provide leave to employees placed on quarantine due to COVID-19 exposure. This regulation authorizes local school districts, to provide quarantine leave to full and part-time employees placed on quarantine by a medical provider, health department or by the school district. This emergency administrative regulation will be replaced by an ordinary administrative regulation. Pursuant to KRS 13A.190, the administrative agency submitted documentary evidence at the time of filing this emergency regulation which shows the increase in COVID-19 cases among Kentuckians between June 1, 2021 and July 31, 2021, as well as its obligation to promulgate a regulation pursuant to KRS 156.160.

ANDY BESHEAR, Governor

JACQUELINE COLEMAN, Secretary

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Emergency Administrative Regulation)

702 KAR 1:191E. District employee quarantine leave.

EFFECTIVE: August 11, 2021

RELATES TO: KRS 156.070, 156.160, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160

requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. This administrative regulation establishes paid quarantine leave to employees in response to the COVID-19 emergency. This emergency regulation is necessary to address the imminent threat to public health, safety, and welfare; and to protect human health; while safely and efficiently operating public schools during the 2021-22 school year in light of the COVID-19 public health emergency.

Section 1. COVID-19 Quarantine Leave. (1) During the 2021-22 school year, each district board of education shall provide each eligible person employed as a full or part-time employee in the public schools paid leave during the period the employee is placed in quarantine due to exposure to COVID-19. Exposure to COVID-19 shall include exposure to any variant of COVID-19. This leave shall be in addition to any other leave provided by statute or board policy.

(2) In order to be eligible for leave under this section, the employee shall:

(a) Be placed in quarantine due to COVID-19 exposure by a treating medical professional, a public health department, the Department for Public Health, or the school district for which the employee works; and

(b) Have received a COVID-19 vaccination prior to the quarantine period, present a statement from a treating medical professional that a disability prevents the employee from taking the COVID-19 vaccine, or is prevented from taking the COVID-19 vaccination based on sincerely held religious belief.

(3) If a school district places an employee on quarantine due to exposure to COVID-19, then the district shall provide the employee with written documentation supporting the quarantine determination.

(4) A school district may require the employee to provide written documentation from the entity placing the employee in quarantine due to COVID-19 exposure.

(5) Quarantine leave shall not be used if the employee has an active COVID-19 infection.

(6) A school district, at its discretion, may determine quarantine leave is unnecessary when an employee can fulfill his or her job duties remotely during the quarantine period.

(7) In order to shorten the quarantine period, a school district may require an employee on quarantine leave to undergo a COVID-19 test at district expense and provide the results to the district. Such test shall occur no sooner than the earliest date recommended by Centers for Disease Control (CDC) and Department for Public Health quarantine guidelines. A district may require an employee testing negative for COVID-19 to return to work in accordance with CDC and Department for Public Health quarantine guidelines.

(8) Leave granted pursuant to this section shall not accumulate or carry over beyond the 2021-2022 school year and shall not be transferrable to any other classification of paid leave established by

KRS 161.155, KRS 161.154, or local school district policy.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner & Chief Learner
LU YOUNG, Chairperson

APPROVED BY AGENCY: August 9, 2021

FILED WITH LRC: August 11, 2021 at 3:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 30, 2021, at 10:30 am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (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 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.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed emergency regulation is only applicable to the 2021-2022 school year. Under existing law, local school districts may not have a mechanism to provide leave to employees in quarantine due to the COVID-19 pandemic. The proposed emergency regulation establishes paid leave for employees placed in quarantine by a medical provider, a health department or by the school district.

(b) The necessity of this administrative regulation: As the 2021-2022 school year quickly approaches and with COVID-19 rates increasing, school districts may be without ability to provide leave to employees placed in quarantine due to COVID-19 exposure. As such, school district employees may be faced with the situation of being absent without leave in order to comply with a quarantine order.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for: The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine. This regulation establishes the leave requirements for quarantine due to COVID-19.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the leave requirements for quarantine due to COVID-19 pursuant to KRS 156.160(1)(l).

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

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

(b) The necessity of the amendment to this administrative regulation: N/A.

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

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

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

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: For school year 2021-2022, this administrative regulation requires school districts to provide leave for employees subject to quarantine due to the COVID-19 pandemic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts would incur some indeterminable costs in providing paid leave to employees. Cost will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts will be able to provide employees with leave when the employee is required to quarantine due to COVID-19 exposure. Districts currently cannot provide leave for quarantined employees beyond sick leave. This allows school districts to operate more safely and mitigate COVID-19 exposure risks in schools.

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

(a) Initially: The cost of the program is indeterminable and will depend on the numbers of employees placed in quarantine due to the COVID-19 pandemic and the cost to obtain substitute services where appropriate.

(b) On a continuing basis: This regulation is only applicable to the 2021-2022 school year and is in response to the COVID-19 pandemic.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General and Federal COVID-19 relief funds (e.g. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations (CRSSA) Act, and the American Rescue Plan (ARP) 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: No additional fees or funding are anticipated to implement this regulation. However, costs are largely dependent on the number of COVID-19 quarantined employees during school year 2021-2022.

(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 regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies uniformly to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for:

The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine.

KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate regulations for:

[T]he protection of the physical welfare and safety of the public school children.

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

leave to employees. Cost will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

(a) How much 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.

(b) How 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 is only applicable to the 2021-2022 school year. It will not generate revenue.

(c) How much will it cost to administer this program for the first year? The cost to administer this program during school year 2021-2022 is indeterminable.

(d) How much will it cost to administer this program for subsequent years? This regulation is only applicable to the 2021-2022 school year. School districts would incur some indeterminable cost in providing paid leave to employees. Costs will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

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

Revenues (+/-): N/A

Expenditures (+/-): Unknown

Other Explanation: Specific dollar estimates cannot be determined. The cost of the program is indeterminable and will depend on the numbers of employees placed in COVID-19 quarantine during the 2021-2022 school year and costs related to obtaining substitute employees where appropriate.

STATEMENT OF EMERGENCY 702 KAR 1:195E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, welfare, or the environment. The regulation is necessary to mitigate the spread of COVID-19 in Kentucky public schools and prevent public school closures during the 2021-22 school year due to COVID-19. Specifically, this emergency administrative regulation requires all individuals inside public school facilities to wear a face covering over the nose and mouth, absent an exemption set forth in the regulation. Pursuant to KRS 13A.190(1)(a), the promulgating agency has attached documentary evidence demonstrating the imminent threat to public health, safety, and welfare of public school students and the need for this regulation to be placed into effect immediately. Due to promulgation time, an ordinary administrative regulation would not be effective for approximately nine months, leaving public school children unnecessarily exposed to COVID-19 infection in public schools, and threatening in-person learning during the 2021-22 school year. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because the promulgating agency anticipates the imminent threat to public health, safety, and welfare will have substantially subsided upon expiration or withdrawal of this emergency regulation. This emergency regulation shall expire 270 days after filing or upon withdrawal by the promulgating agency.

ANDY BESHEAR, Governor
JACQUELINE COLEMAN, Secretary
LU YOUNG, Chair

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Emergency Administrative Regulation)

702 KAR 1:195E. Face coverings in school facilities.

EFFECTIVE: August 12, 2021

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070

designates the Kentucky Board of Education as the entity with the management and control of the common schools and all programs operated in the common schools. KRS 156.070 provides that the Kentucky Board of Education may prescribe administrative regulations it deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. Pursuant to KRS 156.160, the Kentucky Board of Education shall promulgate administrative regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The Commonwealth has experienced a significant and alarming increase in COVID-19 cases since mid-July 2021. Furthermore, the Centers for Disease Control and Prevention (CDC) states that the COVID-19 Delta variant is highly contagious, nearly twice as contagious as previous variants. CDC data shows that hospitalization of children is increasing due to COVID-19 infection. This emergency administrative regulation responds to an imminent threat to public health, safety, or welfare by requiring face coverings to be worn by all individuals inside public school facilities.

Section 1. Definitions. (1) "Face covering" means a material that covers the nose and mouth to prevent respiratory droplets from being expelled into the air and that:

(a) 1. Is secured to the head with ties, straps, or loops over the ears; or 2. Is wrapped around the lower face;

(b) May be made of a variety of materials, including cotton, silk, or linen;

(c) Shall have two (2) or more layers; and

(d) Shall be factory-made, homemade, or improvised from household items such as a scarf, bandana, or t-shirt.

(2) "Person with a disability" means any individual with a disability pursuant to the Individuals with Disabilities Education Act 20 U.S.C. §1400, et seq., the Americans with Disabilities Act 42 U.S.C. §12101, et seq., or Section 504 of the Rehabilitation Act of 1973.

(3) "School facility" means a building, enclosed structure, or vehicle, that is owned, leased, or operated by a school district, and where one or more students are present therein.

Section 2. Face Coverings Required in School Facilities. (1) All individuals, including students, school employees, contractors, and visitors, shall cover their nose and mouth with a face covering while inside a school facility.

(2) School district superintendents shall implement procedures to ensure face coverings are worn in school facilities as required by this administrative regulation.

(3) School districts shall provide face coverings to individuals in school facilities who do not furnish their own face covering, but shall not be required to provide more than two (2) face coverings to any single individual.

(4) This administrative regulation shall not prevent a school district from establishing and implementing policies or procedures that establish face covering requirements in addition to those set forth herein.

Section 3. Exemptions from Required Face Coverings. (1) Notwithstanding Section 2 of this administrative regulation, the following are exempt from wearing a face covering while inside a school facility:

(a) Children who are under age two (2);

(b) Any person with a disability whose disability prevents the person from safely wearing a face covering, or any person with a

physical or mental impairment documented by a medical professional as preventing the person from safely wearing a face covering;

(c) Any person who is deaf or hard of hearing and is actively communicating, or any person who is actively communicating with someone who is deaf or hard of hearing, and is able to maintain a distance of six (6) feet from all individuals who are not members of the person's household;

(d) Any person engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to their health or safety;

(e) Any person who is seated and actively consuming food or beverage;

(f) Any person who is obtaining a service that requires temporary removal of the face covering in order to perform the service;

(g) Any person who is required to temporarily remove the face covering to confirm their identity for security or screening purposes;

(h) Any person who is giving a speech or broadcast to an audience and is able to maintain a distance of six (6) feet from all individuals who are not members of the person's household;

(i) Any person who is in a swimming pool or other body of water;

(j) Any person who is actively engaged in exercise;

(k) Any person who is engaged in a lawful activity where federal or state law prohibits wearing a face covering;

(l) Any person who is sleeping or unconscious, or who cannot otherwise remove the face covering on their own; or

(m) Any person who is in an enclosed room and no other individuals are located inside the enclosed room, other than individuals who are members of the person's household. This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner & Chief Learner
LU YOUNG, Chairperson

APPROVED BY AGENCY: August 12, 2021

FILED WITH LRC: August 12, 2021 at 4:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 30, 2021, at 10:30 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (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 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. CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation responds to an imminent threat to public health, safety, welfare, or the environment by requiring face coverings in Kentucky public school facilities when students are present therein.

(b) The necessity of this administrative regulation: As a result of the COVID-19 Delta variant, Kentucky is experiencing an alarming increase in COVID-19 cases. The Centers for Disease Control and Prevention (CDC) states that the Delta variant is highly contagious, nearly twice as contagious as previous variants. Furthermore, hospitalizations of Kentuckians testing positive for COVID-19,

including children, is increasing at alarming rates. The CDC recommends universal indoor wearing of face coverings for all individuals in school settings. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative "regulations necessary or advisable for the protection of the physical welfare and safety of the public school children."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.070 designates the Kentucky Board of Education as the entity with the management and control of the common schools and all programs operated in the common schools. KRS 156.070 states that the Kentucky Board of Education may prescribe administrative regulations it deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative "regulations necessary or advisable for the protection of the physical welfare and safety of the public school children." This emergency regulation responds to an imminent threat to public health, safety, welfare, or the environment by requiring face coverings in Kentucky public school facilities when students are present therein. This is consistent with recommendations of the CDC to implement indoor universal face coverings in school settings, regardless of vaccination status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative "regulations necessary or advisable for the protection of the physical welfare and safety of the public school children." The CDC recommends universal face coverings in school settings, regardless of vaccination status. Furthermore, KRS 13A.190(1)(a) provides for emergency administrative regulations in order to respond to an imminent threat to public health, safety, welfare, or the environment.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A. This is a new emergency regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky public school districts, public school district employees/staff, public school students, and visitors to public schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All individuals, including students, school employees, contractors, and visitors, will be required, subject to exemptions, to cover their noses and mouths with face coverings while inside a school facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts will experience minimal costs implementing this administrative regulation, specifically to provide face coverings to those individuals who do not furnish their own face covering.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Research indicates that face coverings mitigate the spread of COVID-19, including the Delta variant. The CDC recommends universal face coverings in school settings, regardless of vaccination status. Universal face coverings inside school facilities will mitigate the spread of COVID-19 and prevent mass school community quarantines, and improve the likelihood of uninterrupted in-person learning.

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

(a) Initially: School districts will experience minimal costs providing face coverings to those individuals who do not furnish their own face covering.

(b) On a continuing basis: This is an emergency administrative regulation which will expire in 270 days after filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal emergency relief funds to public schools can be utilized to purchase face coverings.

(7) Provide an assessment of whether an 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: This administrative regulation does not establish any fees or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies uniformly to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and KRS 156.160.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not directly generate revenue, implementation will improve the likelihood of uninterrupted in-person learning, which has an impact on the revenue of Kentucky public school districts and the Kentucky economy.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This is an emergency administrative regulation which will expire in 270 days after filing.

(c) How much will it cost to administer this program for the first year? School districts will experience minimal costs providing face coverings to those individuals who do not furnish their own face covering. School districts may utilize federal COVID-19 relief funding to purchase face coverings.

(d) How much will it cost to administer this program for subsequent years? This is an emergency administrative regulation which will expire in 270 days after filing.

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

Revenues (+/-): N/A

Expenditures (+/-): School districts will experience minimal costs providing face coverings to those individuals who do not furnish their own face covering. School districts may utilize federal COVID-19 relief funding to purchase face coverings.

Other Explanation: None

STATEMENT OF EMERGENCY 702 KAR 7:125E

This emergency administration regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) and (2) to meet an imminent threat to public health, safety, welfare, or the environment and to prevent an imminent loss of federal or state funds. The emergency regulation is necessary to mitigate the potential loss of instructional time for Kentucky's elementary and secondary students placed in

quarantine or isolation due to the COVID-19 pandemic, as well as, the loss of funding to school districts due to student absences because of the quarantine or isolation. Due to rising COVID-19 cases, and because the 2021-2022 school year is about to begin for the majority of Kentucky's public school students, an ordinary regulation would not become effective in time for school districts to effectively plan for and provide educational services for quarantined and isolated students during the upcoming school year. This amendment authorizes local school districts, for the 2021-2022 school year, to provide instructional services to students on quarantine or in isolation as a result of COVID-19. Under the current regulation, students in quarantine or isolation are considered absent and do not receive educational services. With the amendment, students receiving educational services would be included in the district's Average Daily Attendance (ADA) which is utilized to calculate Support Educational Excellence in Kentucky (SEEK) funding to school districts. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation other than technical amendments. Pursuant to KRS 13A.190, the administrative agency submitted documentary evidence at the time of filing this emergency regulation which shows the increase in COVID-19 cases among Kentuckians under age 17 between June 1, 2021 and July 25, 2021.

ANDY BESHEAR, Governor
JACQUELINE COLEMAN, Secretary

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Emergency Amendment)

702 KAR 7:125E. Pupil attendance.

EFFECTIVE: August 11, 2021

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. Daily Attendance. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil entry and exit log at each school.

(2) Daily attendance of pupils in middle and high schools shall be determined by taking attendance by class period and maintaining a pupil entry and exit log at each school.

(3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils who are signed out, the pupil entry and exit log shall also include a signature of:

- (a) A parent;
- (b) A legal guardian; or
- (c) An adult with proof of identification and for whom the school

has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A pupil may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive, at a minimum, the instruction required pursuant to KRS 157.270;

(e) The pupil has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive at a minimum, the instruction required pursuant to paragraph (d) of this subsection;

(f) The pupil has an individual education program (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 7 and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305. A pupil may be counted in attendance for performance-based credit for a class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7; [ef]

(h) The pupil participates in a school that is authorized by the commissioner to design and deliver an educational program so that all graduation requirements are based on pupil proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 7[-]; or

(i) For school year 2021-2022, the pupil is in quarantine due to documented possible exposure to COVID-19 or isolation due to COVID-19 infection, in accordance with Centers for Disease Control and Kentucky Department for Public Health guidelines, and is receiving at least the minimum amount of daily instruction required pursuant to KRS 158.060.

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

Section 3. Shortened School Day. A local board of education

may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. The time a pupil is in attendance shall be included in calculating the district's average daily attendance.

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school and part of the pupil's education under the direction and control of another public or nonpublic school. The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.

Section 5. Private School Placement. If a local school district, under the provisions of KRS 157.360(7), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of Pupil. (1) If a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(2) If a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(3)(a) The local board of education shall have determined that the pupil is eligible for enrollment in the appropriate level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of pupil work samples, including evidence of pupil self-reflection; and
3. Standardized test results.

(b) The team shall be comprised of three (3) members who have knowledge of the pupil's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists.

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.

(d) If a pupil is recommended by the local board of education for accelerated placement into the entry or second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(4) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 7. Due Dates for Certain Reports. (1) The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9) shall be submitted to the department through the statewide student information system within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department through the statewide student information system by June 30 of each year.

Section 8. Nonresident Pupils. (1)(a) A written agreement executed by local boards of education for enrollment of nonresident pupils as provided by KRS 157.350(4)(a) shall be filed in both the attending district and the resident district no later than October 1 of the school year prior to the school year to which it will apply.

(b) The written agreement shall include the specific terms to which the districts have agreed.

(c) A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year covered by the agreement.

(d) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district no later than June 30 of each year.

(2) A list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(b) and who are not covered by the nonresident agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year.

(3)(a) If an agreement cannot be reached for the enrollment of nonresident pupils as provided in KRS 157.350(4)(a), a local board of education may file an appeal to the commissioner no later than October 15 of the school year prior to the school year to which an agreement would apply.

(b) A local board of education shall file its appeal to the commissioner in person or by mail at the following address: Commissioner of Education; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601. A local board of education filing an appeal to the commissioner shall include written arguments and documents in support of its position.

(c) Upon receipt of an appeal pursuant to KRS 157.350(4)(a), the commissioner shall notify the local boards of education involved in the dispute and provide a deadline not to exceed twenty (20) calendar days for the responding local board of education to file written arguments and documents supporting its position. The commissioner shall issue a written decision settling the dispute within thirty (30) calendar days following the deadline for the responding local board of education to file written arguments and documents supporting its position.

(4)(a) A local board of education may appeal the commissioner's written decision to the state board of education by filing a notice of appeal and request for hearing no later than fifteen (15) calendar days following issuance of the commissioner's written decision.

(b) A notice of appeal and request for hearing from a local board of education shall include:

1. The name of the school district filing the notice of appeal and request for hearing;
2. The case number, if any, assigned to the commissioner's written decision;
3. The date of the commissioner's written decision;
4. A statement of the issues which form a basis for the notice of appeal and request for hearing; and
5. The signature of the local board of education chair or counsel authorized to act on behalf of the local board of education.

(c) A local board of education shall file its notice of appeal and request for hearing in person or by mail at the following address: Kentucky Board of Education; General Counsel; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601.

(5)(a) Upon receipt of a notice of appeal and request for hearing, a notice of hearing pursuant to KRS 13B.050 shall be issued and a hearing officer shall be assigned pursuant to KRS 13B.030.

(b) Following issuance of a notice of hearing and assignment

of a hearing officer as set forth in subsection (5)(a) of this section, the hearing officer shall preside over the matter and schedule an administrative hearing pursuant to KRS Chapter 13B to conclude no later than sixty (60) calendar days following the notice of hearing described in subsection (5)(a) of this section.

(c) Following conclusion of administrative hearings not conducted before a quorum of the state board, the hearing officer shall issue a recommended order to the state board of education pursuant to KRS 13B.110.

(d) Parties may file exceptions to the hearing officer's recommended order pursuant to KRS 13B.110.

(e) Following receipt of the hearing officer's recommended order and any exceptions filed by the parties, or following conclusion of the administrative hearing if conducted before a quorum of the state board of education, the state board of education shall issue a final order pursuant to KRS 13B.120.

Section 9. Weather-related Low Attendance Days. (1) The SAAR may:

(a) Substitute the prior year's average daily attendance for up to ten (10) designated weather-related low attendance days; and

(b) Shall constitute certification that the low attendance was due to inclement weather, in accordance with KRS 157.320(17).

(2) Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 10. Nontraditional Instruction Program Health and Safety Closings. (1) The SAAR may:

(a) Substitute the prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(10); and

(b) Shall constitute certification that the low attendance was due to health and safety reasons.

(2) Documentation that the low attendance was due to health and safety reasons shall be retained at the central office.

(3) Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.

Section 11. Original Source of Attendance Data. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, pupil entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W07, W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out,

discharge, or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(9) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;

(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil is too ill to participate in regular school attendance, local homebound instructional services or hospital setting instructional services, or if the pupil has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(12) W08 - A pupil withdrawn due to death;

(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(14) W17 - An entry level pupil in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;

(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(17) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil records has been received or enrollment has been substantiated;

(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated or failed to attend on the first day of school in a district but thereafter enrolled in the district;

(20) W25 - A pupil who is at least eighteen (18) years of age and has withdrawn from public school;

(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(22) W27 - A pupil who has withdrawn from school and subsequently received a GED;

(23) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma;

(24) W29 - A pupil who has moved out of state or out of the United States;

(25) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;

(26) C01 - A pupil who completes the school year in the school of the most current enrollment;

(27) G01 - A pupil who graduates in less than four (4) years;

(28) G02 - A pupil who graduates in four (4) years;

(29) G03 - A pupil who graduates in five (5) or more years;

(30) G04 - A pupil who graduates in six (6) or more years; and

(31) NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1

of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. Suspension. (1) For a pupil who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial Category Codes. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

(1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(2) Black or African American - A person having origins in any of the black racial groups of Africa;

(3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

(4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America), who maintains cultural identification through tribal affiliation or community attachment; and

(5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and Transfer Records. (1) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's permanent file.

Section 17. Incorporation by Reference. (1) "Home/Hospital Program Form", October 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner & Chief Learner
LU YOUNG, Chair

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 30, 2021, at 10:30 am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (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 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.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor,

Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed regulation amendment creates an attendance option for public school students in quarantine or isolation due to COVID-19 during the 2021-2022 school year. Under existing regulation, local school districts do not have a mechanism to provide instructional services to and receive funding for students in quarantine or isolation due to the COVID-19 pandemic. Students under quarantine or isolation are simply considered absent under the regulation prior to amendment. 702 KAR 7:125 generally requires in-person attendance in order for students to be included in a district's Average Daily Attendance (ADA) for Support Education Excellence in Kentucky (SEEK) funding purposes. The current regulation contains several exceptions to the in-person attendance requirement. The proposed regulation amendment establishes an exception to the in-person attendance requirement for students in quarantine or isolation due to the COVID-19 pandemic. The proposed amendment would permit districts to provide instructional services to students in quarantine or isolation and include those students in district Average Daily Attendance (ADA).

(b) The necessity of this administrative regulation: As the 2021-2022 school year quickly approaches and with COVID-19 rates increasing, school districts are expecting a significant number of students to be subject to quarantine or isolation due to exposure or infection throughout the 2021-2022 school year. Currently, students under quarantine or isolation due to the COVID-19 pandemic would be recorded as an excused absence. As such, they are not counted in district ADA, do not receive instructional services, and must make-up missed work. This regulation amendment will allow districts to provide educational services and include those students in the ADA. Given that quarantine may last fourteen days or longer, this amendment seeks to ameliorate lost instructional time and funding for districts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation for school year 2021-2022 provides for an exception to in-person attendance for students subject to quarantine and isolation due to the COVID-19 pandemic when districts provide instructional services in accordance with KRS 158.060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform method of recording pupil attendance.

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

(a) How the amendment will change this existing administrative regulation: For school year 2021-2022 only, this administrative regulation provides for an exception to in-person attendance for students subject to quarantine or isolation due to the COVID-19 pandemic when districts provide instructional services in accordance with KRS 158.060. Under current law, such students would be considered absent and receive no instructional services and districts would lose funding for these students.

(b) The necessity of the amendment to this administrative regulation: As the 2021-2022 school year quickly approaches and with COVID-19 rates increasing, school districts are expecting a significant number of students to be subject to quarantine or isolation due to exposure or infection. Data indicates a significant rise in the

number of COVID-19 cases among Kentuckians age 17 and under. Currently, students under quarantine or isolation due to the COVID-19 pandemic are an excused absence. As such, they do not receive instructional services and must make-up missed work. This regulation will allow districts to provide educational services and include those students in the ADA. Given that quarantine may last fourteen days or longer, this amendment seeks to ameliorate lost instructional time and funding for districts.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation for school year 2021-2022 provides for an exception to in-person attendance for students subject to quarantine and isolation due to the COVID-19 pandemic when districts provide instructional services in accordance with KRS 158.060.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes a uniform method of recording pupil attendance.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

For school year 2021-2022, this administrative regulation permits school districts to provide instructional services to and receive funding for students subject to quarantine and isolation due to the COVID-19 pandemic. Such students would otherwise be considered absent and not receive instructional services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts would incur some indeterminable cost in providing educational services to students. Costs would be dependent on the number of quarantined or isolated students and how the district chooses to deliver instruction to those students. However, districts would include such students in the district's ADA and receive funding for providing instruction.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts that provide instruction to students in quarantine or isolation due to the COVID-19 pandemic will include such students in the district's ADA and receive funding. These students would otherwise be considered absent. Absent students do not generate funding for a school district.

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

(a) Initially: The cost of the program will depend on the numbers of students placed in quarantine or isolation due to the COVID-19 pandemic as well as whether districts choose to provide educational services. If districts do not provide educational services, they will not be eligible to count the student in ADA. For districts that provide educational services, costs will depend on how the district chooses to deliver instruction.

(b) On a continuing basis: This regulation is only applicable to the 2021-2022 school year and is in response to the COVID-19 pandemic.

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

funding are anticipated to implement this regulation. However, costs are largely dependent on the number of COVID-19 quarantined or isolated students in school year 2021-2022 and the costs to districts in providing instructional services to those students.

(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 regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies uniformly to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 157.320, 158.060 and 158.070

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will permit local school districts to receive funding for students in quarantine or isolation due to the COVID-19 pandemic when they provide educational services to those students. Without this amendment, districts would not receive funding for these type of absent students.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue to a local school district is indeterminable. Revenue will depend on the number on the numbers of students placed in quarantine or isolation due to the COVID-19 pandemic as well as whether districts choose to provide educational services. For districts that provide educational services, costs will depend on how the district chooses to deliver instruction.

(b) How 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 only applicable to the 2021-2022 school year.

(c) How much will it cost to administer this program for the first year? The cost to administer this program during school year 2021-2022 is indeterminable. Without the proposed amendment, students in quarantine or isolation would not receive instructional services and would not be included in ADA. As a result, SEEK funding to districts would decrease. The department anticipates this amendment will result in SEEK being more stable to school districts who provide instructional services during quarantine/isolation.

(d) How much will it cost to administer this program for subsequent years? This amendment is only applicable to the 2021-2022 school year.

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

Revenues (+/-): N/A

Expenditures (+/-): Unknown

Other Explanation: Specific dollar estimates cannot be determined. The cost of the program is indeterminable and will depend on the numbers of students placed in COVID-19 quarantine or isolation during the 2021-2022 school year, as well as, whether and how districts provide educational services to such students.

STATEMENT OF EMERGENCY

803 KAR 2:330E

This emergency administrative regulation is promulgated to meet an imminent threat to public health, safety, or welfare, to prevent a loss of federal funds, and ensure compliance with federal mandates. Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to

Kentucky. On June 21, 2021, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) to protect healthcare and healthcare support service workers from occupational exposure to coronavirus disease 2019 (COVID-19) in settings where people with COVID-19 are reasonably expected to be present. OSHA determined that employee exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) presents a grave danger to workers in all healthcare settings where people with COVID-19 are reasonably expected to be present. OSHA also determined that an ETS is necessary to protect healthcare and healthcare support employees in covered healthcare settings from exposures to SARS-CoV-2. During the period of the ETS, covered healthcare employers must develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace. Covered employers must also implement other requirements established in the ETS to reduce transmission of COVID-19 in their workplaces. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding. Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and it must remain in effect for the duration of OSHA's ETS. This emergency administrative regulation will be not replaced by an ordinary administrative regulation since OSHA has not promulgated a permanent final rule.

ANDY BESHEAR, Governor

JAMIE LINK, Secretary

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(New Emergency Administrative Regulation)

803 KAR 2:330E. Occupational Exposure to COVID-19.

EFFECTIVE: July 20, 2021

RELATES TO: KRS 338.015, 29 C.F.R. 1910.502-509

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to adopt federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify or repeal standards and reference federal standards. This emergency temporary administrative regulation establishes federal requirements relating to COVID-19 in healthcare settings.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

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

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

(5) "Occupational Safety and Health Act" or "OSH Act" or "OSHA" means KRS Chapter 338.

(6) "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

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

Section 2. Except as modified by the definitions in Section 1 and the requirements in Section 3 of this emergency administrative

regulation, an employer shall comply with 29 C.F.R. Part 1910, Subpart U, COVID-19 Emergency Temporary Standard, published in the June 21, 2021 Federal Register, Volume 86, Number 116.

Section 3. (1)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.502(r)(1)(ii).

(b) An employer shall report COVID-19 hospitalizations pursuant to 803 KAR 2:181 or 803 KAR 2:181E, whichever is in effect.

(2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.502(r)(2).

(b) An employer shall follow the requirements established in 803 KAR 2:181 or 803 KAR 2:181E, whichever is in effect, when reporting COVID-19 fatalities and hospitalizations.

JAMIE LINK, Secretary of Labor

APPROVED BY AGENCY:

FILED WITH LRC:

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on September 21, 2021 at 10:00 am. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8)(b) (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/87800440284?pwd=dUZHamFJeTk0TUZpWlQ3UHp5cE9vdz09>, passcode 064833; or by telephone at (713) 353-0212, or (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 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: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation defines terms. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1910, Subpart U, COVID-19 Emergency Temporary Standard except as modified by the definitions in Section 1 and requirements of Section 3 of this emergency administrative regulation. Section 3 amends the reporting requirement in the June 21, 2021 final rule to comport with the reporting requirement established in 803 KAR 2:181 or 803 KAR 2:181E, whichever is in effect.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and must remain in effect for the duration of OSHA's ETS.

(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 emergency

administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures the state is as effective as the federal requirement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable.

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

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

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

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

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

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA does not provide a breakdown of the cost for Kentucky entities to comply with the final rule. OSHA estimates the costs of the rule are \$3,969,645,432, the benefits are \$26,851,729,237, with a net benefit of \$22,882,083,805. Section VI.B. of OSHA's June 21, 2021 final rule provides a detailed economic feasibility analysis. There is no additional cost to the OSH Program to implement this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirement protects healthcare and healthcare support employees in covered healthcare settings from exposures to SARS-CoV-2.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29

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C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i). Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and must remain in effect for the duration of OSHA's ETS.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i). Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and must remain in effect for the duration of OSHA's ETS.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: OSHA does not provide a breakdown of the cost for Kentucky entities to comply with the final rule. OSHA estimates the national costs of the rule are \$3,969,645,432 and the benefits are \$26,851,729,237, with a net benefit of \$22,882,083,805. Section VI.B. of OSHA's June 21, 2021 final rule provides a detailed economic feasibility analysis. There is no additional cost to the OSH Program to implement this emergency administrative regulation.

STATEMENT OF EMERGENCY 900 KAR 12:005

Pursuant to 21 RS HB 140, Ky. Acts Ch. 67, Section 2(1)(d), the Cabinet for Health and Family Services is required to promulgate administration regulations to establish a glossary of telehealth terminology to provide standard definitions for all health care providers, state agencies, and payors. The terminology and

definitions used in the uniform glossary will be included in the health benefit plans sold in the commonwealth in calendar year 2022. The health benefit plans to be sold in the private health insurance market in calendar year 2022 were required to be filed with the Kentucky Department of Insurance for review and approval by April 1, 2021. Pursuant to KRS 304.14-120, the department has sixty (60) days to review and approve the forms. Pursuant to KRS 304.14-120(2) and 304.14-120(4), the department as extended the review timeframe through July 30, 2021. However, because the deadline for insurers to submit final plan documents for certification to be sold on the exchange in calendar year 2022 is August 12, 2021, the July 30, 2021, deadline cannot be extended further. In order to meet this imminent deadline, the cabinet needs to file an emergency administrative regulation to establish the glossary of telehealth terminology. This administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3. as it meets the promulgation deadline that is established by state statute. 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 Office of Health Data and Analytics Division of Telehealth Services (New Emergency Administrative Regulation)

900 KAR 12:005E. Telehealth terminology and requirements.

EFFECTIVE: July 28, 2021

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2)-(5), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

STATUTORY AUTHORITY: KRS 194A.105, 211.334(1)(d), 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to establish a telehealth terminology glossary to provide standard definitions for all health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors; establish minimum requirements for the proper use and security of telehealth including requirements for confidentiality and data integrity, privacy, and security, informed consent, privileging and credentialing, reimbursement, and technology; and establish minimum requirements to prevent waste, fraud, and abuse related to telehealth.

Section 1. Definitions. (1) "Department" means Department for Medicaid Services.

(2) "Division" means Division of Telehealth Services.

(3) "Health care service" is defined by KRS 211.332(2).

(4) "Professional licensure board" is defined by KRS 211.332(3).

(5) "State agency authorized or required to promulgate administrative regulations relating to telehealth" is defined by KRS 211.332(4).

(6) "Telehealth" or "digital health" is defined by KRS 211.332(5).

Section 2. Compliance. (1) Health care providers performing a telehealth or digital health service shall:

(a) Maintain confidentiality of patient medical information in accordance with KRS 311.5975;

(b) Maintain patient privacy and security in accordance with the federal Health Insurance Portability and Accountability Act of 1996

(HIPAA), 42 U.S.C. secs. 1320d to 1320d-9, unless waived by the applicable federal authority;

(c) Obtain patient informed consent in accordance with KRS 311.5975 and KRS 304.40-320;

(d) Secure credentialing if required by a third party or insurer or other payor;

(e) Obtain privileges by hospitals or facilities to admit and treat patients;

(f) 1. Utilize the appropriate current procedural terminology (CPT) or health care common procedure coding (HCPCS) code and place of service (POS) code "02" to secure reimbursement for a professional telehealth service; or

2. Utilize appropriate telehealth service code, if a CPT or HCPCS code is not available or not used for that service, according to customary practices for that health care profession, including the use of any telehealth modifiers or alternate codes;

(g) Utilize non-public facing technology products that are HIPAA compliant;

(h) As appropriate for the service, provider, and recipient, utilize the following modalities of communication delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:

1. Live or real-time audio and video synchronous telehealth technology;

2. Asynchronous store-and-forward telehealth technology;

3. Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;

4. Audio-only telecommunications systems; or

5. Clinical text chat technology when:

a. Utilized within a secure, HIPAA compliant application or electronic health record system; and

b. Meeting:

(i) The scope of the provider's professional licensure; and

(ii) The scope of practice of the provider; and

(i) Comply with the following federal laws to prevent waste, fraud, and abuse relating to telehealth:

1. False Claims Act, 31 U.S.C. § 3729-3733;

2. Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); and

3. Physician Self-Referral, Section 1877 of the Social Security Act (42 U.S.C. § 1395nn).

Section 3. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", July 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

ROBERT E. PUTT, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 22, 2021

FILED WITH LRC: July 28, 2021 at 1:34 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. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by 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 will be given an opportunity to comment on the proposed administrative regulation. A 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. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and

Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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 Specialist, 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: Kim Minter or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a telehealth terminology glossary and establishes requirements to prevent waste, fraud, and abuse.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a telehealth glossary to be utilized by state agencies when promulgating telehealth administrative regulations, and by health care providers and payors to understand telehealth in the delivery of health care services, and establishes requirements to prevent waste, fraud, and abuse in KRS 211.334 and 211.336 and required by HB 140, Ky. Acts Ch. 67, from the 2021 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes. The administrative regulation conforms to the content of the authorizing statutes by establishing a telehealth glossary and requirements for use.

(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 a telehealth glossary and requirements. KRS 211.334(1) authorizes the cabinet, in consultation with the Division of Telehealth Services within the Office of Health Data and Analytics, to provide guidance and direction to providers delivering health care services using telehealth or digital health; and to promote access to health care services provided via telehealth or digital health.

(2) If 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 government affected by this administrative regulation: This increase will impact those payors, providers, members, and recipients who are regulated by state government. In the early part of the pandemic, telehealth utilization increased and was about 78 times higher than previous levels. Over the course of the COVID-19 pandemic, telehealth usage appears to have stabilized at levels that are about 38 times higher than pre-pandemic telehealth utilization. The Cabinet for Health and Family Services anticipates that increased telehealth utilization will be an ongoing feature of the healthcare system.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: All health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors should utilize the glossary for consistency when referencing telehealth terminology.

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

question (3): No cost is imposed on the entities regulated by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Telehealth Terminology Glossary will assist providers, consumers, patients, and stakeholders in understanding telehealth within the health care system as well as standardizing telehealth language across all state agencies who promulgate telehealth legislation.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of this administrative regulation in the first year of operation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in 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: Federal Centers for Medicare and Medicaid Services (CMS) funding, state restricted funding, and MCO capitation fees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees. This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as telehealth requirements are applied equally to all affected.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

2. State compliance standards. Meeting federal standards by complying with privacy, security, waste, fraud, and abuse requirements.

3. Minimum or uniform standards contained in the federal mandate. Meeting federal standards by complying with privacy, security, waste, fraud and abuse requirements.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) and all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.105, 205.510, 205.559, 205.5591, 211.332(2)-(5), 211.334(1)(d), 211.336(3), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering this administrative regulation 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:

STATEMENT OF EMERGENCY 902 KAR 2:213E

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. According to the Centers for Disease Control and Prevention ("CDC"), the Delta variant is nearly twice as contagious as previous COVID-19 variants, and fully vaccinated people with Delta variant breakthrough infections can spread the virus to others. Hospitalizations from COVID-19 are doubling every two weeks, by far the fastest rate of growth of the pandemic. The surge of hospitalizations of children with COVID-19 is causing children's hospitals to become overwhelmed, with recent CDC data showing an average of 225 children with COVID-19 admitted to U.S. hospitals every day over the past week, which is a 45.7% increase from the prior week in daily new hospitalizations of children age 17 and under. The American Academy of Pediatrics recently reported that more than 93,000 children and teenagers were infected with COVID-19 last week, up 84% from the previous week and five times as many cases as the end of June. The CDC now recommends universal indoor wearing of face coverings for all teachers, staff, students (age 2 and older), and visitors to schools, regardless of vaccination status. The CDC recommends that all people age 2 and older who are not fully vaccinated should wear a face covering while indoors in childcare settings. The CDC also recommends that fully vaccinated people wear a face covering in public indoor settings in areas of substantial or high transmission. 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.

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 2:213E. Childcare standards for covering the face in response to declared national or state public health emergency.

EFFECTIVE: August 10, 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 child care settings 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. Personal Protective Equipment (PPE) Requirements. (1) All staff, volunteers, visitors, parents, guardians, and all children age 2 and older who are able to wear a face covering, shall wear a face covering while inside a child care center or family child care home, unless they meet any of the exemption criteria established in subsection (5) of this section;

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

(3)(a) A provider shall require all children (2) years of age or older to wear a face covering;

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

(c) A face covering lanyard shall be prohibited for all children due to increased risk of suffocation and strangulation.

(4) If a child age two (2) or older or an adult refuses to wear a face covering, or face shield as permitted by subsection (1)(c) of this section, the facility may refuse the individual the right to enter the facility.

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

(a) Any person who is sleeping or unconscious, or who cannot otherwise remove the face covering on their own;

(b) Any person with a disability, or a physical or mental impairment, that prevents them from safely wearing a face covering;

(c) Any person who is deaf or hard of hearing and is actively communicating, or any person who is actively communicating with someone who is deaf or hard of hearing, and is able to maintain a safe distance of six (6) feet from all individuals who are not members of that person's household;

(d) Any person engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to their health or safety;

(e) Any person who is seated and actively consuming food or beverage;

(f) Any person who is obtaining a service that requires temporary removal of the face covering in order to perform the service;

(g) Any person who is required to temporarily remove their face covering to confirm their identity or for security or screening purposes;

(h) Any person who is giving a speech or broadcast to an audience and is able to maintain a safe distance of six feet from all individuals who are not members of the person's household;

(i) Any person who is in a swimming pool or other body of water indoors;

(j) Any person who is actively engaged in exercise indoors in a facility; and

(k) Any person who is engaged in a lawful activity where federal or state law prohibits wearing a face covering.

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>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 12, 2021 at 8:17 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. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by 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 will be given an opportunity to comment on the proposed administrative regulation. A 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. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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 Specialist, 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for wearing a face covering by teachers, staff, children, and visitors while in a child care center or family child care home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the health and safety of the children, teachers, staff, and visitors in child care settings during the current national or state public health emergency. The Centers for Disease Control and Prevention (CDC) now recommends universal indoor wearing of face coverings for all teachers, staff, students (age 2 and older), and visitors to schools, regardless of vaccination status. The CDC recommends that all people age 2 and older who are not fully vaccinated should wear a face covering while indoors in childcare settings. The CDC also recommends that fully vaccinated people wear a face covering in public indoor settings in areas of substantial or high transmission.

(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: Currently, 1,835 licensed child care centers, and 231 certified family child care homes in Kentucky. The Department for Community Based Services, Division of Child Care, and the Office of the Inspector General, Division of Regulated Child Care, will be impacted as the child care regulating and monitoring agencies, respectively.

(4) Provide an analysis of how the entities identified in question (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: Certified family child care homes, licensed child care centers, and limited duration child care programs will be required to meet the additional CDC and public health guidance contained in this administrative regulation to prevent the spread of the virus within child care facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no additional cost to the Division of Child Care or the Division of Regulated Child Care. These requirements are consistent with the current CDC guidance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities complying with the requirements of this administrative regulation will reduce the risk of spreading the COVID-19 virus within their facilities and homes and hopefully be able to eliminate or minimize spreading the virus and remain open.

(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 not applied as all licensed child care centers and certified family child care homes will be regulated by this administrative regulation.

Regulated Child Care, and the Department for Public Health are impacted by this administrative regulation. A local government or a school district operating a licensed child care center, in whole or in part, 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 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:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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, Division of Child Care and Division of

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Emergency As Amended at ARRS, August 17, 2021)

702 KAR 1:195E. Face coverings in school facilities.

Emergency As Amended version effective: August 17, 2021

Prior version:

New Emergency - 48 Ky.R. 746

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 designates the Kentucky Board of Education as the entity with the management and control of the common schools and all programs operated in the common schools. KRS 156.070 provides that the Kentucky Board of Education may prescribe administrative regulations it deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. Pursuant to KRS 156.160, the Kentucky Board of Education shall promulgate administrative regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The Commonwealth has experienced a significant and alarming increase in COVID-19 cases since mid-July 2021. Furthermore, the Centers for Disease Control and Prevention (CDC) states that the COVID-19 Delta variant is highly contagious, nearly twice as contagious as previous variants. CDC data shows that hospitalization of children is increasing due to COVID-19 infection. This emergency administrative regulation responds to an imminent threat to public health, safety, or welfare by requiring face coverings to be worn by all individuals inside public school facilities.

Section 1. Definitions. (1) "Face covering" means a material that covers the nose and mouth to prevent respiratory droplets from being expelled into the air and that:

- (a) 1. Is secured to the head with ties, straps, or loops over the ears; or 2. Is wrapped around the lower face;
- (b) May be made of a variety of materials, including cotton, silk, or linen;
- (c) Shall have two (2) or more layers; and
- (d) Shall be factory-made, homemade, or improvised from household items such as a scarf, bandana, or t-shirt.

(2) "Person with a disability" means any individual with a disability pursuant to the Individuals with Disabilities Education Act 20 U.S.C. §1400, et seq., the Americans with Disabilities Act 42 U.S.C. §12101, et seq., or Section 504 of the Rehabilitation Act of 1973.

(3) "School facility" means a building, enclosed structure, or vehicle, that is owned, leased, or operated by a school district, and where one or more students are present therein.

Section 2. Face Coverings Required in School Facilities. (1) All individuals, including students, school employees, contractors, and visitors, shall cover their nose and mouth with a face covering while inside a school facility.

(2) School district superintendents shall implement procedures to ensure face coverings are worn in school facilities as required by this administrative regulation.

(3) School districts shall provide face coverings to individuals in school facilities who do not furnish their own face covering, but shall not be required to provide more than two (2) face coverings to any single individual.

(4) This administrative regulation shall not prevent a school district from establishing and implementing policies or procedures that establish face covering requirements in addition to those set

forth herein.

Section 3. Exemptions from Required Face Coverings. (1) Notwithstanding Section 2 of this administrative regulation, the following are exempt from wearing a face covering while inside a school facility:

- (a) Children who are under age two (2);
- (b) Any person with a disability whose disability prevents the person from safely wearing a face covering, or any person with a physical or mental impairment documented by a medical professional as preventing the person from safely wearing a face covering;
- (c) Any person who is deaf or hard of hearing and is actively communicating, or any person who is actively communicating with someone who is deaf or hard of hearing, and is able to maintain a distance of six (6) feet from all individuals who are not members of the person's household;
- (d) Any person engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to their health or safety;
- (e) Any person who is seated and actively consuming food or beverage;
- (f) Any person who is obtaining a service that requires temporary removal of the face covering in order to perform the service;
- (g) Any person who is required to temporarily remove the face covering to confirm their identity for security or screening purposes;
- (h) Any person who is giving a speech or broadcast to an audience and is able to maintain a distance of six (6) feet from all individuals who are not members of the person's household;
- (i) Any person who is in a swimming pool or other body of water;
- (j) Any person who is actively engaged in exercise;
- (k) Any person who is engaged in a lawful activity where federal or state law prohibits wearing a face covering;
- (l) Any person who is sleeping or unconscious, or who cannot otherwise remove the face covering on their own; or
- (m) Any person who is in an enclosed room and no other individuals are located inside the enclosed room, other than individuals who are members of the person's household. 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).

Section 4. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on August 17, 2021.

JASON E. GLASS, Ed.D., Commissioner & Chief Learner

LU YOUNG, Chairperson

APPROVED BY AGENCY: August 12, 2021

FILED WITH LRC: August 12, 2021 at 4:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 30, 2021, at 10:30 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (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 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.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology
(Emergency As Amended at ARRS, August 17, 2021)

902 KAR 2:213E. Childcare standards for covering the face in response to declared national or state public health emergency.

Emergency As Amended version effective: August 17, 2021

Prior version:

New Emergency - 48 Ky.R. 757

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 child care settings 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. Personal Protective Equipment (PPE) Requirements. (1) All staff, volunteers, visitors, parents, guardians, and all children age 2 and older who are able to wear a face covering, shall wear a face covering while inside a child care center or family child care home, unless they meet any of the exemption criteria established in subsection (5) of this section;

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

(3)(a) A provider shall require all children (2) years of age or older to wear a face covering;

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

(c) A face covering lanyard shall be prohibited for all children due to increased risk of suffocation and strangulation.

(4) If a child age two (2) or older or an adult refuses to wear a face covering, or face shield as permitted by subsection (1)(c) of this section, the facility may refuse the individual the right to enter the facility.

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

- (a) Any person who is sleeping or unconscious, or who cannot otherwise remove the face covering on their own;
- (b) Any person with a disability, or a physical or mental impairment, that prevents them from safely wearing a face covering;
- (c) Any person who is deaf or hard of hearing and is actively

communicating, or any person who is actively communicating with someone who is deaf or hard of hearing, and is able to maintain a safe distance of six (6) feet from all individuals who are not members of that person's household;

(d) Any person engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to their health or safety;

(e) Any person who is seated and actively consuming food or beverage;

(f) Any person who is obtaining a service that requires temporary removal of the face covering in order to perform the service;

(g) Any person who is required to temporarily remove their face covering to confirm their identity or for security or screening purposes;

(h) Any person who is giving a speech or broadcast to an audience and is able to maintain a safe distance of six feet from all individuals who are not members of the person's household;

(i) Any person who is in a swimming pool or other body of water indoors;

(j) Any person who is actively engaged in exercise indoors in a facility; and

(k) Any person who is engaged in a lawful activity where federal or state law prohibits wearing a face covering.

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>.

Section 5. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on August 17, 2021.

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

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 12, 2021 at 8:17 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. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by 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 will be given an opportunity to comment on the proposed administrative regulation. A 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. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation

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shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, August 10, 2021)

16 KAR 3:060. School[Guidance] counselor, provisional and standard certificates, all grades.

RELATES TO: KRS 156.101, 156.160, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB[board]. This administrative regulation establishes the preparation and certification program for school[guidance] counselors, at all grade levels.

Section 1. Conditions and Prerequisites. (1) The provisional and standard certificate for school[guidance] counselor shall be issued in accordance with KRS Chapter 161 and 16 KAR Chapters 3 and 6 to an applicant who has completed the approved program of preparation which corresponds to the certificate at an educator preparation[a teacher education] institution approved in accordance with 16 KAR 5:010.

(2) The school[guidance] counseling program shall be subject to the program approval requirements established in 16 KAR 5:010 and shall incorporate the Kentucky Standards of Preparation for School Counselors[Kentucky Standards For Guidance Counselor Programs, incorporated by reference in 16 KAR 5:010].

(3) The provisional and standard certificate for school[guidance] counselor established under this administrative regulation shall be valid for the position of school[guidance] counselor for all grade levels, primary through grade twelve.

Section 2. (1) The provisional certificate for school[guidance] counselor shall be issued to an applicant who meets the requirements of 16 KAR 2:010, Section 3(1), and has completed [upon completion of] an approved master's level program in school[guidance] counseling.

(2) The provisional certificate for school[guidance] counselor shall be issued for a period of five (5) years and may be renewed upon application to the EPSB[board], compliance with 16 KAR 2:010, Section 3(1), [using the "Form TC-2, Application for Certificate Renewal Duplicate," incorporated by reference in 16 KAR 2:090,] and submission of proof of the completion of a minimum of three (3)[nine (9)] semester hours of graduate credit in the areas of counseling or school[guidance] counseling.

(3)[(2)] An applicant with a valid Kentucky teaching certificate who has completed the coursework for the standard certificate for school counselor, but has not met the employment requirements of Section 3 of this administrative regulation, may renew the provisional school counselor certificate upon meeting the requirements of 16 KAR 4:060 for the renewal of the applicant's teaching certificate.

(4)[(3)] If there is a lapse of a provisional certificate for school[guidance] counselor for lack of meeting the renewal requirements, certification may be reissued at a later date upon application to the EPSB[board], compliance with 16 KAR 2:010, Section 3(1), [using the "Form TC-2, Application for Certificate Renewal/Duplicate," incorporated by reference in 16 KAR 2:090,] and the submission of proof of the completion of a minimum of six (6)[nine (9)] semester hours of graduate credit [for each five (5) year period of validity or period of lapse of the guidance counselor

certificate. The graduate credit shall be] in the areas of counseling or school[guidance] counseling.

Section 3. (1) The standard certificate for school[guidance] counselor shall be issued to an applicant who meets the requirements of 16 KAR 2:010, Section 3(1) and one (1) of the following qualification options:

(a) Option I:

1. Successful completion of an approved master's level program in school[guidance] counseling;

2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or school[guidance] counseling program;;

3. One (1) year of full time employment as a provisionally-certified school[guidance] counselor in a public school or nonpublic school that[which] meets the state performance standards as established in KRS 156.160 or that[which] has been accredited by a regional or national accrediting association;

4. A valid Kentucky Professional teaching certificate; and

5. A minimum of one (1) year of full time classroom teaching experience on a Professional Teaching Certificate in a public school or a nonpublic school that[which] meets the state performance standards as established in KRS 156.160 or that[which] has been accredited by a regional or national accrediting association; or

(b) Option II:

1. Successful completion of an approved master's level program in school[guidance] counseling;

2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or school[guidance] counseling program; and

3. A minimum of two (2) years of full-time[successful] employment as a provisionally [full-time] certified school[guidance] counselor.

(2) The standard certificate for school[guidance] counselor shall be issued for a period of five (5) years and shall be renewed subsequently for five (5) year periods upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of;[-, by September 1 of the year of expiration, the Effective Instructional Leadership Act (EILA) hours as specified by the Kentucky Department of Education in KRS 156.101. It shall be the responsibility of the guidance counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal.]

(a) Two (2) years of experience as a certified school counselor;

(b) Three (3) semester hours of additional graduate credit in counseling or school counseling; or

(c) The Effective Instructional Leadership Act hours as specified by the Kentucky Department of Education in KRS 156.101. It shall be the responsibility of the school counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal.

(3) If there is a lapse in the standard certificate for school[guidance] counselor for lack of meeting renewal requirements, the certificate may be reissued at a later date upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of [by first completing] twelve (12) clock hours of counselor role specific training for each year since the expiration of the certificate up to a maximum of seventy-five (75) clock hours or six[nine (9)] semester hours of additional graduate credit appropriate to position of school[guidance] counselor.[

Section 4. Implementation Dates. (1) The provisions for the issuance of the provisional and standard certificate for guidance counselor, all grades, shall apply to a student admitted to a program of preparation beginning September 1, 2003.

(2)(a) A candidate admitted by September 1, 2003 to an

approved preparation program for guidance counselor shall complete the program by December 31, 2006.

(b) A candidate formally admitted by September 1, 2003, to an approved preparation program for guidance counselor shall be eligible for the guidance counselor certificate, all grades upon:

1. Completion of the program in which the candidate is enrolled as identified in this subsection;

2. Successful completion of an approved additional three (3) to six (6) credit hours from an approved graduate level counseling or guidance counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not previously addressed and which provides the candidate with knowledge relevant to counseling all grades; and

3. A recommendation from the institution of higher education for the appropriate certificate.

(3) An individual who holds a valid Kentucky provisional or standard guidance counselor certificate, grades K-8, grades 7-12, or grades 5-12 shall be eligible to extend that certificate to a provisional or standard guidance counselor certificate, all grades, upon application and proof of the following:

(a) Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or guidance counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not already addressed and for the grade range sought by the extension; and

(b) Recommendation from the institution of higher education for the appropriate certificate.]

Section 4[Section 5]. Validity of Prior Certificates. (1) A valid Provisional or Standard Certificate for Guidance Counselor grades K-8, 5-12, or 7-12 issued prior to August 5, 2005 shall be valid for the position of school[guidance] counselor for any[grades K-8 and also for any other] school configurations containing[having] at least one (1) grade level listed on the certificate.[sequential combination of the grades K-12 that includes any grade K-8.]

(2) An individual who holds a valid Kentucky provisional or standard guidance counselor certificate, grades K-8, grades 7-12, or grades 5-12 shall be eligible to extend that certificate to a provisional or standard school counselor certificate, all grades, upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and proof of the following:

(a) Successful completion of a minimum three (3) credit hours from an approved graduate level counseling or school counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not previously addressed and ~~that[which]~~ provides the candidate with knowledge relevant to counseling all grades; and

(b) A recommendation from the institution of higher education for the appropriate certificate. [

(2) A valid Provisional or Standard Certificate for Guidance Counselor grades 5-12 issued prior August 5, 2005 shall be valid for the position of guidance counselor for grades 5-12 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade 5-12.

(3) A valid Provisional or Standard Certificate for Guidance Counselor grades 7-12 issued prior to August 5, 2005 shall be valid for the position of guidance counselor for grades 7-12 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade 7-12.]

Section 5. Incorporation by Reference. (1) "Kentucky Standards of Preparation for School Counselors", 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the EPSB's Web site at <http://www.epsb.ky.gov/course/view.php?u=2>.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (As Amended at ARRS, August 10, 2021)

16 KAR 5:020. Standards for admission to educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires that the Education Professional Standards Board (EPSB) promulgate administrative regulations setting standards for educator preparation programs. KRS 161.030(1) requires that the EPSB promulgate administrative regulations establishing requirements for issuance of a certificate authorized under KRS 161.010 to 161.126. This administrative regulation establishes the standards for admission to an educator preparation program that is required for certification.

Section 1. Selection and Admission to Educator Preparation Programs. (1) Each accredited provider of an approved program of educator preparation shall adhere to minimum standards for admission to its certification educator preparation programs, including those programs established pursuant to KRS 161.048, in accordance with this section.

(2)(a) Admission to an approved undergraduate initial certification education preparation program[including those programs established pursuant to KRS 161.048(2), 161.048(3), 161.048(6), and 161.048(8),] shall require the following: [

(a)] 1. a. A cumulative grade point average of 2.75 on a 4.0 scale; or

b. [2.] A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, in accordance with the following:

(i)[a.] Grade point average (GPA) shall be calculated by beginning with the most recent course completed and proceeding backward for two (2) semesters in the order the grades fall on the transcript to accumulate the last thirty (30) hours completed; and

(ii)[b.] If it is necessary to go back further than two (2) semesters, then the courses in the third semester included in the calculation shall be chosen based on the highest grades earned during that third semester; and

2. (b) Successful completion of one (1) of the following [pre-professional skills] assessments of basic knowledge: [administered by the Educational Testing Service with the corresponding minimum score]:

a. [1.] The ACT with a composite score of 22 or the corresponding minimum scores:

(i)[a.] Reading-20;

(ii)[b.] Writing-18; and

(iii)[c.] Math-19; or

b. [2.] The pre-professional skills assessments of basic knowledge administered by the Educational Testing Service with the corresponding minimum scores:

(i)[a.] [1-] "Praxis Core Academic Skills for Educators (CASE): Reading (5713)" – 156;

(ii)[b.] [2-] "Praxis Core Academic Skills for Educators (CASE): Writing (5723)" – 162; and

(iii)[c.] [3-] "Praxis Core Academic Skills for Educators (CASE): Mathematics (5733)" – 150.

(b)[e.] An applicant may[can] use a combination of ACT and CASE minimum scores to meet the requirements of paragraph (a)2. (b) of this subsection.

(c)[e.] If an applicant has a minimum cumulative grade point average of 3.0 on a 4.0 scale, the educator preparation provider may admit the applicant to an approved undergraduate initial certification education preparation program if the applicant is within five points of one or more of the corresponding minimum scores on the pre-professional skills assessments listed in paragraph

(a)2.b.[(b)2.] of this subsection.

(3) Admission to an approved graduate level initial certification educator preparation program shall require the following:

(a) [4-] A bachelor's degree or advanced degree awarded by a regionally or nationally accredited college or university with a cumulative grade point average of 2.75 on a 4.0 scale; or

(b)[2-] A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework, and

(4)[(b)] Admission to an Option 7 program established in accordance with KRS 161.048(8) shall also require successful completion of one of the following:

(a)[1-] The[Successful completion of the pre-professional skills] assessments in subsection (2)(a)2.b.[(b)2.] of this section; or

(b)[2-] The[Successful completion of the] Graduate Record Exam (GRE) administered by the Education Testing Service with the following corresponding minimum scores on the corresponding sections:

1.[a-] Verbal reasoning – 150;

2.[b-] Quantitative Reasoning – 143; and

3.[c-] Analytical Writing – 4.0.

(5)[(4)] Admission to an advanced certification educator preparation program shall require the following:

(a)1. A statement of eligibility or an initial certificate earned by completion of an approved program through an approved educator preparation provider in Kentucky; or

2. For out-of-state applicants, a statement of eligibility or an initial certificate issued by EPSB and earned by completion of a program through an approved educator preparation provider; and

(b)1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(c)1. Completion of requirements for the administrative certificate as established in 16 KAR Chapter 3; or

2. Completion of requirements for the certificate as established in [16 KAR 2:060;] 16 KAR 2:070[;] and 16 KAR 2:090.

(6)[(5)] Each accredited provider of an approved program of educator preparation shall have a formal application procedure for admission that shall include the following:

(a) Documentation that the applicant demonstrates the following:

1. Critical thinking;

2. Communication;

3. Creativity; and

4. Collaboration;

(b) Evidence that the applicant has reviewed the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

(c) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(7)[(6)] The educator preparation program shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

(8)[(7)] The educator preparation provider shall maintain electronic records that document that all students meet the requirements established in this section.

Section 2. Selection and Admission to an Approved Educator Preparation Program for Occupation-Based Career and Technical Education. (1) Admission to an approved program of preparation for occupation-based career and technical education that results in certification pursuant to 16 KAR 2:020 shall require:

(a) A minimum of a high school diploma or equivalency exam;

(b) Four (4) years of successful and appropriate occupational experience in the area to be taught, which shall include:

1. At least two (2) years of occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an approved program of preparation for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education, Office of Career and Technical Education;

(c) The assessment provisions established in 16 KAR 6:020; and

(d) An offer of employment from a state or local technology center, or a school district.

(2) Each provider of an approved occupation-based educator preparation program shall have a formal application procedure for admission that shall include the following:

(a) Evidence that the applicant has reviewed the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

(b) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(3) The educator preparation provider shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

(4) The educator preparation provider shall maintain electronic records that document that all students meet the requirements established in this section.

(5) A provider of approved educator preparation programs shall provide notice to the EPSB of which candidates it has admitted to an approved program of educator preparation within six (6) months of the candidate's admission.

(6) Failure of an approved educator preparation provider to provide EPSB with notice of each candidate it admitted to an approved program of preparation in accordance with this section may result in action against the provider's accreditation status.

Section 3. Assessment Recency. A passing score on an assessment established at the time of admission shall be valid for the purpose of applying for admission for five (5) years from the assessment administration date.

Section 4. Annual Report. (1) Each educator preparation provider shall submit an electronic report annually to the EPSB that includes the following program data on each candidate admitted to educator preparation programs:

(a) EPSB Person Identifier;

(b) Student School Identification number;

(c) Social Security number;

(d) Full name;

(e) Birth date;

(f) Reported ethnicity;

(g) Reported gender;

(h) Email address;

(i) Present home mailing address;

(j) Permanent home mailing address;

(k) Phone number;

(l) Admission date;

(m) Total number of credit hours prior to admission to the provider's educator preparation program;

(n) Total number of credit hours in educator preparation courses completed prior to admission to the provider's educator preparation program;

(o) Grade point average at admission;

(p) Current program enrollment status;

(q) Program completion date;

(r) Grade point average at program completion;

(s) Academic major at program completion; and

(t) Academic minor or minors at program completion, if applicable.

(2) The report shall be submitted in the following manner:

(a) The provider shall electronically submit all data identified in subsection (1) to the EPSB; and

(b) By September 15 of each year, each institution shall provide written confirmation by electronic mail to the EPSB that all required information has been entered.

(3) The preparation program shall exit any candidate who has not been enrolled in at least one (1) course required for program completion within the last twelve (12) months.

(4) Failure to submit the annual report in accordance with this section may result in action against the program's accreditation status.

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.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, August 10, 2021)**

16 KAR 9:090. University-based alternative certification program for teachers of world languages.

RELATES TO: KRS 160.345(2)(h), 161.020, 161.028, 161.030, 161.048, 161.1221

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 and 161.030 authorize the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards to approve and evaluate educator preparation programs. KRS 161.048(7) authorizes the EPSB[~~Education Professional Standards Board~~] to approve alternative programs that enroll students in postbaccalaureate educator preparation programs concurrently with employment as a teacher in a local school district. This administrative regulation establishes the program requirements and candidate qualifications for the university-based alternative certification program for teachers of world languages and the requirements for issuance of a temporary provisional certificate to teach world languages.

Section 1. Definitions. (1) "University-based alternative certification program" means a postbaccalaureate educator preparation program that enrolls a teacher candidate concurrently with employment as a teacher in a local school district.

(2) "World language" means any currently spoken and written language other than English.

Section 2. An accredited college or university, or a consortium of institutions, may apply to the ~~EPSB[Education Professional Standards Board]~~ for approval to provide a university-based alternative certification program for teachers of world languages if the college, university, or consortium meets the requirements established in Section 4(1) of this administrative regulation.

Section 3. Admission Requirements. To be admitted to a postbaccalaureate educator preparation program that enrolls a candidate concurrently with employment as a teacher of world language, the individual shall have:

(1) A bachelor's degree from an accredited college or university with a minimum cumulative grade point average of 2.75 on a 4.0 scale or a 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework[the required cumulative grade point average]; and

(2) Successful completion of the program's approved assessments to measure proficiency for program admission as established in Section 4(1)(a) of this administrative regulation.

Section 4. University Requirements. (1) In addition to the standards for program approval established in 16 KAR 5:010, the university-based alternative certification program for teachers of world languages shall:

(a) Select assessments to measure proficiency for program admission, which shall include:

1. A nationally recognized assessment for written and oral proficiency in the world language area in which the candidate is seeking certification; and

2. A nationally recognized assessment for oral and written proficiency in English language usage;

(b) Establish a protocol to assess a candidate's educational background to develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grades that correspond with the candidate's school placement;

(c) Design coursework and mentoring to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including internship programs, within a period of three (3) years;

(d) Develop an agreement to provide, in collaboration with the administration of a candidate's employing school, mentoring to the candidate in the employment setting, which shall include:

1. Prior to the candidate's enrollment in the Kentucky Teacher Internship pursuant to KRS 161.030 and 16 KAR 7:010, a minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. An acknowledgement by the employing school district that the school district shall be responsible for all costs associated with providing school district mentors for the teacher;

4. The name, contact person, and role for the collaborating educator preparation institution mentor; and

5. The names and roles of the school district mentor teachers;

(e) Require the candidate to begin course work no later than ninety (90) days from the date the eligibility notice is issued; and

(f) Establish a process to maintain regular communications with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement.

(2) Student teaching shall not be required for program completion.

Section 5. Issuance of a Temporary Provisional Certificate for World Language. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university-based alternative certification program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate for world language.

(3) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).f.i]

(4) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(5) All transcripts from institutions outside of the United States shall be accompanied by a course-by-course evaluation with a grade point average from a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES®).

(5) The educator preparation institution shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

(6) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the university-based alternative certification program as required by Section 4(1)(d) of this administrative regulation.

Section 6.[Section 5.] Temporary Provisional Certificate for World Language. (1) The temporary provisional certificate for world language shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional certificate for world language may be renewed a maximum of two (2) times.

(3) The temporary provisional certificate for world language shall be:

(a) Issued in accordance with a grade level and specialization as recommended by the educator preparation institution pursuant to Section 5(5) of this administrative regulation[on Form TC-WL]; and

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(b) Valid for the world language and all grades listed on the face of the certificate.

(4) The temporary provisional certificate for world language shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in 16 KAR 8:020.

~~Section 6. Issuance of a Temporary Provisional Certificate for World Language. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university based alternative certification program to provide to school districts pursuant to KRS 160.345(2)(h).~~

~~(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate for world language.~~

~~(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.~~

~~(4) All transcripts from institutions outside of the United States shall be accompanied by a course-by-course evaluation from the American Association of Collegiate Registrars and Admissions Officers or a member of NACES®.~~

(5) ~~The employing school district shall submit with Form TC-WL a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 4(1)(d) of this administrative regulation.~~

Section 7. Requirements for renewal of the temporary provisional certificate for world language. (1) A candidate shall be eligible for the first renewal of the temporary provisional certificate for world language upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional world language certificate; and

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program.[-; and

~~(c) Completion of Form TC-WL.]~~

(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate for world language upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional world language certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c) The required assessments as established in 16 KAR 6:010.1; and

~~(d) Completion of Form TC-WL.]~~

Section 8. (1) Upon completion of all program requirements of the university-based alternative certification program for teachers of world languages[,] including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:010,] the candidate may apply to the EPSB for the professional certificate[make application to the Education Professional Standards Board for the professional certificate on the form TC-1 which is incorporated by reference in 16 KAR 2:010.]

(2) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB[~~Education Professional Standards Board~~] shall issue a professional certificate.]

~~Section 9. Incorporation by Reference. (1) "Application for World Language Temporary Provisional Certification," Form TC-WL, September 2011, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional~~

~~Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky
40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, August 10, 2021)

105 KAR 1:270. [Special federal income tax withholding]Federal tax withholding or direct rollover of funds for eligible distributions.

RELATES TO: KRS 16.505, 16.578, 16.645, 61.505(1)(f),
61.510, 61.625, 61.635, 61.640, 61.690, ~~61.645(9)(g), [16.505,~~
~~16.578, 16.645,~~ 78.510, 78.545, ~~]~~ 26 U.S.C. 72(t), 401(a), 402

STATUTORY AUTHORITY: KRS 61.505(1)(f)[61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS

61.505(1)(f)[KRS 61.645(9)(e)(g)] authorizes the Kentucky Public Pensions Authority[Board of Trustees of Kentucky Retirement Systems] to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with[necessary to carry out the provisions of] KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. 26 U.S.C. 402 establishes the federal taxation requirements regarding direct rollovers of distributions and the withholding of federal income tax. This administrative regulation establishes the procedure for informing affected members, beneficiaries, and alternate payees of their rights with regard to federal taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file[return] the form required for federal income tax purposes at the retirement office within a reasonable time, and a procedure in [for] the event that an alternate payee cannot be located.

Section 1. Definitions. (1) Definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this **administrative** regulation.

(2) Prior to April 1, 2021, "the Agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "the Agency" means the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "File" means the following methods for delivering or submitting a form to the retirement office: mail, fax, secure email, in-person delivery, and upload via Self Service on the Web site maintained by the agency (if available). ~~IA form shall not be deemed filed until it has been received at the retirement office.~~

(4) "Provide" means the following methods for the agency to make a form available to a member, beneficiary, or alternate payee: mail, fax, secure email, and upload via Self Service on the Web site maintained by the agency (if available).

Section 2. Application for Refund of Accumulated Account Balance.

(1)(a) ~~[In order]~~ To receive a refund of ~~an [his or her]~~ accumulated account balance in accordance with KRS 61.625 and 78.545, a member shall apply for ~~[such]~~ a refund on a Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection.

(b) Upon receipt of a request by the member, the agency [the retirement office] shall provide [mail] the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments, to the member [requesting payment].

(c) Additionally, the agency may make the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The member shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, and file [return] it at [to] the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the applicable section [back] of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, [the form] certifying that the rollover will be accepted.

(c) The employer(s) participating in the agency from which the member has terminated employment may complete the applicable portion of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, verifying termination of employment.

(3)(a) The refund of contributions shall not be processed unless [until] the member is eligible to receive a refund pursuant to KRS 61.625 and 78.545 and the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, is filed [returned] by the member at [to] the retirement office.

(b) The refund of contributions shall **not** be processed [ne] earlier than forty-five (45) days from the date of the member's termination of employment with the participating employer(s) that previously employed the member.

Section 3[2]. Required Form following Member Selection of an Actuarial Refund Retirement Payment Option, Lump-sum Refund of Contributions, or Partial Lump-sum Retirement Payment Option.

(1)(a) Along with each blank [Upon receipt of a completed] Form 6010, Estimated Retirement Allowance, the agency [on which the member has selected the actuarial refund or partial lump-sum option, the retirement office] shall provide [mail to the member] the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding [or a Spouse Beneficiary of] an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the member.

(b) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) If the member completes the Form 6010, Estimated Retirement Allowance, and selects an actuarial refund retirement payment option, lump-sum refund of contributions, or partial lump-sum retirement payment option, the [The] member shall also complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding [or a Spouse Beneficiary of] an Eligible Rollover Distribution, and file both completed forms at [return it to] the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the applicable section [back] of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, [the form] certifying that the rollover will be accepted.

(3) The payment option selected by the member on the completed and filed Form 6010, Estimated Retirement Allowance, shall not be processed unless [until] the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding [or a Spouse Beneficiary of] an Eligible Rollover Distribution, is filed at [is returned to] the retirement office.

Section 4[3]. Required Form following Beneficiary Selection of Lump-sum Payment Option or Sixty (60) Months Certain Payment Option, or if Beneficiary Eligible for Lump-sum Refund of Contributions Only.

(1)(a) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary [who is the surviving spouse] of the deceased member has selected the lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option, the agency [retirement office] shall provide [mail to the beneficiary who is the surviving spouse of the deceased member] the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding [or a Spouse Beneficiary of] an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the beneficiary of the deceased member.

(b) If the beneficiary of the deceased member is only eligible for a lump-sum refund of the deceased member's accumulated account balance, the agency shall provide the Form 6025, Direct Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the beneficiary of the deceased member.

(c) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The beneficiary [who is the surviving spouse] of the deceased member shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding [or a Spouse Beneficiary of] an Eligible Rollover Distribution, and file [return] it at [to] the retirement office.

(b) If the beneficiary [who is the surviving spouse] of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary [who is the surviving spouse] of the deceased member shall have the trustee or institution complete the applicable section [back] of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, [form] certifying that the rollover will be accepted.

(3)(a) The payment options selected by the beneficiary [who is the surviving spouse] of the deceased member on a Form 6010, Estimated Retirement Allowance shall not be processed unless [until] the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding [or a Spouse Beneficiary of] an Eligible Rollover Distribution, is filed at [returned to] the retirement office.

(b) If the beneficiary of the deceased member is only eligible for a lump-sum refund of the deceased member's accumulated account balance, payment to the beneficiary of the deceased member shall not be processed unless the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed at the retirement office.

Section 5. Required Form for Alternate Payee who is Eligible for Actuarial Refund or Partial Lump-sum Payment Option, or Eligible for a Portion of the Lump-sum Refund, Partial Lump-sum, or Actuarial Refund Retirement Payment Option selected by the Member.

Section 4. (1) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary who is not the surviving spouse of the deceased member has selected the actuarial refund or a sixty (60) months certain payment option, the retirement office shall mail to the beneficiary who is not the surviving spouse of the deceased member the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.

(2)(a) The beneficiary who is not the surviving spouse of the

deceased member shall complete the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.

(b) If the beneficiary who is not the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is not the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment option selected by the beneficiary who is not the surviving spouse of the deceased member shall not be processed until the completed Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

Section 5-] (1)(a) If the alternate payee is eligible for a lump-sum portion of the member's accumulated contributions, ~~contribution account~~ actuarial refund, or partial lump-sum payment option pursuant to a qualified domestic relations order, the agency shall provide the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution [4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection], along with the Special Tax Notice Regarding Payments ~~shall be mailed to the alternate payee~~, to the alternate payee.

(b) If the alternate payee is eligible ~~for to select a payment option and selects~~ an actuarial refund or partial lump-sum payment option pursuant to a qualified domestic relations order, the agency shall provide a Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the alternate payee ~~shall be mailed to the alternate payee~~.

(c) Additionally, the agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The alternate payee shall complete the ~~[Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or]~~ Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, and ~~file return~~ it ~~at to~~ the retirement office.

(b) If the alternate payee intends to have the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the applicable section ~~back~~ of the ~~[Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or]~~ Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~of Spouse Beneficiary of~~ an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3) ~~(a)~~ The payment to an alternate payee of an actuarial refund or lump-sum refund, or a portion of the member's accumulated account balance, actuarial refund, or partial lump-sum payment option, ~~partial lump-sum~~ pursuant to the qualified domestic relations order shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, is ~~filed at~~ returned to the retirement office.

(4) ~~(a)(b)~~ If the ~~payment is a portion of the member's contribution account and the~~ alternate payee does not ~~file at the retirement office return~~ the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution [4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection], within thirty (30) days of

receipt of the form and the Special Tax Notice Regarding Payments, the alternate payee's payment shall be processed and treated for federal income tax purposes as if the alternate payee had made an election to directly receive the funds instead of rolling over the payment to an IRA or other plan ~~form~~, the payment shall be processed and the alternate payee's portion of the refund shall be treated for federal income tax purposes as if the alternate payee had made an election to receive the funds].

(b) The agency shall hold the amount payable to the alternate payee under this section for at least 180 days after the payment becomes payable.

1. The agency shall make all reasonable efforts to locate the alternate payee during the 180 days and shall make payment to the alternate payee if he or she is located within that period.

2. If the alternate payee has not been located within 180 days after the alternate payee's payment becomes payable and the agency has exhausted all reasonable efforts to locate the alternate payee, the agency shall pay the payment held to the member and shall assign the federal tax liability for this payment to the member. ~~[No]~~ Interest shall ~~not~~ accrue on this lump-sum payment during the 180 day period or thereafter. If the alternate payee is subsequently located, any amounts already paid to the member shall no longer be payable to the alternate payee.

Section 6. Optional Form for Qualified Public Safety Employee electing to receive an Actuarial Refund Retirement Payment Option, Lump-sum Refund, Partial Lump-sum Refund, or Ten (10) Year Certain Retirement Payment Option.

(1) A member who was last employed as a "qualified public safety employee" as defined in 26 U.S.C. Internal Revenue Code, Section 72(t), ~~shall will~~ not be subject to the ten (10) percent early distribution tax penalty if electing to receive an actuarial refund, lump-sum refund, partial lump-sum refund, or the ten (10) years certain option if the member files the following completed forms at the retirement office: ~~may file a~~

(a) The Form 4527, Certification by a "Qualified Public Safety Employee [Employees]" and Request for an Exception to the ~~ten (10%) percent~~ Early Distribution Penalty in IRC 72(t); ~~and to avoid the ten (10) percent early distribution tax penalty if electing to receive an actuarial refund, lump-sum refund, partial lump-sum refund, or the ten (10) years certain option.~~

(b) The Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(2)(a) Upon request by the member, the agency shall provide the Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), to the member.

(b) Additionally, the agency may make the Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), available on its Web site. ~~The member who was last employed as a "qualified public safety employee" shall file the Form 4527, Certification by a Qualified Public Safety Employee and Request for an Exception to the 10 percent Early Distribution Penalty in IRC 72(t), with the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, at the retirement office in order to avoid the ten (10) percent early distribution tax penalty.]~~

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", February 2021 [May-2008];

(b) "Special Tax Notice Regarding Payments", February 2021 [May-2008];

(c) Form 6010, "Estimated Retirement Allowance", February 2021 [July-2004];

(d) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding [or a Spouse Beneficiary of] an Eligible Rollover Distribution", February 2021[May 2008]; and

(e) [Form 6026, "Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution", May 2008; and

(f) Form 4527, "Certification by a "Qualified Public Safety Employee[Employees]" and Request for an Exception to the 10% [percent] Early Distribution Penalty in IRC 72(t)", February 2021[May 2008].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Retirement Systems], [Perimeter Park West], 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

CONTACT PERSON: Katherine Rupinen, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8615 email Legal.Non-Advocacy@kyret.ky.gov.

BOARDS AND COMMISSIONS
Kentucky Board of Medical Licensure
(As Amended at ARRS, August 10, 2021)

201 KAR 9:290. Athletic trainers: interpretation and application of KRS 311.901(1) and 311.903(2)[(4)].

RELATES TO: KRS Chapter 13B, 311.591-311.593, 311.599, 311.900, 311.901(1), ~~[and KRS]~~ 311.903(2), 311.905, 311.911[(4)]

STATUTORY AUTHORITY: KRS 311.901(1), ~~[and KRS]~~ 311.903(2)[(4)]

NECESSITY, FUNCTION & CONFORMITY: KRS 311.901(1) and ~~[KRS]~~ 311.903(2)[(4)] require that the Kentucky Board of Medical Licensure promulgate administrative regulations relating to the licensure and regulation of athletic trainers, including procedures for eligibility and credentialing, procedures for license renewal and reinstatement, procedures for complaints and disciplinary actions, a code of ethical standards, standards of practice, objectives of athletic training, procedures for name and contact information changes, procedures of licensure renewal and reinstatement of active duty military individuals, procedures for documentation standards, requirements for foreign-trained athletic trainers, a formulary of legend medications that may be obtained, transported, provided, and administered when providing athletic training services, and requirements for invasive procedures. This administrative regulation establishes the procedures for eligibility and credentialing of US-trained and foreign-trained athletic trainers, procedures for license renewal and reinstatement including for active duty military individuals, procedures for complaints and disciplinary actions, a code of ethical standards, standards of practice, objectives of athletic training, procedures for name and contact information changes, procedures for documentation standards, a formulary of legend medications that may be obtained, transported, provided, and administered when providing athletic training services, and requirements for invasive procedures.

Section 1. Definitions. (1) "Athletic injury" is defined by KRS 311.900(2). [means: (a) An injury or condition, excluding medical conditions such as internal infections, internal injuries, fractures, and spinal cord injuries except in an acute situation sustained by an athlete that affects the individual's participation or performance in sports, games, or recreation; or

(b) An injury or condition that is within the scope of practice of an athletic trainer identified by a physician licensed under KRS Chapter 311, a physical therapist licensed under KRS Chapter 327, an occupational therapist licensed under KRS Chapter 319A, or a chiropractor licensed under

KRS Chapter 312 that is likely to benefit from athletic training services that have been approved by a physician supervising the athletic trainer;]

(2) "BLS" means basic life support.

(3) "Board" means the Kentucky Board of Medical Licensure.

(4) "BOC" means National Athletic Trainers Association Board of Certification, Inc.

(5) ~~["CAATE" means the Commission on Accreditation of Athletic Training Education.~~

~~(6)] "Dry needling" or [is also known as] "intramuscular manual therapy" [and] means the insertion of a dry solid filiform needle, without medication, into a trigger point with the goal of releasing or inactivating the trigger points for the treatment of myofascial or musculoskeletal pain or soft tissue dysfunction.~~

~~(6)][(7)] "IM" means intramuscular.~~

~~(7)][(8)] "IV" means intravenous.~~

~~(8)][(9)] "Legend drug" or "legend medication" means any drug, except for Schedule II, III, IV, or V drugs as defined in the Controlled Substances Act, 21 U.S.C. secs. 801 et seq., approved by the U.S. Food and Drug Administration that can be dispensed to the public only with a prescription from a medical doctor or other licensed practitioner.~~

~~(9)][(10)] "NATA" means the National Athletic Trainers Association.~~

~~(11)] "OTC" means an over-the-counter medication and is any medicine sold directly to a consumer without a requirement for a prescription from a healthcare professional.~~

~~(10)][(12)] "SubQ" means subcutaneous.~~

~~(11)][(13)] "Supervising physician" is defined by KRS 311.900(6)[means a medical or osteopathic physician licensed by the Board].~~

~~(12)][(14)] "Supervision" is defined by KRS 311.900(7)[means advising, consenting to, or directing the activities of an athletic trainer through written or oral orders by a physician licensed by the Board, including pre-existing written protocols].~~

Section 2. Eligibility and Credentialing for US-trained and Foreign-Trained Athletic Trainers. In order to be eligible for licensure as an athletic trainer in the Commonwealth of Kentucky, regardless of whether trained in the United States or abroad, an applicant shall satisfy the requirements established in KRS 311.905.

Section 3. Renewal and Reinstatement. The procedures for renewal and reinstatement shall be as [are those] established in KRS 311.905 and 201 KAR 9:305 and 9:307.

Section 4. Procedures for complaints and disciplinary actions. All grievances, complaints and disciplinary proceedings against an athletic trainer shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593, ~~[,]~~ 311.599, and 311.911; KRS Chapter 13B; and any related administrative regulations in 201 KAR Chapter 9 that [promulgated under KRS Chapter 311 which] apply to physicians shall also apply to athletic trainers.

Section 5. Ethical Standards. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to the National Athletic Trainers' Association's Code of Ethics (March 2018).

Section 6. Standards of Practice. The standards of practice of an athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to BOC Standards of Professional Practice (October 2017), unless otherwise excluded by Kentucky statute or administrative regulation including those under 201 KAR Chapter 9.

Section 7. Objectives of Athletic Training. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall practice with the intent of preventing, recognizing, evaluating, managing, disposing, treating, reconditioning, or rehabilitating

athletic injuries.

Section 8. Name and Contact Information Changes.

(1) Any person licensed to practice as an athletic trainer in the Commonwealth of Kentucky shall report, in writing, to the Board:

(a) His or her full and official name, maiden name, and any aliases;

(b) The primary address or addresses[address(es)] at which he or she maintains an office or practices athletic training and may be served correspondence from the Board;

(c) The electronic email address or addresses[address(es)] at which he or she may receive correspondence from the Board; and

(d) His or her supervising physician or physicians[physician(s)].

(2) If unknown at the time of initial licensure, any new licensee shall make the report required in subsection (1) of this section within thirty (30) days after commencing the practice of athletic training within this state.

(3) Every athletic trainer who, after notifying the Board of the information required in subsections (1) and (2) of this section, moves, changes, or obtains a new name, address, electronic address, or supervising physician, shall notify the Board, in writing, within ten (10) business days thereof.

Section 9. Documentation Standards. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall maintain an appropriate and reasonable medical record of patients receiving athletic training services, which may include:

(1) Record of the athletic trainer's evaluation of the patient;

(2) Inclusion of pertinent medical history;

(3) Record of oral orders from a referring or supervising physician;

(4) A description of services provided by the athletic trainer;

(5) A plan of care including referral to other medical providers;

(6) Record of follow up care and/or ongoing treatment; and

(7) Documentation of significant changes in patient status, if any.

Section 10. Formulary of Legend Medications that[which] may be Obtained, Transported, Provided, and Administered if[when] Providing Athletic Training Services.

(1) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, obtain, transport, provide, and administer the following legend drugs:

(a) Albuterol for administration via meter dose inhaler;

(b) Albuterol Nebule for administration via small volume nebulizer or oxygen-driven nebulizer prepackaged;

(c) Atrovent Nebule for administration via small volume nebulizer or oxygen-driven duonebulizer prepackaged;

(d) Oxygen;

(e) Nitroglycerin for administration via spray or tab;

(f) Epinephrine 1:1000 for administration via IM or Epi-Pen for treatment of anaphylaxis;

(g) The following fluids for IV administration:

1. Normal Saline; and

2. Lactated Ringers;

(h) Naloxone for IM or nasal administration;

(i) Glucagon for IM administration in the event of a diabetic emergency;

(j) D50-Dextrose 50% and D25- Dextrose 25% for IV administration in the event of a diabetic emergency;

(k) Flu Vaccine to any person nine (9) years of age or older;

(l) Lidocaine (1% or 2%) for administration via injection, with or without Epinephrine;

(m) Bupivacaine (.5%) for administration via injection, with or without Epinephrine;

(n) Lidocaine Topical; and

(o) Dermabond tissue adhesive.

(2) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, obtain, transport, provide, and administer

OTC medications in accordance with the manufacturer's recommendations or upon order of a supervising physician.

(3) Unless there is a risk of death, physical disability, or impairment to the athlete, an athletic trainer licensed to practice in the Commonwealth of Kentucky shall not administer a legend drug or an OTC medication to a person under the age of eighteen (18) years without express parental or guardian consent and physician oversight.

Section 11. Invasive Procedures.

(1) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, perform the following invasive procedures:

(a) Rectal thermometry;

(b) IM, IV or SubQ medication administration injections;

(c) Airway adjuncts, if in conformity with BLS protocols and instruments;

(d) Dry needling, if:

1. The athletic trainer has completed at least fifty-four (54) classroom hours of BOC-approved dry needling training, which includes instruction in the clinical application of dry needling;

2. The procedure is ordered by a supervising physician; and

3. The treatment is administered in a designated room or facility separate from a gymnasium, locker room, sports field, or sideline;

(e) Phlebotomy;

(f) Capillary finger sticks for purpose of testing blood glucose levels;

(g) Repair or closure of superficial lacerations involving only skin or subcutaneous tissues, if performed in a designated room or facility separate from a gymnasium, locker room, sports field, or sideline; and

(h) Draining of blisters.

(2) Unless there is a risk of death, physical disability, or impairment to the athlete, an athletic trainer licensed to practice in the Commonwealth of Kentucky shall not perform an invasive procedure on a person under the age of eighteen (18) years without express parental or guardian consent and physician oversight.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "National Athletic Trainers' Association's Code of Ethics", March 2018; and

(b) "BOC Standards of Professional Practice", October 2017.

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

(3) This material may also be obtained on the board's Web site at kbml.ky.gov.

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

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM**

**Kentucky Board of Emergency Medical Services
(As Amended at ARRS, August 10, 2021)**

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; and[;]
- (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-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) Offered with instruction [

4. Adequate and appropriate for instruction] in classrooms and laboratories that 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) [(d)] 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-E44].

(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 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-E44, 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 contains[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:

(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 board office:

(a) Course N[otification] Application [form] submitted no less than fourteen (14) days prior to the course start date; [and]

1. An EMS-TEI shall notify the board within 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[s form]

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 cancelation 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.~~[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, ~~as determined by the board in instances such as if there is an emergent medical condition or a death in the immediate family,~~ 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 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 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 valid examination measuring process.

(2) To be eligible for licensure as a paramedic, a student shall complete a clinical or field rotation that meets the requirements for paramedic education as determined by this administrative regulation [and] including the National and Kentucky EMS Scope of Practice for a Paramedic student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for paramedics shall include:

(a) Clinicals or field rotations [that shall be] conducted at [in] a [hospital emergency department, public health department, urgent treatment center, physician's office,] licensed [advanced life support] ambulance service[, or other licensed [advanced] health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards];

(b) [Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the [seventy-five (75)] patients required in [subsection (3)(b) of] this section.

(4) If a student fails to achieve the [a] goals[goal] established by [for] the EMS-TEI for the EMS education program, the EMS-TEI [chief administrative officer or] program director and medical director shall require the student to repeat the failed portion of the paramedic education program. [a clinical or field rotation experience.]

(5) If a student is required to repeat a portion of the paramedic education program [a clinical or field rotation experience], the [CAO or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; [and]

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[.]; and

(d) The notification to the student shall be in writing and signed and dated by the:

1. Student;
2. TEI Administrator;
3. Medical Director; and

4. Course Coordinator.

(6) Paramedic candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:401. [If additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the student.]

(7) Paramedic students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 13. Continuing Education. (1) Training and education courses provided to individuals [outside the roster of a licensed service and] that fulfill the continuing education requirements necessary to receive [recertify or renew] a certification or licensure from the board shall be provided by:

(a) An entity certified by the board [KBEMS] as an EMS-TEI;

(b) An agency or department having contractual agreements with a board [KBEMS] certified EMS-TEI that is in good standing and not subject to disciplinary action;

(c) A board [KBEMS] approved symposia, state, national, or international school;

(d) A board [KBEMS] approved or nationally accredited online [on-line] or distance education provider, but which shall not provide more than ninety (90) [fifty (50)] percent of the total continuing education hours to fulfill the continuing education [CE] requirements for renewal pursuant to KRS Chapter 311A or 202 KAR Chapter 7; or

(e) One (1) or more of the approved continuing education entities listed below:

1. The Commission on Accreditation for Pre-Hospital Continuing Education (CAPCE);

2. Kentucky Board of Nursing;

3. Kentucky Board of Medical Licensure;

4. Kentucky Board of Respiratory Care;

5. Department of Homeland Security and all department components;

6. U.S. Fire Administration and all department components;

7. Kentucky Department of Criminal Justice (DOCJT);

8. Kentucky Cabinet for Health and Family Services; or

9. Courses approved by any State EMS Office that are offered and or completed outside the Commonwealth of Kentucky. [

(e) A course that has been accredited by the board=approved accrediting agency for continuing education.]

(2) Continuing education courses shall:

(a) Contain material relevant to the job specifications and professional development of EMS personnel; and

(b) Be conducted at an EMS level appropriate for the discipline of the participants.

(3) EMS-TEIs that provide continuing education shall provide course completion documentation by hardcopy or electronically to all participants that successfully complete the continuing education course. The course completion documentation shall contain at a minimum the following items:

(a) Official name of the EMS-TEI as listed in the EMS-TEI KEMSIS account and certification number of the EMS-TEI issued by the board;

(b) Name of primary instructor and state EMS office EMS provider number;

(c) Name of course;

(d) Breakdown of completed hours and subject categories instructed that meet the continuing education requirements established by 202 KAR 7:201, 202 KAR 7:301, 202 KAR 7:330, and 202 KAR 7:401; and

(e) Signature of one (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[al 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 7:1-1565. [A licensed EMS provider agency seeking authorization for a pilot program shall submit a written request to the board.]

(4) An authorized entity approved by the board to conduct a pilot program shall agree in writing:

(a) To submit periodic reports related to the progress of the pilot program; and

(b) To abide by the board established requirements for the pilot program.

(5) An individual otherwise certified or licensed by the board who successfully completes an approved pilot program shall perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.

(6) The board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; and

(b) The performance of the procedure subject to a:

1. Specific and defined event;

2. Disaster; or

3. Designated directive.

(7) The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.

(8) The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.]

Section 16. EMS Educators. (1) An EMS Educator may be certified at the following levels:

(a) EMR Educator, which certifies the individual to teach EMR initial certification and continuing education courses [Level I—EMR Educator, which certifies the individual to teach EMR courses or EMR continuing education];

(b) EMT Educator, which certifies the individual to teach EMR and EMT initial certification and continuing education courses; [Level II—EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or]

(c) AEMT Educator, which certifies the individual to teach EMR, EMT, and AEMT initial certification and continuing education courses; [Level III—Advanced Educator, which certifies the individual to teach EMR, EMT, A-EMT, and paramedic courses or continuing education.]

(d) Paramedic Educator, which certifies the individual to teach EMR, EMT, AEMT, and Paramedic initial certification and continuing education courses; or [Level IIIIR—Registered nurses and physicians who are not currently certified as an EMT, A-EMT, or paramedic shall only be certified as Level III instructors who teach A-EMTs or paramedics.]

(e) CE Educator, which certifies the individual to teach continuing education courses at or below the level of EMS provider certification or license issued by the board.

(2) Depending on the level of certification sought, an applicant for certification as a Kentucky EMS educator shall:

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (AEMT), or a paramedic; or

(b)1. Hold a license in Kentucky or another state as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA);

2. A Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA) shall be considered an advanced EMS provider at the paramedic level only for the purpose of credentialing the individual as an EMS educator;

(c) [(b)] Not be issued a certificate as an EMS educator for a level of instruction higher than his or her [their] EMS provider certification or license;[-]

(d) [(e)] Have successfully completed:

1. The National Association of EMS Educators Emergency Medical Services Education Standards [~~Instructional Guidelines~~] [for Educating EMS Instructors] [educators] [course;]

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; 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. [(4)] An EMS Educator whose certification has lapsed [for a period not exceeding five (5) years] may reinstate [his certificate]. To reinstate a

certificate, the EMS educator shall ~~submit~~:

- (1) ~~[(a)] Submit a [A] completed; [EMS Responder Application];~~
~~(a) 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 IIIR Educator shall be certified as a Paramedic [Level III] Educator. [III instructors currently licensed as RNs or physicians shall be certified as Level IIIR 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;

- (d) Submit a completed EMS Responder Application; and

- (e) Have paid all fees required by 202 KAR 7:030.

- (2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML, or the state that issues his or her license.

- (3) An EMS evaluator shall be certified as:

- (a) Level I, which qualifies the evaluator to assess EMR candidates for certification;

- (b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification; or

- (c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT, and EMR candidates for certification or

licensure. A licensed physician or registered nurse who is not also a licensed or certified EMS provider shall evaluate paramedics only. A person certified as an A-EMT may evaluate A-EMTs, EMTs, and EMRs.

(4) An individual shall not be endorsed as an EMS evaluator at a level greater than the level at which certified or licensed as an EMS educator.

~~Section 23. Renewal of EMS Evaluator Endorsement. A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual:~~

~~(1) Maintains current state certification or licensure as a provider;~~

~~(2) During the certification period, participates in a minimum of two (2) separate evaluations [on two (2) separate dates] or attends a board-sponsored evaluator class;~~

~~(3) Is not subject to discipline pursuant to KRS Chapter 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>.

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 10, 2021)**

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

(3) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(4) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(5) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(6) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(7) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(8) "Processed fish" means a fish that has been gutted, with the head removed.

(9) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(10) "Shad" means a live gizzard shad or threadfin shad.

(11) "Single hook" means a hook with no more than one (1) point.

(12) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(13) "Slot limit" means a size range of a fish species that shall be released by an angler.

(14) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

- (a) Hook and line in hand; or
- (b) Rod in hand.

(15) "Trophy catfish" means a:

- (a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or
- (b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

(16) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (l) of this subsection, except as established in Sections 3 through 8 of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily creel limit, fifteen (15); no size limit;

(c) Sauger, walleye, and any hybrid thereof daily creel limit, singly or in combination, six (6); size limit, fourteen (14) inches;

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily creel limit, eight (8); no size limit.

3. Brown trout daily creel limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only.

5. Cutthroat trout daily creel limit, one (1); size limit, twenty (20) inches;

(j) Redear sunfish daily creel limit, twenty (20); no size limit;

(k) Paddlefish daily creel limit, two (2); no size limit; and

(l) Catfish daily creel limit is unlimited; no size limit, except that only one (1) trophy catfish of each species may be harvested daily.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in

this section, with the exceptions established in subsections (1) through ~~(73)~~~~(70)~~ of this section. (1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;

(3) Barren River Lake.

(a) Crappie size limit, ten (10) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Blue and channel catfish aggregate daily creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

(4) Beaver Lake, Anderson County. A person shall not possess shad or use shad as bait;

(5) Beech Fork Reservoir, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily creel limit, fifteen (15);

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;

(7) Boltz Lake, Grant County. A person shall not possess shad or use shad as bait;

(8) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches;

(10) Carnico Lake, Nicholas County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Sunfish daily creel limit, fifteen (15);

(11) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(12) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

(13) Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches.

(d) Cave Run Lake shall extend up:

1. Scott's Creek to the Highway 801 culvert;

2. Beaver Creek to the Highway 1274 culvert;

3. North Fork Creek to the confluence of Craney Creek;

4. Licking River to the Highway 772 bridge; and

5. Ramey Creek to include the pool of water north of Highway 801;

(14) Cedar Creek Lake, Lincoln County. Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1);

(15) Chimney Top Creek, Wolfe County. A person shall only fish with artificial bait;

(16) Clear Fork, tributary of the Gasper River. A person shall release all sportfish;

(17) Corinth Lake, Grant County. A person shall not possess shad or use shad as bait;

(18)~~(17)~~ Cumberland Lake.

(a)1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie size limit, ten (10) inches.

(b) Cumberland Lake shall extend up:

1. The Cumberland River to Cumberland Falls;

2. The Big South Fork to Devil's Jump;

3. The Rockcastle River to The Narrows; and

4. The Laurel River to Laurel River Dam;

~~(19)~~~~(48)~~ Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections ~~(36) and (37)~~ ~~(34) and (35)~~ of this section.

(a) Brown trout size limit, twenty (20) inches; daily creel limit, one (1).

(b) Brook trout size limit, fifteen (15) inches; daily creel limit, one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;

~~(20)~~~~(49)~~ Cumberland River below Barkley Lake. Fishing is prohibited at the mouth of the lock chamber, as designated by signs.

~~(21)~~~~(20)~~ Dale Hollow Lake.

(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and walleye hybrids, daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

~~(22)~~~~(24)~~ Dewey Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

~~(23)~~~~(22)~~ Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;

~~(24)~~~~(23)~~ Doe Run Lake, Kenton County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

~~(25)~~~~(24)~~ Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;

~~(26)~~~~(25)~~ Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.

(a) There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;

~~(27)~~~~(26)~~ Elmer Davis Lake, Owen County.

(a) Largemouth bass. There shall be a slot limit between

twelve (12) and fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(28) [(27)] Fishtrap Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

(29) [(28)] Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(30) [(29)] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily creel limit, five (5); size limit, fifteen (15) inches;

(31) [(30)] General Butler State Park Lake, Carroll County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(32) [(31)] Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;

(33) [(32)] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad as bait.

(b) Bluegill and sunfish daily creel limit, fifteen (15) fish;

(34) Green River from Green River Lake Dam and extending downstream to the end of the concrete wall. Fishing shall be limited to rod in hand using either:

(a) An artificial bait with a single hook; or

(b) Live bait attached to a single hook;

(35) [(33)] Green River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Muskellunge size limit, thirty-six (36) inches.

(c) Green River Lake shall extend up:

1. Green River to the Snake Creek Boat Ramp;

2. Robinson Creek to the Highway 76 Bridge; and

3. Casey Creek to the Arnolds Landing Boat Ramp[;]

(36) [(34)] Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily creel limit, five (5), singly or in combination;

(37) [(35)] Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:

(a) Only use artificial bait; and

(b) Release all trout;

(38) Highsprint Lake, Harlan County. Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1);

(39) [(36)] Jericho Lake, Henry County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(40) [(37)] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;

(41) [(38)] Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Sunfish daily creel limit, fifteen (15).

(c) Catfish daily creel limit, four (4);

(42) [(39)] Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(43) [(40)] Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;

(44) [(41)] Lake Malone, Muhlenberg and Logan counties. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(45) [(42)] Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;

(46) [(43)] Lake Reba, Madison County. A person shall not possess shad or use shad as bait;

(47) [(44)] Lake Shelby, Shelby County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(48) [(45)] Laurel River Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

(49) [(46)] Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

(50) [(47)] Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait;

(51) [(48)] Marion County Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(52) [(49)] McNeely Lake, Jefferson County. A person shall not possess shad or use shad as bait;

(53) [(50)] Mill Creek Lake, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait;

(54) [(51)] New Haven Optimist Lake, Nelson County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(55) [(52)] Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(56) [(53)] Ohio River.

(a) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30); no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(b) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(c) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(d) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;

(57) [(54)] Otter Creek, Meade County.

(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;

(58) [(55)] Paint Creek, between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

(59) [(56)] Paintsville Lake. Smallmouth bass size limit, eighteen (18) inches;

(60) [(57)] Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(61) [(58)] Pikeville City Lake, Pike County. A person shall release largemouth bass;

(62) [(59)] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;

(63) [(60)] Rockcastle River WMA, all ponds collectively, Pulaski County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel

limit, one (1).

(b) Bluegill and sunfish daily creel limit, ten (10).

(c) Catfish daily creel limit, four (4).

(d) Crappie daily creel limit, fifteen (15);

~~(64)~~~~(61)~~ Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(c) Rough River Lake shall extend up Rough River to the Highway 84 Bridge;

~~(65)~~~~(62)~~ Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

~~(66)~~~~(63)~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

~~(67)~~~~(64)~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

~~(68)~~~~(65)~~ Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

~~(69)~~~~(66)~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

~~(70)~~~~(67)~~ Trammel Creek, Allen County. Rainbow trout daily limit, five (5);

~~(71)~~~~(68)~~ Willisburg Park Pond, Washington County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Catfish daily creel limit, four (4).

(c) Sunfish daily creel limit, fifteen (15);

~~(72)~~~~(69)~~ Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

~~(73)~~~~(70)~~ Yatesville Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; and

(i) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Gunpowder Creek in Boone County;

(k) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and

(n) Trammel Creek in Allen County.

(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds. The requirements established in subsections (1) through (5) of this section shall apply to all bodies of water established in the Special Lakes and Ponds list:

(1) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(2) Catfish daily creel limit, four (4);

(3) Sunfish or bream daily creel limit, fifteen (15);

(4) Rainbow trout daily creel limit, five (5); and

(5) A person shall not possess shad or use shad as bait.

Section 8. Special Catfish Size Limit Lakes. All lakes established in the Special Catfish Size Limit Lakes list shall have a twelve (12) inch size limit on catfish.

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

(a) "Special Catfish Size Limit Lakes", 2020[2019] edition; and

(b) "Special Lakes and Ponds", 2020[2019] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 10, 2021)**

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) requires the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits may be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions.

- (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.
- (2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.
- (3) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.
- (4) "Bait":
 - (a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and
 - (b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.
- (5) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.
- (6) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.
- (7) "Elk" means *Cervus canadensis nelsoni*.
- (8) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.
- (9) "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.
- (10) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.
- (11) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters into an agreement with the department to allow public access and hunting for at least five (5) years.
- (12) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.
- (13) "Out-of-zone" means all counties not included in the restoration zone.
- (14) "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(15) "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(16) *"Spike" means an elk having one (1) or two (2) antler points on each side.*

(17) "Unit" means a designated area in the restoration zone with specific management restrictions.

(18) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(19) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

- (1) Attach a department-issued destruction tag to an elk prior to moving the carcass; and
- (2) Not remove the destruction tag until the carcass is processed.

Section 3. Elk Quota Hunts.

- (1) The elk quota hunt application period shall be January 1 to April 30.
- (2) An applicant shall:
 - (a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and
 - (b) Pay a nonrefundable application fee of ten (10) dollars.
- (3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.
- (4) There shall be a random electronic drawing from each applicant pool.
- (5) Youth may enter a separate drawing pool for either-sex elk permits that shall be valid for use during all elk seasons, pursuant to Section 7(4) of this administrative regulation.
- (6) A youth shall not apply for the youth-only elk quota hunt more than once per application period.
- (7) An applicant for the youth-only elk quota hunt may also apply for a regular quota hunt, as established in subsection (12) of this section.
- (8) A youth drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.
- (9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.
- (10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.
- (11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.
- (12) In addition to the youth-only quota hunt, there shall be three (3) separate regular elk quota hunts consisting of:
 - (a) Antlered firearms;
 - (b) Antlerless firearms; and
 - (c) Either-sex archery and crossbow.
- (13) An applicant shall:
 - (a) Apply only once for an individual elk quota hunt;
 - (b) Not be eligible to be drawn in more than one (1) of the three (3) quota hunt pools;
 - (c) Only be selected by a random electronic drawing; and
 - (d) Pay a nonrefundable application fee of ten (10) dollars for each entry.
- (14) A person who is drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.
- (15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at (800)858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits.

(1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 7 and 8 of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

(a) Name;

(b) Fish and Wildlife customer identification number;

(c) Address; and

(d) Telephone number.

(5) The landowner cooperator permit shall not be transferable if it was already used for the harvest of an elk.

(6) Public access agreements with the department shall be recorded in writing.

Section 5. Voucher Cooperator Permits.

(1) A voucher cooperator shall accrue one (1) voucher point for each legally harvested elk.

(2) A voucher cooperator who accrues ten (10) total points on land enrolled pursuant to Section 1 ~~(17)~~(18) of this administrative regulation shall receive one (1) either-sex elk permit from the department.

(3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 7 and 8 of this administrative regulation.

(4) A voucher cooperator elk permit shall only be used on:

(a) The property enrolled with the department per agreement; or

(b) Other property that the landowner or lessee owns or leases.

(5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.

(6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Fish and Wildlife customer identification number;

(c) Address; and

(d) Telephone number.

(7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Elk Restoration Permits.

(1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue one (1) point for each captured elk.

(2) A landowner or lessee who accrues ten (10) total points shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.

(3) A recipient of an ERP shall comply with all the requirements established in Sections 7 and 8 of this administrative regulation.

(4) An ERP shall only be used on property that the ERP recipient owns or leases.

(5) An ERP recipient may transfer the permit to any person

eligible to hunt in Kentucky.

(6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:

(a) Name;

(b) Address;

(c) Telephone number; and

(d) Fish and Wildlife customer identification number.

(7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 7. Hunter Requirements.

(1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) If a legal elk hunter kills any elk, ~~then~~:

(a) The person shall immediately cease hunting elk for the remainder of the elk season; and

(b) The elk permit held by that individual shall immediately become invalid.

(4) A drawn hunter may apply to hunt in up to five ~~(5)~~~~two (2)~~ units by completing the application process on the department's Web site at fw.ky.gov.

(a) Up to three (3) drawn hunters may apply for their unit choices as a party.

(b) If the party is drawn for a unit, then all hunters in the party shall be assigned to that same unit.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or be assigned to a unit by the department.

(5) A drawn hunter who does not apply for a unit shall be assigned to a unit by the department.

(6) A hunter drawn for a unit may hunt only in the assigned unit, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(7) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(8) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(9) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(10) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

(11) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(12) A person shall only use the ~~equipment~~~~weapons~~ and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition

designed to expand upon impact;

- (c) A muzzleloader of .50 caliber or larger;
- (d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or
- (e) A handgun loaded with:
 - 1. Centerfire cartridges;
 - 2. Bullets of .270 caliber or larger designed to expand upon impact; and
 - 3. Cartridges with a case length of 1.285 inches or larger.
- (13) A crossbow shall contain a working safety device.
- (14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.
- (15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the five (5) day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperater permit, a voucher cooperater permit, an elk restoration permit, or a special commission permit may hunt in all of the quota hunts and shall hunt in accordance with the seasons, limits, and equipment~~[weapons]~~ established in Section 7 of this administrative regulation.

(18)(a) A person who is drawn for an elk quota hunt permit or was issued a landowner cooperater permit, a special commission permit, an elk restoration permit, or voucher cooperater permit shall complete and submit a post-season elk hunting survey on the department's Web site at fw.ky.gov no later than the last day of February.

(b) A person who fails to comply with the requirements established in paragraph (a) of this subsection shall be ineligible to apply for any quota hunt or no-hunt option the following year.

Section 8. Elk Quota Hunt Seasons and Limits.

(1) A person drawn for an either-sex archery and crossbow permit shall use archery or crossbow equipment to take either-sex elk from the:

- (a) Second Saturday in September through the fourth Friday in September; and
- (b) First Saturday in December through the second Friday in December.

(2) A person drawn for an antlered firearms permit shall use any legal equipment~~[weapon]~~ as established in Section 7(12) of this administrative regulation to take an antlered elk during one (1) of two (2) five (5) day periods randomly assigned by the department from the:

- (a) Last Saturday in September for five (5) consecutive days; or

(b) First Saturday in October for five (5) consecutive days.

(3) A person drawn for an antlerless firearms permit shall use any legal equipment~~[weapon]~~ as established in Section 7(12) of this administrative regulation to take an antlerless elk during one (1) of two (2) five (5) day periods randomly assigned by the department from the:

- (a) Last Saturday in November for five (5) consecutive days; or
- (b) Last Saturday in December for five (5) consecutive days.

Section 9. Unit Boundaries and Elk Viewing Areas.

(1) Hunting unit boundaries and the boundaries of the Appalachian Wildlife Center Viewing Area are incorporated by reference.

(2) Elk viewing areas shall be closed to all elk hunting.[]

Section 10. Post-season Quota Hunt on Private Land.

~~(1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.~~

~~(2) Each hunter shall be randomly drawn from the pool of applicants who:~~

- ~~(a) Were not drawn for the previous elk quota hunts; and~~
- ~~(b) Are residents of counties included, wholly or in part, within an EMU boundary.~~

~~(3) A drawn applicant shall comply with the requirements in~~

~~Section 7 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.~~

~~(4) The EMU boundaries shall be as incorporated by reference in this administrative regulation.~~

~~(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.[]~~

Section 10[14]. Tagging and Checking Requirements.

(1) Immediately after taking an elk, a hunter shall record on a hunter's log:

- (a) The species harvested;
- (b) The sex of the animal;
- (c) Date of harvest; and
- (d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

- 1. Head with antlers; or
 - 2. Testicles, scrotum, or penis attached to the carcass; or
- (b) For antlerless elk the hunter shall retain the:
- 1. Head;
 - 2. Udder or vulva attached to the carcass; or
 - 3. Testicles, scrotum, or penis attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

- (a) Confirmation number;
 - (b) Name; and
 - (c) Telephone number.
- (6) A person shall not provide false information in:
- (a) Completing the hunter's log;
 - (b) Checking an elk; or
 - (c) Creating a carcass tag.

Section 11[42]. Elk Hunting on Public Land.

(1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

- (a) Wildlife Management Areas;
- (b) Hunter Access Areas;
- (c) State forests;
- (d) Big South Fork National River and Recreation Area;
- (e) Daniel Boone National Forest; or
- (f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 13 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA and Fishtrap Lake WMA shall be designated as an elk viewing area and shall be closed to all elk hunting.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 12[43]. Out-of-zone Elk Hunting.

(1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the equipment~~[weapons]~~ and ammunition requirements established in Section 7 of this administrative regulation.

(2) Unless exempted by KRS 150.170, a person who is hunting

out-of-zone elk shall possess:

- (a) A valid Kentucky hunting license; and
- (b) An out-of-zone elk permit.
- (3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.
- (4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11 of this administrative regulation.

Section 13[14]. Elk Antlers.

- (1) A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours.
- (2) An elk shed shall be legal to possess.

Section 14[15]. Elk Permit Deferral. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:

- (1) There is a death of the permit holder's:
 - (a) Spouse;
 - (b) Child; or
 - (c) Legal guardian, if the permit holder is under eighteen (18) years old; and
- (2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:
 - (a) A marriage certificate;
 - (b) A birth certificate; or
 - (c) An affidavit of paternity or maternity.

Section 15[16]. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Knott-Floyd Elk Management Unit 2017 Edition" map;
 - (b) ~~"Mayking-Letcher Elk Management Unit 2017 Edition" map;~~
 - (a)[(e)] "Elk Hunting Units" map, 2019 edition; and
 - (b)[(d)] "Appalachian Wildlife Center Viewing Area" map, 2019 edition.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., Eastern Time.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 10, 2021)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.180, 150.370, 150.399, 150.415, 150.416, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap

visitation, and trap placement to protect domestic animals. This administrative regulation establishes seasons, bag limits, legal methods of take, and checking and recording requirements for hunting and trapping furbearers.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an animal upon capture.

(2) "Dry land set" means a trap that is placed so that no portion of the trap touches the water of a river, stream, pond, lake, wetland, or other water course.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic or rubber soft-catch jaws that close upon an animal's foot.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(5) "Hunter" means a person legally taking furbearers by means other than trapping.

(6) "Otter Zone 1" means the following counties: Anderson, Ballard, Bath, Boone, Bourbon, Bracken, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Daviess, Fayette, Fleming, Franklin, Fulton, Gallatin, Grant, Graves, Grayson, Hancock, Hardin, Harrison, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McCracken, McLean, Meade, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Robertson, Rowan, Scott, Shelby, Spencer, Trigg, Trimble, Union, Webster, and Woodford.

(7) "Otter Zone 2" means all Kentucky counties not included in subsection (6) of this section.

(8) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device, the deployment of which is or is not spring-assisted, but any spring-assisted device is not for the purpose of applying tension to the closing device.

(9) "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(10) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers, in the set or unset position.

(11) "Water set" means a trap placed in the water of a river, stream, pond, lake, wetland, or other water course so that a portion of the trap body is underwater.

(12) "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date.

Section 2. License and Permit Requirements. Unless exempted by KRS 150.170, a person shall carry on his or her person a valid:

- (1) Hunting~~[Valid hunting]~~ license while hunting furbearers; ~~and/or~~
- (2) Bobcat hunting permit while hunting bobcat; or
- (3) Trapping~~[Valid trapping]~~ license while trapping furbearers.

Section 3. Furbearer Hunting Seasons. Except as established in 301 KAR 2:049, a person shall only take furbearers by hunting during the seasons established in subsections (1) through (5) of this section:

(1) Bobcat, from one-half (1/2) hour before sunrise on the ~~third~~fourth Saturday in November through the last day of February;

(2) Coyote, year-round;

(3) Raccoon and opossum, October 1 through the last day of February;

(4) All other furbearers except as established in subsection (5) of this section, from one-half (1/2) hour before sunrise on the third day of modern gun deer season through the last day of February; and

(5) Furbearers taken by falconry, September 1 through March 30.

Section 4. Furbearer Trapping Season. Except as established in 301 KAR 2:049, a person shall only take furbearers by trapping

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from one-half (1/2) hour before sunrise on the third day of the modern gun deer season through the last day of February.

Section 5. License-Exempt Youth Season. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.

Section 6. Legal Hunting Equipment ~~[weapons]~~. Except as established in Section 7(8) of this administrative regulation, a hunter shall only use the ~~equipment[weapons]~~ established in subsections (1) through (7) of this section to hunt furbearers:

- (1) Centerfire gun;
- (2) Rimfire gun;
- (3) Shotgun;
- (4) Muzzleloader;
- (5) Bow and arrow;
- (6) Crossbow; or
- (7) An air gun using pellets at least .22 caliber in size.

Section 7. Hunter Restrictions. (1) Furbearers may be taken during daylight hours only, except for the following, which may also be taken after daylight hours:

- (a) Coyote;
- (b) Opossum; or
- (c) Raccoon.
- (2) A person shall not take a raccoon or opossum during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.
- (3) A person hunting from a boat shall not use a light in conjunction with taking a raccoon or opossum.
- (4) A person shall not use the following while chasing a raccoon or opossum from noon on March 1 through September 30:
 - (a) A firearm;
 - (b) Slingshot;
 - (c) Tree climber; or
 - (d) Any device to kill, injure, or force a raccoon or opossum from a tree or den.
- (5) A person may use a squaller year-round.
- (6) There shall not be a closed season on:
 - (a) Chasing red and gray foxes during daylight hours for sport and not to kill; or
 - (b) Chasing raccoons or opossums for sport and not to kill.
- (7) A hunter may use a hand or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.
- (8) A person may take a coyote after daylight hours year-round, except that:
 - (a) It shall not be allowed in a county or area where a deer or elk firearm season is open;
 - (b) ~~Artificial~~[A person shall not use artificial] light or other means designed to make wildlife visible at night shall only be used from December 1~~[June 1]~~ through May 31~~[November 30]~~;
 - (c) Any artificial light or other means designed to make wildlife visible at night shall not be connected to or cast from a mechanized vehicle;
 - (d) A holder of a valid Mobility-Impaired Access Permit or Hunting Methods Exemption - Vehicle Permit may use a stationary vehicle as a hunting platform and may cast lights or other means designed to make wildlife visible at night so long as the means used are not connected to the vehicle~~[A person shall not use any weapon other than a shotgun on public land]~~;
 - (e) On public land, a~~[A]~~ person shall not use any ~~equipment[weapon]~~ other than a bow, crossbow, or shotgun and shall not use a shotgun shell with a single-projectile;
 - (f) On private land, a person shall not use any equipment other than a bow, crossbow, or shotgun and shall not use a shotgun shell with a single-projectile, except that from December 1 through March 31 a person may also use a~~[or]~~ rifle of 6.5mm ~~[.264 caliber]~~[Creedmoor caliber] or smaller bullet diameter, a muzzleloader of .54 caliber or less, or a shotgun shell with a single projectile~~[on private land from December 1 through March 31]~~;
 - (f) A person using a shotgun shall not use a shell with a single

projectile].

Section 8. Legal Traps. (1) A person who is trapping with a dry land set shall only use traps as established in paragraphs (a) through (e) of this subsection:

- (a) Deadfall;
 - (b) Wire cage or box trap;
 - (c) Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;
 - (d) A snare; or
 - (e) Except as established in 301 KAR 2:049, a body-gripping trap with a maximum inside jaw spread of seven and one-half (7 1/2) inches measured parallel with the trigger:
 1. In the center of the trap; and
 2. In the unset position.
- (2) There shall be no restrictions on the size or type of trap used as a water set, except that any body-gripping trap greater than twenty (20) inches in width shall be set so that the trap is completely submerged underwater.

Section 9. Trapper Restrictions. (1) A person trapping on private land shall not place traps used as dry land sets any closer than ten (10) feet apart unless possessing written permission from the landowner or the landowner's designee, except that there shall not be more than three (3) traps placed within any ten (10) foot spacing.

- (2) The trap spacing requirement established in subsection (1) of this section shall not apply to:
- (a) Box or cage live traps; or
 - (b) Properties of five (5) acres or less.
- (3) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.
- (4) A trapper may use lights from a boat or a vehicle in conjunction with trapping furbearers.

Section 10. Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows:

- (a) The name and address of the person setting, using, or maintaining the trap; or
 - (b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.
- (2) A person applying for a wildlife identification number shall apply by:
- (a) Completing the Wildlife Identification Number for Trap Tags – Application available on the department's Web site at fw.ky.gov; or
 - (b) Calling the department's information center at 1-800-858-1549.
- (3) The following information shall be required for a person to apply for a wildlife identification number:
- (a) Name;
 - (b) Current home address;
 - (c) Social Security number;
 - (d) Current phone number;
 - (e) Date of birth; and
 - (f) Driver's license number, if available.
- (4) A person shall:
- (a) Not use a trap tag that has an inaccurate or outdated address;
 - (b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and
 - (c) Contact the department to provide updated address and phone number.
- (5) A wildlife identification number shall be valid for the life of the holder.

Section 11. Bag Limits. (1) There shall not be a bag limit on furbearers, except as established in subsections (2) through (6) of this section.

- (2) A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun, except as established in subsection (3) of this section.

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(3) Hunters and trappers may increase their bobcat bag limit for the following season, under the following criteria:

(a) A hunter or trapper who submits lower jaws from all harvested bobcats in a single season may receive one (1) additional bobcat to the bag limit for the following season for every two (2) jaws submitted.;

(b) Additions to the bobcat bag limit also increase the allowable number of bobcats that may be taken with a gun.;

(c) Hunters and trappers **shall/must** submit all lower jaws, from bobcats they harvest during a single season, to the department by March 15th the year the season ends to be eligible for bag limit incentives. Instructions how to remove and submit the lower jaws can be obtained from the department's Web site at fw.ky.gov.

(d) Additions of bobcats to bag limits are non-transferable.

(4) A person shall not take more than ten (10) river otters per season in Otter Zone 1.

(5)(4) A person shall not take more than six (6) river otters per season in Otter Zone 2.

(6)(5) The total river otter bag limit per season shall be ten (10) per person, only six (6) of which can be taken from Otter Zone 2.

(7)(6) A falconer hunting within the falconry season, but outside the dates specified in Section 3(3) and (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section 12. Harvest Recording. (1) Immediately after harvesting a river otter or bobcat, and prior to moving the carcass, a person shall record in writing the:

- (a) Species;
- (b) Date;
- (c) County where taken; and
- (d) Sex of the river otter or bobcat.

(2) The information required by subsection (1)(a) through (d) of this section shall be documented on:

- (a) The hunter's log section on the reverse side of a license or permit;
 - (b) A hunter's log printed from the department's Web site at fw.ky.gov;
 - (c) A hunter's log available from any KDSS agent; or
 - (d) An index card or similar card.
- (3) A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section 13. Checking a River Otter or Bobcat. (1) A person who harvests a river otter or bobcat shall check each animal by:

(a) Completing the telecheck process after calling 800-245-4263 or completing the check-in process on the department's Web site at fw.ky.gov:

1. Before midnight on the day the river otter or bobcat is recovered;
 2. Prior to processing the carcass; and
 3. Prior to transporting the raw fur, pelt, or unskinned carcass out of Kentucky; and
- (b) Writing the check-in confirmation number on the hunter's log as established in this section.

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid check-in confirmation number as established in subsection (1) of this section; and
 2. A street address where the tag is to be mailed; or
- (b) Complete the CITES tag request form on the department's Web site at fw.ky.gov.

(3) A person who is transferring a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the:

- (a) Confirmation number;

(b) Hunter or trapper's name; and

(c) Hunter or trapper's phone number.

(4) A person shall not knowingly provide false information when:

- (a) Completing the hunter's log;
- (b) Checking a river otter or bobcat;
- (c) Completing a CITES tag request form; or
- (d) Creating a handmade carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass upon receipt of the tag from the department per the instructions provided by the department and remain attached until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag issued by the department shall be prohibited.

Section 14. Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

- (a) Fur buyer;
- (b) Fur processor; or
- (c) Taxidermist.

(2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part thereof without a proper carcass tag or CITES tag as established in Section 13 of this administrative regulation; and

(b) Retain the information established in subparagraphs 1. through 4. of this paragraph from a hunter or trapper:

1. Name;
2. Address;
3. Confirmation number or CITES tag number; and
4. Date received for each river otter or bobcat.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wildlife Identification Number for Trap Tags – Application", 2014 edition; and

(b) "CITES Tag Request" form, 2014 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, August 10, 2021)**

301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes bear hunting and chasing seasons, bear hunting areas, legal methods of take, and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.
 (4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Bear" means the species *Ursus americanus*.

(6) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex.

(8) "Bear Zone 3" means Adair, Bath, Boyd, Carter, Casey, Clark, Cumberland, Elliot, Estill, Fleming, Garrard, Greenup, Lee, Lewis, Lincoln, Madison, Menifee, Montgomery, Morgan, Powell, Rowan, and Wolfe counties.

(9) "Bell Zone" means Bell County.

(10) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(11) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(12) "East Zone 2" means Breathitt, Clay, Floyd, Johnson, Knott, Knox, Lawrence, ~~[Leslie,]~~ Magoffin, Martin ~~and~~ Owsley, ~~Perry, and Pike~~ counties.

(13) "Firearm" means a breech- or muzzle-loading rifle, shotgun, or handgun.

(14) "Harlan Zone" means Harlan County.

(15) "~~Leslie Zone~~" means Leslie County.

(16)~~[(15)]~~ "Letcher Zone" means Letcher County.

(17)~~[(16)]~~ "License year" means the period from March 1 through the last day of February.

(18)~~[(17)]~~ "McCreary Zone" means McCreary County.

(19)~~[(18)]~~ "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.

(20)~~[(19)]~~ "Muzzleloader" means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.

(21) "~~Perry Zone~~" means Perry County.

(22) "~~Pike Zone~~" means Pike County.

(23)~~[(20)]~~ "Wayne Zone" means Wayne County.

(24)~~[(24)]~~ "West Zone 2" means Clinton, Jackson, Laurel, Pulaski, Rockcastle, Russell, and Whitley counties.

(25)~~[(22)]~~ "Youth" means a person under the age of sixteen (16) on the day of the hunt.

(26)~~[(23)]~~ "Youth bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry on his or her person a valid Kentucky hunting license and a valid:

- (a) Bear chase permit; or
- (b) Youth bear chase permit.

(2) A bear chase permit or youth bear chase permit shall only be purchased by a resident of Kentucky.

(3) A person shall not:

- (a) Kill or intentionally injure a bear during a chase-only season;
- (b) Chase a bear except during daylight hours while a chase season is open;
- (c) Chase a bear from a baited area:

- 1. While bait is present; or
- 2. For thirty (30) days after the bait has been removed; or
- (d) Disturb a bear in a den.

(4) A person shall only use a dog to chase a bear on public hunting areas, or on private land with permission of the landowner, in all bear zones, except that it shall be prohibited to chase bears with dogs in the areas established in paragraphs (a) through (h) of this subsection:

- (a) McCreary Zone;

(b) Daniel Boone National Forest;

(c) Miller-Welch Central Kentucky Wildlife Management Area;

(d) Beaver Creek Wildlife Management Area;

(e) Cane Creek Wildlife Management Area;

(f) Mill Creek Wildlife Management Area;

(g) Pioneer Weapons Wildlife Management Area;

(h) Redbird Wildlife Management Area.

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the seasons established in subsections (1) and (2) of this section.

(1) The chase-only season shall be from:

- (a) June 1 through August 31; and
- (b) September 9 through September 30; and

(2) The bear ~~[quota]~~ hunt with dogs season shall be pursuant to Section 8(1) of this administrative regulation.

Section 5. Bear Permit Requirements. Unless exempted by KRS 150.170, a person hunting a bear shall carry on his or her person a valid Kentucky hunting license and the appropriate valid bear permit or permits while hunting during the seasons established in Section 8(1) of this administrative regulation.

Section 6. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use a dog during the modern gun, muzzleloader, or archery and crossbow season to hunt bears~~[for]~~, except leashed tracking dogs may be used to recover a wounded or dead bear;

(c) Hunt bear on a baited area:

- 1. While bait is present; or
- 2. For thirty (30) days after the bait has been removed;

(d) Harvest:

- 1. A female bear that has a cub; or
- 2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming;

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disability ~~[disabled]~~ hunting methods exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den;

(h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den; or

(i) Use radio telemetry equipment to locate a bear that is equipped with a radio-tracking collar.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. ~~Equipment~~~~[Weapon]~~ Restrictions. (1) A person shall only use the equipment ~~[weapons]~~ and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A modern rifle~~[firearm]~~:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Loaded with:

a. Bullets of .270 caliber or larger; and

b. Centerfire~~3. Loaded with centerfire~~, single projectile ammunition designed to expand upon impact;

(c) A muzzleloader of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing a slug or a slug with a sabot~~[one (1) projectile]~~; or

(e) A handgun loaded with:

- 1. Centerfire cartridges;
- 2. Bullets of .270 caliber or larger designed to expand upon impact; and
- 3. Cartridges with a case length of 1.285 inches or larger.

(2) A crossbow shall contain a working safety device.

(3) A bear hunter using a modern gun shall not use a magazine capable of holding more than ten (10) rounds.

(4) A bear hunter may use archery, crossbow, or muzzleloader equipment to take a bear during bear modern gun season.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the open bear zones during the seasons established in paragraphs (a) through (c) of this subsection:

(a) The archery and crossbow season for bears, which shall be for seven (7) consecutive days beginning on the fourth Saturday in October in all bear zones, except Bear Zone 3;

(b) The modern gun season for bears, which shall be for seven (7) consecutive days beginning on the second Saturday in December in all bear zones; and

(c) The bear [quota] hunt with dogs season, which shall be for fourteen (14) consecutive days beginning on the third Monday in October in all bear zones, except the McCreary Zone.

(2) A person shall not harvest more than one (1) bear in a license year.

Section 9. Bear Season Closure. (1) The archery and crossbow season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.

(a) Bell Zone, two (2) female bears;

(b) East Zone 2, two (2) female bears;

(c) Harlan Zone, two (2) female bears;

(d) Leslie Zone, two (2) female bears;

(e) Letcher Zone, two (2) female bears;

(f) ~~(e)~~ McCreary Zone, one (1) female bear;

(g) Perry Zone, two (2) female bears;

(h) Pike Zone, two (2) female bears;

(i) ~~(f)~~ Wayne Zone, two (2) female bears; and

(j) ~~(g)~~ West Zone 2, one (1) female bear.

(2) The modern gun season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (g) of this subsection have been reached.

(a) Bell Zone, two (2) female bears;

(b) East Zone 2, three (3) female bears;

(c) Harlan Zone, two (2) female bears;

(d) Leslie Zone, two (2) female bears;

(e) Letcher Zone, two (2) female bears;

(f) ~~(e)~~ McCreary Zone, one (1) female bear;

(g) Perry Zone, two (2) female bears;

(h) Pike Zone, two (2) female bears;

(i) ~~(f)~~ Wayne Zone, two (2) female bears;

(j) ~~(g)~~ West Zone 2, two (2) female bears; and

(k) ~~(h)~~ Zone 3, two (2) female bears.

(3) The bear [quota] hunt with dogs season [for bears] in each open bear zone will close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.

(a) Bell Zone, one (1) female bear;

(b) East Zone 2, two (2) female bears;

(c) Harlan Zone, two (2) female bears;

(d) Leslie Zone, two (2) female bears;

(e) Letcher Zone, two (2) female bears;

(f) Perry Zone, two (2) female bears;

(g) Pike Zone, two (2) female bears;

(h) ~~(e)~~ Wayne Zone, two (2) female bears; [and]

(i) ~~(f)~~ West Zone 2, one (1) female bear; and

(j) ~~(g)~~ Zone 3, one (1) female bear.

(4) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the quota has been reached for that season.

Section 10. Bear [Quota] Hunt with Dogs Requirements. (1) A person shall only harvest a bear using [a] legal equipment[~~weapon~~] with the use of unleashed dogs that are actively pursuing, chasing, baying, or treeing a bear prior to harvest.

(2) A dog used to harvest bears shall be a purebred or a crossbreed of the recognized dog breeds established in paragraphs (a) through (l) of this subsection.

(a) Airedale;

(b) American black and tan coonhound;

(c) Black mouth cur;

(d) Bluetick coonhound;

(e) English coonhound;

(f) Leopard cur;

(g) Majestic tree hound;

(h) Mathis;

(i) Mountain cur;

(j) Plott hound;

(k) Redbone coonhound; or

(l) Treeing walker coonhound.

(3) The bear [quota] hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit, even if the quota has been met.

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzleloader season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

(a) Waterfowl; or

(b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12. Bear Reserves. The areas established in subsections (1) through (3) of this section shall be closed to all bear hunting and bear chase with dogs.

(1) Cumberland Gap National Historical Park;

(2) Hensley-Pine Mountain Wildlife Management Area; and

(3) Big South Fork National River and Recreation Area.

Section 13. Harvest Recording and Check-in Requirements.

(1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

(a) Species taken;

(b) Date taken;

(c) County where taken; and

(d) Sex of the bear.

(2) A person who has harvested a bear shall:

(a) Retain a completed hunter's log;

(b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:

1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and

2. Recording the confirmation number on the hunter's log;

(c) Arrange for department personnel to inspect the bear by:

1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest; and

2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex by including the attached:

a. Testicles, scrotum, or penis for a male bear; or

b. Udder or vulva for a female bear; and

(d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, August 10, 2021)

**701 KAR 5:100. ~~[Guidelines for alternative models for]~~
School-based decision making guidelines.**

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The State Board for Elementary and Secondary Education is directed by] KRS 160.345(7) authorizes[grants] the Kentucky Board of Education (KBE) to make final [authority] [to review] ~~[for]~~ approval of applications for alternative models for school-based decision making (SBDM). KRS 160.345(5) requires the KBE [this administrative regulation establishes the application process, as well as approval guidelines for alternative models for school-based decision making. Additionally, the KBE is required] to exempt, upon request, a school that meets the requirements of KRS 160.345(5) from implementing SBDM. [This administrative regulation establishes the application process as well as approval guidelines for receiving a SBDM exemption pursuant to KRS 160.345(5). Further,] KRS 160.345(6) requires new and experienced SBDM members to complete professional development activities provided by the Kentucky Department of Education (department) through providers that have been endorsed by the department. [This administrative regulation clarifies training requirements for SBDM members and prescribes the process for a training provider to be endorsed by the department. Finally,] KRS 160.345(6) requires the department to collect the names and addresses for each SBDM member. This administrative regulation establishes the SBDM database and associated reporting requirements, the application process and approval criteria for alternative models for SBDM, exemption requirements, training requirements for SBDM members, and the provider-training requirements for department endorsement.~~

Section 1. Definitions. (1) ["Classified employee" shall have the same meaning as defined in KRS 161.011(1)(a).

(2) "Parent" is defined by KRS 160.345(1)(d) [shall have the same meaning as defined in KRS 160.345].

(2) [(3)] "Teacher" is defined by KRS 160.345(1)(c) [shall have the same meaning as defined in KRS 160.345]. [The membership of school councils shall be maintained at the 3-2-1 ratio set forth in KRS 160.345(2) so that parental membership shall not fall below one-third (1/3) of voting members. Any representation of classified staff or of students on the school council shall either be as nonvoting members of the council or on committees advisory to the council, whichever the council itself shall decide.]

Section 2. Alternative Models for School-Based Decision Making. (1) On or after January 1 and prior to March 1 of each calendar year, a school choosing to develop an alternative model for school-based decision making (SBDM) pursuant to KRS 160.345(7) shall submit a completed Alternative School-Based Decision Making Application through the school's [its] local board of education to the Commissioner of Education (Commissioner) for consideration by the Kentucky Board of Education (KBE).

(2) The Kentucky Department of Education (department) shall provide technical assistance, upon request, to districts prior to submission of the Alternative School-Based Decision Making Application to help ensure minimum compliance with the required components established [set forth] in KRS 160.345(7).

(3) Within thirty (30) days from receipt of a completed Alternative School-Based Decision Making Application, the commissioner or the commissioner's designee, or his designee, shall review and recommend that the KBE approve or deny the Alternative School-Based Decision Making Application, based on the requirements established in this administrative regulation.

(4) At the next regularly scheduled meeting of the KBE following the receipt of the recommendation from the commissioner or the commissioner's designee, or his designee, pursuant to subsection (3) of this section, the KBE shall approve or deny the Alternative School-Based Decision Making Application.

(5) Implementation of an approved Alternative School-Based Decision Making Application shall begin on July 1 unless otherwise stated [specified] in the Alternative School-Based Decision Making Application submitted to and approved by the KBE pursuant to this administrative regulation.

(6) An alternative SBDM model approved by the KBE shall undergo annual [is subject to ongoing] review by the department but shall be valid until the earlier of the following occurs:

(a) The school implements a traditional SBDM that complies with KRS 160.345 following a majority vote by the existing SBDM to do so and evidence of the council's majority vote to reinstate the traditional SBDM model is communicated in writing to the department;

(b) The school qualifies for and is granted, as [where] applicable, an SBDM exemption under Section 3 [(3)] of this administrative regulation;

(c) The school is identified for comprehensive support and improvement and has its SBDM authority transferred to the superintendent pursuant to KRS 160.346; or

(d) The KBE revokes approval for the alternative SBDM model.

(7) The department shall maintain a record of all schools that apply for an alternative SBDM model and a record of all approved alternative SBDM models.

(8) An Alternative School-Based Decision Making Application shall not be necessary for changes to an SBDM that maintain the parent, teacher, and administrator voting membership ratio established [prescribed] in KRS 160.345. An SBDM may add one (1) or more non-voting members upon a majority vote of the existing SBDM without submission of an Alternative School-Based Decision Making Application.]

(1) If a school can demonstrate that it had in operation prior to July 13, 1990, a successful school-based decision-making model composed of a different membership than specified in KRS 160.345(2), it may apply to the State Board for Elementary and Secondary Education for approval of its model under KRS 160.345(7) regarding alternative models. Priority for approval of alternative models shall be given to those preexisting models which add parents in numbers sufficient to meet the 3-2-1 statutory configuration.

(2) To demonstrate that a school had a formal, operational, decision-making entity in place before July 13, 1990, it shall submit written evidence of decisions and actions taken by the decision-making body and implemented in the school. Groups that were informal and advisory in that they were dealing with peripheral issues not covered in the Kentucky Education Reform Act of 1990 shall not qualify for alternative model approval.

(3) In the case of requests for approval of alternative models which were in operation prior to July 13, 1990, the school shall show evidence that the model in existence has been subjected to review, evaluation, and recommendation regarding its continuation by representatives of the parents, students, certified personnel, and the administrators of the school, and that two-thirds (2/3) of the faculty (all certified members of the school including any itinerant teacher assigned to the school for payroll purposes) have agreed to apply for the continued use of that model for school-based decision-making.]

Section 3. Exemptions from School-Based Decision Making.

(1) On or after January 1 and prior to March 1 of each calendar year, a school required to implement school-based decision making pursuant to KRS 160.345 may seek an SBDM exemption. A request for exemption shall be made by submitting a written request to the commissioner for consideration by the KBE.

(2) The department shall provide technical assistance, upon request, to districts prior to submission of the written request to help ensure minimum compliance with the required components established [set forth] in KRS 160.345(5).

(3) Within thirty (30) days from receipt of the written request, the commissioner or the commissioner's designee, or his designee, shall review and verify that the school meets the requirements established/set forth in KRS 160.345(5).

(4) Once the commissioner or the commissioner's designee, or his designee, has verified that the school meets the requirements established/set forth in KRS 160.345(5), the school's written request shall be submitted to the KBE for final approval pursuant to KRS 160.345(5). If the commissioner or the commissioner's designee is/ or his designee, are unable to verify that the school has met the requirements reequipments for exemption established/set forth in KRS 160.345(5), the commissioner or the commissioner's designee shall recommend that the KBE deny the exemption request.

(5) Implementation of an approved school-based decision making exemption shall begin on July 1 unless otherwise stated/specified in the written request submitted to and approved by the KBE.

(6) An SBDM exemption approved by the KBE shall be valid for one (1) school year.; however, A school may annually re-apply for an SBDM exemption if it meets the requirements established/set forth in KRS 160.345(5).

(7) The department shall maintain a record of all schools that apply for an SBDM exemption and a record of all approved SBDM exemptions. [Each application for alternative models from schools which began school-based decision making after July 13, 1990, shall be based on the 3-2-1 statutory configuration so that parental membership shall not fall below one-third (1/3) of voting members, shall have no more than two (2) year terms of office, and shall show any student or classified staff representation as nonvoting or advisory. The other requests shall be approved or rejected after a case-by-case review by the board and recommendation by the Department of Education.]

Section 4. Training for School-Based Decision Making Members. (1) SBDM members shall satisfy training required under KRS 160.345 by completing department-provided/[department provided] training or training provided by individuals that have been endorsed by the department to provide [such] training.

(2) To be endorsed by the department to provide SBDM member training, an individual shall successfully complete a training program administered, as required by the department, on an annual basis. This training shall include modules on effective training and the duties, authority, and responsibilities of SBDM members and councils as authorized by KRS 160.345.

(3) The department shall maintain a record of individuals that it has endorsed to provide training to SBDM members.

(4) Individuals the department has endorsed to provide training to SBDM members shall use training modules developed or approved by the department pursuant to subsection (6) of this section. Training modules shall provide professional development to SBDM members on the duties, authority, and responsibilities of SBDM members and councils as authorized by KRS 160.345.

(5) If an individual the department has endorsed to provide training to SBDM members would like to use non-department training modules to meet the requirements of KRS 160.345(6), the[such] training modules shall be approved in advance by the department pursuant to subsection (6) of this section.

(6) To have a training module approved by the department, an individual or entity shall submit [the following] in writing to the department for review:

- (a) The title of module;
- (b) The number of training hours the module provides;
- (c) The intended audience of the module;
- (d) An overview of the module, including topics addressed and anticipated outcomes for attendees; and
- (e) All materials to be presented as part of the training, including written, audio, and video materials[Other evidence deemed necessary by the department].

(7) The department shall maintain a record of non-department trainings that have complied with/been approved to meet the requirements of KRS 160.345(6). [KRS 160.345(7) stipulates

that the school shall submit its application for an alternative model "through" the local board to the Commissioner of Education and the State Board for Elementary and Secondary Education for approval. The state board interprets that provision to mean that the local board shall transmit the request to the state as quickly as possible. In exercising this function, the local board is serving as transmittal agent and shall not have the right to delay or deny a school's request for an alternative model.]

Section 5. Database of School-Based Decision Making Members. (1) By November 1 of each year, each school shall provide, in a format acceptable to the department, the following information to the department:

- (a) The names and addresses of each SBDM member; and
- (b) Verification that each SBDM member has completed the training required by KRS 160.345(6).

(2) The department shall maintain a database of all SBDM members, including training verifications for SBDM members. [All alternative models approved by the state board pursuant to any provision contained in this administrative regulation shall be valid for an indefinite period, subject to continuous review by the state board. This approval for an indefinite period, subject to continuous review by the state board, shall apply to all alternative models approved prior to and subsequent to the date of enactment of this administrative regulation.]

Section 6. Incorporation by Reference. (1) "Alternative School-Based Decision Making Application," February 2021 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [The Kentucky Department of Education shall keep records of all schools which apply for, and all schools which are granted, an alternative model for school-based decision making.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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, August 3, 2021)

703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, Pub. L. 114-95

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a statewide assessment program that measures the achievement of students, schools, and districts;[.] [No.] 114-95; and ensures accountability. KRS 158.6455 requires/provides the Kentucky Board of Education [with the authority] to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation

establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. **Kentucky public schools shall comply with Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs when administering any state-required assessment.**

Section 2. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs", April 2021 [December–2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at Education Assessment and Accountability Review Subcommittee, August 3, 2021)

703 KAR 5:225. Continuous improvement planning for schools and districts.

RELATES TO: KRS 158.645, ~~[158.649,]~~158.6451, 158.6453, 158.6455, 158.649, 158.782, 160.346, 20 U.S.C. 6301, 6311, 2 C.F.R. Part 200, 34 C.F.R. Part 200, Pub. L. 114-95

STATUTORY AUTHORITY: KRS ~~[158.649,]~~158.6453, 158.6455, 158.649, 160.346

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide accountability system that measures the achievement of students, schools, and districts; complies with the federal Elementary and Secondary Education Act, 20 U.S.C. ~~[secs.]~~6301 et seq., as amended by the Every Student Succeeds Act (ESSA), Pub. L. 114-95[or its successor]; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences. This administrative regulation establishes the comprehensive school and district improvement plan process, which[- The requirements] are key components of the continuous improvement process in Kentucky and ultimately fulfillment of school, district, and state goals under the Kentucky State Plan as required by the ESSA.

Section 1. Definitions. (1) "Charter school" means a "public charter school" [and shall have the same meaning] as defined by[*in*] KRS 160.1590(12).

(2) "Charter school board of directors" or "governing board" means "charter school board of directors" [and shall have the same meaning] as defined by[*in*] KRS 160.1590(6).

(3) "Comprehensive District Improvement Plan" or "CDIP" means a plan developed by the local school district with the input of parents, faculty, staff, and representatives of school councils from each school in the district, based on a review of relevant data

that includes targets, strategies, activities, [and]a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(4) "Comprehensive School Improvement Plan" or "CSIP" means a plan developed by the school council, or successor, and charter schools with the input of parents, faculty, and staff, based on a review of relevant data that includes targets, strategies, activities, [and]a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

Section 2. Monitoring. (1) The department shall review and approve all submissions required by this administrative regulation based on compliance with KRS 158.649, 158.6455, 158.782, 160.346, 703 KAR 5:280, the Elementary and Secondary Education Act, 20 U.S.C. 6301 et seq., 2 C.F.R. Part 200, 34 C.F.R. Part 200, and this administrative regulation.

(2) The department shall monitor implementation of each CDIP or CSIP and shall provide guidance based upon information, which may include the following:

- (a) Progress reports from the school through the district;
- (b) Data reviews;
- (c) On-site observation; and
- (d) Other information supplied at the option of the district or school.

(3) In addition to the activities undertaken by the department, each school district or governing board shall monitor compliance of its respective schools.

Section 3. Comprehensive School and District Improvement Plan Process. (1) Each school or district shall, ~~[by January 4 of each school year,]~~ develop, review, and revise a comprehensive school or district improvement plan.

(2) The structure of a school or district comprehensive improvement plan shall include:

(a) Completion of a narrative summary of the current state of the school ~~[the Continuous Improvement Diagnostic]~~ between August 1 and October 1 of each school year;

(b) Completion of the needs assessment between October 1 and November 1 of each school year which[that] shall include:

- 1. A description of the data reviewed and the process used to develop the needs assessment;
- 2. A review of the previous plan and its implementation to inform development of the new plan; [and]
- 3. Perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions; and
- 4. Any additional requirements made necessary by the receipt of federal funds authorized by the Elementary and Secondary Education Act, 20 U.S.C. 6301 et seq.;

(c) Process for development of the CSIP or CDIP, to be completed between November 1 and January 1 of each school year, which shall include:

- 1. Analysis of data to determine causes and contributing factors;
- 2. Prioritization of needs; and
- 3. Development of goals, objectives, strategies, and activities based on the needs assessment and root cause analysis that shall include targets or measures of success, timelines, persons responsible, a budget that includes resources needed and source of funding, and a process for meaningful stakeholder communications and input;

(d) A set of assurances, approved by and on file with the local board of education, The assurances shall contain[-with] a signed declaration by the superintendent that all schools in the district are in compliance with the necessary federal and state requirements for school improvement, including KRS 158.649, 158.6455, 158.782, 160.346, 703 KAR 5:280, the Elementary and Secondary Education Act, 20 U.S.C. 6301 et seq., 2 C.F.R. Part 200, 34 C.F.R. Part 200, and this administrative regulation[of the statutes and administrative regulations included in those assurances];[and]

(e) A process for annual review and revision by the school or district;[-]

(f) A district level plan for providing an equitable education to English Learners, to be completed by May 1 of each school year; and

(g) Other components required **for school and district improvement, KRS 158.649, 158.6455, 158.782, 160.346, and 703 KAR 5:280[by state statutes or regulations]. Unless otherwise noted, all additional components of the CSIP or CDIP shall[must] be complete by May 1 of each school year.**

(3) Continuous improvement and capacity building shall drive the development of the plan.

(4) Other required components in the process shall include:

(a) A standards-based process for measuring organizational effectiveness that shall include purpose and direction, governance and leadership, teaching and assessing for learning, resources and support systems, and using results for continuous improvement;

(b) A data driven self-evaluation based on the standards, including a means to gather meaningful stakeholder input;

(c) A written improvement plan based on the issues identified in the self-evaluation;

(d) A set of assurances that includes a determination of compliance with each assurance and the ability to upload any supporting documentation needed;

(e) Electronic submission of all elements of the plan;

(f) Monitoring implementation of the plan through implementation and impact checks; and

(g) Evaluation of the effectiveness based on the strategies and activities in the plan.[]

(5) A CSIP shall also include the elements required of schools pursuant to KRS 158.649(5).[]

(5)(a) [(6)] The CDIP for each district shall be posted to the district's Web site.

(b) The CSIP for each school shall be posted to the school's Web site.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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, August 3, 2021)**

703 KAR 5:240. Accountability administrative procedures and guidelines.

RELATES TO: KRS 158.150, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(3)(a) and KRS 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. [secs.]6301 et seq.[- or its successor]; and ensures accountability. This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

Section 1. Definitions. (1) "A1" means a school that **is**:

(a) **[Is]** Under administrative control of a principal and eligible to establish a school-based decision-making council; and

(b) **[Is]** Not an alternative education program operated by, or as a part of, another school.

(2) "Alternative education program" is defined by KRS

160.380(1)(a).

(3) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

Section 2. Assigning Students for School and District Accountability. (1)(a) A student enrolled in an A1 school for a full academic year shall be counted in the accountability membership of the A1 school and shall be attributed to the A1 school for accountability purposes. This shall include state agency children or other students who have been enrolled in an A1 school by any authority.

(b) A student qualifying as an early graduate based on criteria **established[defined]** in 704 KAR 3:305 shall be included in the school's accountability calculation in the year in which the student graduates, whether or not the student has a full academic year of enrollment.

(2) A student enrolled in an A1 school and attending an alternative education program during the year as a result of local school district policies or procedures shall be counted in the accountability membership of the A1 school and shall be attributed to the A1 school for accountability purposes if the student's combined enrollment in the A1 school and alternative education program is a full academic year.

(3) A student enrolled in an alternative education program for a full academic year as a result of local school district policies or procedures without any enrollment in an A1 school during the same year shall be attributed to the accountability of the district that the student would have attended if not enrolled in the alternative education program.

(4) A student not enrolled in any A1 school or an alternative education program for a full academic year, but enrolled in a district for a full academic year, shall be assigned to the district for accountability purposes.

(5) The Department of Education shall monitor alternative school placements. If evidence indicates a district is inappropriately placing students into alternative programs to avoid inclusion in accountability, **the district[if]** shall be further investigated by the Department of Education.

Section 3. Assigning Students for State Accountability. (1) Students enrolled in alternative education programs, and not attributed to an A1 school or district, shall be aggregated into a state level accountability report.

(2) If a student, before completing a full academic year in a school or district as **established[provided]** in Section 2 of this administrative regulation, is enrolled in an alternative education program by a court, a governmental agency other than a Kentucky public school, or Kentucky school district, the student shall be accountable to the state.

Section 4. Inclusion of Schools in Accountability. (1) All A1 schools shall receive annual accountability classifications as established in 703 KAR 5:270, for the state's assessment and accountability system.

(2)(a) For reporting purposes, all alternative education programs shall receive annual accountability reports based on tested students.

(b) Reports for alternative education programs shall be separate from the A1 school accountability reporting.

(c) The alternative education program reports shall **state[outline]** the unique features and characteristics of the alternative education program and the appropriate uses and limitations of the data.

Section 5. Standard Grade Configuration for Accountability. (1) Accountable grade level configurations shall be elementary, middle, or high school.

(a) Elementary shall include any configuration of grades K-5 or K-6.

(b) Middle school shall include any configuration of grades 5-8 or 6-8.

(c) High school shall include any configuration of grades 9-12.

(2) An A1 school or an alternative education program shall fall

into one (1), two (2), or three (3) grade level configurations for accountability reporting.

Section 6. Reporting of Schools with Changed School Service Area. (1)(a) For reporting purposes, a school's past data trend shall be removed from public reporting if a school has a significant change in its stable population.

(b) A school shall be considered to have a stable population, if as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, the population of the school remains at sixty (60) percent or higher of its original students from the previous year in the accountability grades.

(c) To determine if the population is stable, the number of students in the stable population shall be divided by the total number of students in the grades included in the accountability calculations.

1. If the stable population is sixty (60) percent or higher, the school's past trend data shall be reported.

2. If the stable population is less than sixty (60) percent, the school's past trend data shall not be reported.

(2) A school district shall notify the Department of Education of any school that will have an unstable population compared to the prior year by June 30.

Section 7. Data Review and School or District Appeal of Accountability Classifications. (1) A written request for a data review shall be submitted to the Department of Education within ten (10) days after the Department of Education officially releases the final accountability classifications as established in 703 KAR 5:270, to the public.

(2) A written appeal of a final accountability classification shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the accountability classifications. The appeal of a final classification shall:

(a) Identify clearly the basis for the wrongful effect on the calculations used to place a school into a classification; and

(b) State in detail the requested adjustment to be made to the calculations used to place a school into a classification.

(3)(a) The request for an appeal for a school accountability classification shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the local board of education.

(b) The request for an appeal for a district accountability classification shall be signed by the superintendent upon approval of the local board of education.

(4)(a) Department of Education staff shall review the request for an appeal against the standards established[set forth] in KRS 158.6455 (6).

(b) A committee shall be appointed by the Commissioner of Education to review the pending appeals and make recommendations to the Commissioner of Education as to whether or not to dispute an appeal. The committee may include a teacher, a parent, a principal, a district assessment coordinator, a superintendent, and a counselor.

(c) If the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education.

(5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 8. Student Participation in State Assessments. (1)(a) All students enrolled shall participate at the appropriate grade level for the state-required assessments in grades 3-12.

(b) For assessment and accountability purposes, the state shall not use the primary level designator and all students in grades 3-12 shall be assigned a single grade level. The assigned grade level shall determine the state tests to administer.

(c) Exceptions for testing shall be made for medical-exempted students [~~or extraordinary circumstances~~].

(d) Students categorized as English Learners (EL) shall follow testing guidelines established[set forth] by the federal Every Student Succeeds Act of 2015, 20 U.S.C. [~~secs.~~]6301 et seq[~~7~~ or its successor].

(2) For the state assessments in grades 3-12, a school shall test all students during the test window that are enrolled in each accountability grade on the first day of the school's testing window and shall complete a roster in the electronic application provided by the Department of Education.

(3) A student retained in a grade in which state-required assessments are administered shall participate in the assessments for that grade again and shall continue to be included in all accountability calculations.

(4) A student who is suspended or expelled but continues to receive instructional services required under KRS 158.150 shall participate in the state-required assessments.

Section 9. Students Not Participating in State-Required Assessments. (1) If a student does not participate in state-required assessments, the school at which the student was enrolled on the first day of the testing window shall include the student in the roster in the electronic application provided by the Department of Education.

(2) A student who does not take the state assessments and does not qualify for approved exempted status shall be assigned the lowest reportable score on the appropriate test for accountability calculations.

(3) A student reaching the age of twenty-one (21) years of age who no longer generates state funding under Support Education Excellence in Kentucky shall not be required to participate in state-required assessments.

(4) A student who is expelled and legally not provided instructional services under the standards established in KRS 158.150 shall not be considered to be enrolled for a full academic year[~~1~~] and shall not be included in accountability calculations.

(5) If a student has been expelled or suspended at some point during a year and is enrolled but does not complete the state-required assessment, the student shall be included in the accountability calculation.

(6)(a) If participation in the state-required assessment would jeopardize a student's physical, mental, or emotional well-being, a school or district shall submit a request for medical exemption, which shall be subject to the approval of the Department of Education and that states[which describes] the medical condition that warrants exempting a student from the assessments.

(b) An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements.

(c) A student with an approved medical exemption [~~or extraordinary circumstance~~] shall be excluded from state-required assessments and state and federal accountability calculations.

(7) If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from accountability calculations.

Section 10. Required Participation in the National Assessment of Educational Progress (NAEP) and State-Required Field Testing.

(1) If a school is selected by the U.S. Department of Education or its designated contractors to participate in NAEP testing, the school shall participate fully.

(2) If a school is selected by the Department of Education to participate in field testing for state assessment purposes, the school shall participate fully.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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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.

LABOR CABINET
Office of Unemployment Insurance
(As Amended at ARRS, August 10, 2021)

787 KAR 1:360. Overpayment waivers.

RELATES TO: Ky. Acts ch. 16, sec. 2[2021 SB 7, Section 2]
STATUTORY AUTHORITY: KRS 341.115(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims between January 27, 2020 and December 31, 2020, Ky. Acts ch. 16, sec. 2 authorizes[2021 SB 7, Section 2 allows] the secretary to waive overpayments of unemployment insurance benefits if the secretary, upon an alleged overpayment recipient's waiver request, [the secretary] finds the overpayment was made [(a)] without fault on the part of the recipient and if, and (b)] recovery of would be contrary to equity and good conscience. This administrative regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341 and Ky. Acts ch. 16, sec[2021 SB 7, Section] 2.

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

(2) "Financial hardship" means:

(a) An individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment; or

(b) That, as a result of the recovery of the overpayment of the benefit, the individual is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.

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

(4) "Office error" means:

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

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

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

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

(1) The overpayment was made pursuant to Section 4 of this administrative regulation without fault on the part of the recipient; and

(2) Recovery would be contrary to equity and good conscience

as established in Section 5 of this administrative regulation.

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

(1) "Office error" as defined by[*in*] Section 1 of this administrative regulation [and 787 KAR 1:190, Section 1]; or

(2) Auto-payment of benefits.

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

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

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

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

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

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)

803 KAR 2:060. Employer responsibility to post notice[Employers' responsibilities].

RELATES TO: KRS 338.051, 29 C.F.R. Part 1903
STATUTORY AUTHORITY: KRS 338.051, 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [Pursuant to the authority granted] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative[by KRS 338.051 to adopt administrative] regulations and authorizes the chairman to reference federal standards if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes employers' responsibility to post notices provided by the Labor Cabinet and availability of safety and health administrative regulations[required by federal law, this administrative regulation identifies the responsibility place upon the employer to post notices furnished by the Occupational Safety and Health Program, Department of Workplace Standards, verify abatement of cited hazards to the department, and also to furnish certain information to employees for their safety and protection. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health

Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011)).

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

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

(3) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed such as a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. "Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by Division of Occupational Safety and Health Compliance during an inspection.

(2) "Abatement date" means:

(a) For an uncontested citation item, the later of:

1. The date in the citation for abatement of the violation;

2. The date approved by Division of Occupational Safety and Health Compliance or established in litigation as a result of a petition for modification of the abatement date (PMA); or

3. The date established in a citation by an informal settlement agreement.

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHRC) has issued a final order affirming the violation, the later of:

1. The date identified in the final order for abatement; or

2. The date computed by adding the period allowed in the citation for abatement to the final order date;

3. The date established by a formal settlement agreement.

(3) "Affected employees" means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.

(4) "Final order date" means:

(a) For an uncontested citation item, the 15th working day after the employer's receipt of the citation;

(b) For a contested citation item:

1. The 30th day after the date on which a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; or

2. Where review has been directed, the 30th day after the date on which the commission issues its decision or order disposing of all or pertinent part of a case; or

3. The date on which an appeals court issues a decision affirming the violation in a case in which a final order of KOSHRC has been stayed.

(5) "Movable equipment" means a hand-held or nonhand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(6) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed, (for example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Division of Occupational Safety and Health Compliance. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of Section 2 of this administrative regulation.

Section 2. Posting. [Purpose and Scope. (1) KRS Chapter 338 requires, in part, that every employer shall furnish to his employees

employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Covered employers shall comply with the occupational safety and health standards promulgated pursuant to KRS Chapter 338. Employees shall comply with standards, rules, administrative regulations and orders issued under KRS Chapter 338 which are applicable to their own actions and conduct.

(2) The Division of Occupational Safety and Health Compliance is authorized to conduct inspections and issue citations and proposed penalties for alleged violations.

Section 3. Posting of Notice, Availability of Act, Administrative Regulations, and Applicable Standards. (1) Each employer shall post and keep posted a notice or notices created [to be furnished] by the Labor Cabinet [Division of Occupational Safety and Health Compliance, Labor Cabinet,] informing employees of the protections and obligations established [provided for] in KRS Chapter 338 including information that [and that for assistance and information, including health standards,] employees may [should] contact the employer or the Labor Cabinet for occupational safety and health assistance and information [Division of Occupational Safety and Health Compliance].

(2) The notice created by the Labor Cabinet **shall be/is** available on the Labor Cabinet Web site **at Labor.ky.gov**.

(3) The [Such] notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted.

(4) **If/Where** distinctly separate activities are performed at a single physical location, such as construction activities at the same physical location, each activity shall be treated as a separate physical establishment and a separate notice or notices shall be posted in each **[such]** establishment.

(5) **If/Where** employers are engaged in activities **that/which** are physically dispersed, such as agriculture, construction, gas and sanitary services, transportation, communications, and electric services, the notice or notices shall be posted at the location to which employees report each day.

(6) **If/Where** employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, and engineers, the notice or notices shall be posted at the location where employees operate to carry out their activities.

(7) In all cases, **[such]** notice or notices shall be posted in accordance with the requirements of this administrative regulation.

(8) Each employer shall take steps to ensure the notice or [that such] notices are not altered, defaced, or obscured [covered by other material that obscures the poster].

Section 3. Availability of Administrative Regulations. (1) All applicable occupational safety and health administrative regulations **shall be/are** available on the Labor Cabinet Web site **at Labor.ky.gov**. (2) Copies of KRS Chapter 338, all administrative regulations filed pursuant thereto, and all applicable standards will be available at the Department of Workplace Standards, Labor Cabinet).

(2) If an employer has [obtained] copies of these materials, **the employer[she or he]** shall make **the copies[them]** available upon request to any employee or [his] authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or [his] authorized employee representative and the employer [.

(3) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of KRS 338.991.

Section 4. Abatement Verification. (1) Purpose. Inspections by the Division of Occupational Safety and Health Compliance are intended to result in the abatement of violations of KRS Chapter 338. This section sets forth the procedures the Division of Occupational Safety and Health Compliance will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

(2) Scope and application. This section applies to employers who receive a citation for a violation of KRS Chapter 338.

(3) Abatement certification.

(a) Within ten (10) calendar days after the abatement date, the employer must certify to the Division of Occupational Safety and Health Compliance (the agency) that each cited violation has been abated, except as provided in paragraph (b) of this subsection.

(b) The employer is not required to certify abatement if the compliance officer, during the on-site portion of the inspection:

1. Observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and
2. Notes in the citation that abatement has occurred.

(c) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (8) of this section, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement. Note to this subsection: Appendix A (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement certification letter.

(4) Abatement documentation.

(a) The employer must submit to the agency, along with the information on abatement certification required by subsection (3)(c) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the agency indicates in the citation that such abatement documentation is required.

(b) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

(5) Abatement plans.

(a) The agency may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the citation must so indicate.

(b) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete. Note to this subsection: Appendix B (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement plan form.

(6) Progress reports.

(a) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

1. That periodic progress reports are required and the citation items for which they are required;
2. The date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;
3. Whether additional progress reports are required; and
4. The date(s) on which additional progress reports must be submitted.

(b) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. Note to this subsection: Appendix B (incorporated reference by Section 5 of this administrative regulation) contains a sample progress report form.

(7) Employee notification.

(a) The employer must inform affected employees and their representative(s) about abatement activities covered by this section by posting a copy of each document submitted to the agency or a summary of the document near the place where the violation occurred.

(b) Where such posting does not effectively inform employees and their representatives about abatement activities (for example,

for employers who have mobile work operations), the employer must:

1. Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

2. Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(c) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the agency.

1. An employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted.

2. The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.

(d) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the agency and that abatement documents are:

1. Not altered, defaced, or covered by other material; and
2. Remain posted for three (3) working days after submission to the agency.

(8) Transmitting abatement documents.

(a) The employer must include, in each submission required by this section, the following information:

1. The employer's name and address;
2. The inspection number to which the submission relates;
3. The citation and item numbers to which the submission relates;
4. A statement that the information submitted is accurate; and
5. The signature of the employer or the employer's authorized representative.

(b) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the agency receives the document is the date of submission.

(9) Movable equipment.

(a) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites. Note to this paragraph: Attaching a copy of the citation to the equipment is deemed by Division of Occupational Safety and Health Compliance to meet the tagging requirement of paragraph (a) of this subsection as well as the posting requirement of 803 KAR 2:125.

(b) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. Note to this paragraph: Nonmandatory Appendix C in the material incorporated by reference in Section 5 of this administrative regulation contains a sample tag that employers may use to meet this requirement.

(c) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

1. For hand-held equipment, immediately after the employer receives the citation; or
2. For nonhand-held equipment, prior to moving the equipment within or between worksites.

(d) For the construction industry, a tag that is designed and used in accordance with 29 C.F.R. 1926.20(b)(3) (incorporated by 803 KAR 2:402) and 29 C.F.R. 1926.200(h) (incorporated by 803 KAR 2:406) is deemed to meet the requirements of this section when the information required by paragraph (b) of this subsection is included on the tag.

(e) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(f) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:

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1. The violation has been abated and all abatement verification documents required by this administrative regulation have been submitted to the agency;
2. The cited equipment has been permanently removed from service or is no longer within the employer's control; or
3. The commission issues a final order vacating the citation.

Section 5. Incorporation by Reference. (1) The appendices to 29 C.F.R. 1903.19, as published in the Federal Register, Volume 62, pages 15324-15340, March 31, 1997 are incorporated by reference.

(2) This material may be inspected, obtained, and copied at the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. – 4:30 p.m. (ET), Monday through Friday).

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, August 10, 2021)

803 KAR 2:062. Employer[Employers] responsibility for an/when employee/is[where employees are] exposed to toxic substances or harmful physical agents.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health [rules,] administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. This [and standards. The purpose and function of the following] administrative regulation establishes [is to provide that all employers] employer responsibility for an employee/when employees are exposed to toxic substances or harmful physical agents [monitor areas and maintain accurate records of such monitoring where their employees are exposed to potentially toxic substances and to make available to those employees the records of such monitoring].

Section 1. Definitions. (1) "Board" is defined by KRS 338.015(6).

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

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

(4) "Occupational safety and health standard" is defined by KRS 338.015(3).

Section 2. General Requirements. (1) Employers shall monitor areas where employees are exposed to potentially toxic substances or harmful physical agents that [which] are required to be monitored or measured pursuant to [those] standards [as] adopted by the board pursuant to KRS Chapter 338 [Kentucky Occupational Safety and Health Standards Board].

(2) Employers shall provide employees or their representatives an opportunity to observe [such] monitoring or measuring.

(3)(a) Each employer shall promptly notify every [any] employee [or employees] who was or is [have been or are being] exposed to toxic materials or harmful physical agents in concentrations or [at] levels that [which] exceed those established[prescribed] by [those] applicable [occupational safety and health] standards adopted by the board pursuant to KRS Chapter 338 [Kentucky Occupational Safety and Health Standards Board].

(b) If/Where [pursuant to those applicable occupational safety and health standards adopted and promulgated by the Kentucky

Occupational Safety and Health Standards Board] it is required that exposure to certain toxic substances or agents is [be] limited or prohibited, each employer shall:

(1) Notify [notify—his] employees who are subject to [such] exposure; [;]

(2) Inform employees [inform them] of the corrective action required, if any; [;] and

(3) Notify employees [notify them] when [such] action will be, or was, [has been] taken.

(4)(a) Each employer shall make and maintain records of all monitoring activity required by this administrative regulation and make appropriate provisions whereby each employee, former employee, or a representative of either, has [may have] access to [such] records that [which will] indicate the levels [to which] the [particular] employee or former employee was [has been] exposed.

(b) Each employee, former employee, or representative of either, [Said person] shall [also] be allowed[permitted] to copy [those] records pertaining to her or his exposure levels or the exposure levels of the employee or former employee she or he is representing.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, August 10, 2021)

803 KAR 2:070. Inspections[Inspection; procedure].

RELATES TO: KRS 338.101

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference standards. [Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following rules and administrative regulations are adopted, governing the authority to conduct inspections. The function of the] This administrative regulation establishes the [is to identify this] authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections.

Section 1. Definitions. (1) "Commissioner" is defined by/in KRS 338.015.

(2) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections and investigations.

(3) "Compulsory process" means the institution of any appropriate action, including ex parte application for an inspection, [or] investigation, or warrant or its equivalent.

(4) "Director" means Director, Division of Occupational Safety and Health Compliance.

(5) "Employee" is defined by/in KRS 338.015(2).

(6) "Employer" is defined by/in KRS 338.015(1).

Section 2. Authority for Inspections. (1) Compliance safety and health officers [Safety and Health Officers of the Division of Occupational Safety and Health Compliance] shall be[are] authorized to conduct inspections pursuant to KRS 338.101 [enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or

environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by KRS Chapter 338 and administrative regulations issued pursuant thereto, and other records which are directly related to the purpose of the inspection].

(2) Prior to inspecting areas containing information [which is] classified by an agency of the United States Government [;] in the interest of national security, compliance safety and health officers shall obtain [have obtained] the appropriate security clearance.

Section 3 [2]. Objection to Inspection. (1) If an employer refuses [Upon a refusal] to permit a compliance safety and health officer [; in the exercise of his official duties,] to enter without delay and at reasonable times any place of employment [or any place therein,] to inspect; [;] [to] review records; [;] [or to] question any employer, owner, operator, agent, or employee; [;] [in accordance with this administrative regulation,] or [to] permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace [in accordance with 803 KAR 2:110], the compliance safety and health officer shall terminate the inspection or confine the inspection to [other] areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised.

(2) The compliance safety and health officer shall endeavor to ascertain the reason for the [such] refusal and [; and he shall] immediately report the refusal and [the] reason [therefore] to the commissioner [Commissioner of the Department of Workplace Standards].

(3) The commissioner shall promptly take appropriate action including compulsory process [;] if necessary.

(4)(a) Compulsory process may be sought in advance of an inspection if, in the judgment of the commissioner, circumstances exist that make a[which make such] pre-inspection process desirable or necessary.

(b) It may be desirable or necessary to seek compulsory process in advance of an attempt to inspect if[when].

1. The employer's past practice implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed;

2. Procuring a warrant prior to conducting the inspection would avoid, in case of refusal, the expenditure of significant time and resources to obtain a warrant and return to the establishment or worksite; or

3. An inspection includes the use of special equipment or the presence of an expert, or experts, is needed to conduct the inspection and procuring a warrant prior an inspection would alleviate the difficulties or costs encountered in coordinating the availability of [such] equipment or an expert.

(5) With the approval of the commissioner as established in this section, the director or other designee may obtain compulsory process.

(6) Ex parte inspection warrants shall be the preferred form of compulsory process if[when] compulsory process is relied upon.

Section 4 [3]. Entry not a Waiver. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty pursuant to [under] KRS Chapter 338 [Compliance safety and health officers are not authorized to grant any such waiver].

Section 5 [4]. Conduct of Inspections. (1) Inspections [Subject to the provisions herein, inspections] shall take place at [such] times and [in such] places [of employment] as the commissioner or designee [Commissioner of the Department of Workplace Standards or the compliance safety and health officer] directs[may direct].

(2) At the beginning of an inspection, or as soon as practical, [;]

the compliance safety and health officer shall; [officers shall]

(a) Present [present] her or his [their] credentials to the owner, operator, or agent in charge at the establishment or worksite; [;]

(b) Explain [explain] the nature and purpose of the inspection; [;] and]

(c) Indicate [indicate] generally the scope of the inspection and the records she or he wishes [specified herein which they wish] to review. The[Such] [However, such] designation of records shall not preclude access to additional records; [specified herein]; [;]

(2) Compliance safety and health officers shall]

(d) Have [have] authority to take environmental samples, [and to take or obtain] photographs, videos, oral recordings, and statements; and; [related to the purpose of the inspection,]

(e) Employ [employ] other reasonable investigative techniques, such as [; and question privately any employer, owner, operator, agent or employee of an establishment. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to,] the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that [such] actions with flash, spark-producing, or other equipment shall not be [is not] hazardous.

(4) Compliance safety and health officers shall comply with [all] employer safety and health rules and practices at the establishment or worksite [being inspected,] and [they shall] wear, as well as use, appropriate personal protective equipment [and use appropriate protective clothing and equipment].

(5) [(4)] The conduct of an inspection shall [be such as to] preclude unreasonable disruption of [the] operations at [of] the employer's establishment or worksite.

(6)(a) [(5)] At the conclusion of an inspection, the compliance safety and health officer shall offer conference [confer] with the employer [or his representative] and informally advise her or him of [any] apparent [safety and health] violations [disclosed by the inspection].

(b) The [During such conference, the] employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace. [

(6) Inspection shall be conducted in accordance with the requirements of this section.]

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(As Amended at ARRS, August 10, 2021)

803 KAR 2:110. Employer and employee representatives.

RELATES TO: [KRS 338.051] KRS 338.111
STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [Pursuant to the authority granted] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health [by KRS 338.051, the following rules and] administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes employer and employee representation during an

~~inspection [are adopted concerning the employer and employee representatives who may accompany compliance safety and health officers during the course of the inspection].~~

Section 1. Definitions. (1) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections or investigations.

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

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

Section 2. Representatives of Employers and Employees. (1) ~~The compliance [Compliance] safety and health officer[officers] shall be in charge of the inspection [inspections] and questioning of persons.~~

(2) A representative of the employer and a representative authorized by her or his employees shall be given an opportunity to accompany the compliance safety and health officer.

(3) The compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany her or him ~~if[when] she or he [where he] determines it aids [that such additional representatives will further aid] the inspection.~~

(4) A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if ~~it does [this will] not interfere with the conduct of the inspection.~~

(5) ~~[(2)] The compliance [Compliance] safety and health officer[officers] shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees [for the purpose of this section].~~

(6) If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is ~~the [such] representative, she or he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.~~

(7) ~~[(3)] The representative[representative(s)] or representatives authorized by employees shall be an employee[employee(s)] of the employer.~~

(8) If, ~~[However, if] in the judgment of the compliance safety and health officer, good cause is [has been] shown why accompaniment by a third party, such as a safety professional or industrial hygienist, who is not an employee of the employer [(such as an industrial hygienist or a safety engineer)] is reasonably necessary to [the] conduct [of] an effective and thorough [physical] inspection [of the workplace], the [such] third party may accompany the compliance safety and health officer during the inspection.~~

(9) A compliance ~~[(4) Compliance] safety and health officer[officers] may consult with employees concerning matters of occupational safety and health [to the extent they deem] necessary for [the conduct of] an effective and thorough inspection.~~

(10) During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of KRS Chapter 338 ~~that[which] she or he has reason to believe exists in the workplace to the attention of the compliance safety and health officer.~~

(11) The compliance ~~[(5) Compliance] safety and health officer shall be[is] [officers are] authorized to deny [the right of] accompaniment [under this section] to any person whose conduct interferes with the [a fair and orderly] inspection.~~

(12) Accompaniment ~~[The right of accompaniment] in areas containing trade secrets shall be subject to KRS 338.171.~~

(13) Only persons authorized access to ~~[With regard to] information classified by an agency of the United States Government [in the interest of national security, only persons authorized to have access to such information] may accompany a compliance safety and health officer in areas containing [such] information.~~

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803 KAR 2:122. ~~Abatement~~[Application for extension of abatement].

RELATES TO: KRS 338.141

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [The Commissioner of the Department of Workplace Standards is empowered to extend abatement periods established pursuant to KRS 338.141(2) and 803 KAR 2:120. The function of this] This administrative regulation establishes [is to detail] the form of the application for extension of abatement, steps necessary to make application, content of the application, form and timing for the ruling of the Commissioner of the Department of Workplace Standards on the application, and, appeal available to the parties adversely affected by the decision on the application.

Section 1. (1) "Abatement" means action by an employer to comply with a cited regulation, standard, statute, or order to eliminate a hazard identified by the Division of Occupational Safety and Health Compliance.

(2) "Abatement date" means ***as established in paragraphs (a) and (b) of this subsection.[:]***

(a) For an uncontested citation item, "***abatement date***" means the later of ***the date***:

1. ~~[The date]~~In the citation for abatement of the violation; ~~[or]~~

2. ~~[The date]~~Approved by Division of Occupational Safety and Health Compliance or established in litigation as a result of a petition for modification of the abatement date (PMA); or

3. ~~[The date]~~Established in a citation by an informal settlement agreement.

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHRC) has issued a final order affirming the violation, "***abatement date***" means the later of ***the date***:

1. ~~[The date]~~Identified in the final order for abatement; ~~[or]~~

2. ~~[The date]~~Computed by adding the period allowed in the citation for abatement to the final order date; ***or***

3. ~~[The date]~~Established by a formal settlement agreement.

(3) "Affected employees" means employees who exposed to a hazard identified as violation in a citation.

(4) "C.F.R." means Code of Federal Regulations.

(5) "Commissioner" is defined by 803 KRS 338.015(7).

(6) "Compliance officer" means a person authorized by the commissioner to conduct occupational safety and health inspections and investigations.

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

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

(9) "Final order date" means ***as established in paragraphs (a) and (b) of this subsection.[:]***

(a) For an uncontested citation item, "***final order date***" means the 15th working day after the employer's receipt of the citation. ***[:]***

(b) For a contested citation item, "***final order date***" means:

1. The 30th day after the date a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; ***[or]***

2. ~~If[When] review has been directed, the date the commission issues its decision or order disposing of all or pertinent part of a case; or~~

3. The date an appeals court issues a decision affirming the violation in a case if/when a final order of the review commission has been stayed.

(10) "Movable equipment" means a hand held or non-hand held machine or device, powered or unpowered, used to do work and moved within a worksite or between worksites.

(11) "Review commission" is defined by KRS 338.015(8).

(12) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, and/as well as the day of receipt of notice.

Section 2. Extension or Modification of Abatement. (1) An employer may apply for an ~~[make application for]~~ extension or modification of abatement ~~[date]~~ with the commissioner or designee ~~[Commissioner of the Department of Workplace Standards or his designee the Director of Compliance,]~~ after/when the employer ~~[has]~~ made a good faith effort to comply with the abatement requirements ~~[of a citation,]~~ but abatement is not ~~[has not been]~~ completed due to factors reasonably beyond the employer's ~~[his]~~ control.

(2) The ~~[Where]~~ application for extension or modification of abatement, as established in subsection (7) of this section, ~~[is made, said application]~~ shall be made no ~~[filed not]~~ later than 4:30 p.m. Eastern Time on ~~[the close of]~~ the day ~~[on which]~~ abatement is required ~~[was originally required]~~.

(3) A later filed petition shall be accompanied by the employer's written statement of exceptional circumstances explaining the delay.

(4) The application for extension or modification of abatement shall be posted for ten (10) working days in a conspicuous location where all affected employees have notice or near the location where the violation occurred.

(5) [

Section 2.] An application for extension or modification of abatement shall ~~[may]~~ be in writing or may be made orally if/when ~~[where]~~ time does not permit a written application ~~[writing]~~.

(6) If/When an ~~[Where]~~ application for extension or modification of abatement is made orally, a written application shall follow the ~~[said]~~ oral request within three (3) working days.

(7) Every ~~[The]~~ application for extension or modification of abatement shall include ~~[the following information]:~~

(a) ~~[(1)]~~ All steps taken by the employer, and the dates of ~~[such]~~ action, in an effort to achieve compliance during the established/prescribed abatement period; ~~[-]~~

(b) ~~[(2)]~~ The specific additional ~~[abatement]~~ time or modification necessary ~~[in order]~~ to achieve compliance; ~~[-]~~

(c) ~~[(3)]~~ The reason ~~[reasons such]~~ additional time or modification is necessary, ~~including the unavailability of professional and technical personnel or materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date];~~ ~~[-]~~

(d) ~~[(4)]~~ All ~~[available]~~ interim steps implemented ~~[being taken]~~ to safeguard ~~[the]~~ employees against the ~~[cited]~~ hazard ~~[during the abatement period];~~ and ~~[-]~~

(e) Certification the application for extension or modification of abatement was posted for ten (10) working days and, if appropriate, provided to the authorized representative of affected employees including the date the posting and service were made.

(8)(a) Affected employees or their representatives may file a written objection to the application with the commissioner within ten (10) working days of the date of posting of the/such petition or service upon an authorized representative.

(b) Failure to file an objection within ten (10) working days of the date of posting of the/such petition or service upon an authorized representative, shall constitute a waiver of any further right to object to the application.

(9) [

Section 3.] The commissioner or designee ~~[Commissioner of the Department of Workplace Standards or his designated representative, the Director of Compliance,]~~ shall rule on the application for extension or modification of abatement within three

(3) working days of receipt of the application ~~[same]~~.

(10) ~~[(1)]~~ Where extension is granted, amended citation shall issue and the employer shall post the amended citation at or near the same location as the original citation as under 803-KAR-2:125. Adversely affected employees may appeal an extension or modification of abatement pursuant to KRS 338.141~~[(4)]~~ and rules of the KOSHRG.

(11) If/When an application for extension or modification of abatement ~~[(2)]~~ Where extension is denied, the employer may ~~[adversely affected employers shall have right of]~~ appeal pursuant to ~~[as under]~~ KRS 338.141~~[(4)]~~ and rules of the KOSHRG.

Section 3. Abatement Certification. (1) Within ten (10) calendar days after the abatement date, the employer shall certify to the commissioner that each cited violation is abated, except as established/provided in subsection/paragraph (2) of this section.

(2) The employer shall/is not be required to certify abatement if the compliance officer, during the on-site portion of the inspection:

(a) Observes, within twenty-four (24) hours after a violation is identified, that abatement occurred; and

(b) The citation states that abatement occurred.

(3) The employer's certification that abatement is complete shall include, for each cited violation, in addition to the information required by this administrative regulation, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

Section 4. Abatement Documentation. (1) The employer shall submit documents demonstrating that abatement is complete for each cited violation.

(2) Documents demonstrating that abatement is complete may include evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

Section 5. Abatement Plan. (1) The commissioner may require an employer to submit an abatement plan if/when the time permitted for abatement is more than ninety (90) calendar days.

(2) The citation shall state that an abatement plan shall be/is required.

(3)(a) The employer shall submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date if/when the citation indicates that ~~[such]~~ a plan shall be/is required.

(b) The abatement plan shall identify the violation and the steps to be taken to achieve abatement including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the hazard or violative condition until abatement is complete.

(3) Progress reports.

(a) An employer required to submit an abatement plan may be required to submit periodic progress reports for each cited violation.

(b) If an employer is required to submit periodic progress reports, the citation shall indicate:

1. That periodic progress reports shall be/are required and the citation items for which they shall be/are required;

2. The date the initial progress report shall be submitted, which shall/may be no sooner than thirty (30) calendar days after submission of an abatement plan;

3. Additional progress reports that shall be/are required; and

4. The dates additional progress reports shall be submitted.

(c) For each violation, the progress report shall identify the action taken to achieve abatement and the date the action was taken.

Section 6. Employee Notification. (1) The employer shall inform affected employees and their representative about abatement activities by posting a copy of each document submitted to the commissioner or a summary of the document near the place where the violation occurred.

(2) ~~if[when]~~ posting does not effectively inform employees and their representatives about abatement activities, the employer shall:

(a) Post each document or a summary of the document in a location where it is readily observable by affected employees and their representatives; or

(b) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3)(a) The employer **shall[must]** inform employees and their representatives of their right to examine and copy all abatement documents submitted to the commissioner.

(b) An employee or an employee representative **shall[must]** submit a request to the employer to examine and copy abatement documents within three (3) working days of receiving notice that documents were submitted to the commissioner.

(c) The employer shall comply with an employee or employee representative request to examine and copy abatement documents within five (5) working days of receiving the request.

(4)(a) The employer shall ensure that notice to employees and employee representatives **shall be[is]** provided at the same time or before the information is provided to the commissioner.

(b) The employer shall ensure that abatement documents~~[are]~~:

1. **Shall not be[Not]** altered, defaced, or covered by other material; and

2. Remain posted for **at least** three (3) working days after submission to the commissioner.

Section 7. Transmitting Abatement Documents. (1) The employer shall include in each submission:

(a) The employer's name and address;

(b) The inspection number;

(c) The citation and item number;

(d) A statement that information submitted is accurate; and

(e) The signature of the employer or the employer's authorized representative.

(2) The postmark date **shall be[is]** the date of submission for mailed documents.

(3) For documents transmitted by other means, the date the commissioner receives the document **shall be[is]** the date of submission.

Section 8. Moveable Equipment. (1) The employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment moved within the worksite or between worksites.

(2) Attaching a copy of the citation meets the tagging requirement of this administrative regulation as well as the posting requirement established in 803 KAR 2:125.

(3) The employer shall attach a warning tag that:

(a) Properly warns employees about the nature of the violation involving the equipment; and

(b) Identifies the location of the citation issued.

(4)(a) If the violation is not abated, a warning tag or copy of the citation **shall be[must]** be attached to hand held equipment immediately after the employer receives the citation.

(b) If the violation is not abated, a warning tag or copy of the citation **shall be[must]** be attached to non-hand held equipment prior to moving the equipment within or between worksites.

(5) For the construction industry, a tag designed and used in accordance with 29 C.F.R. 1926.20(b)(3) and 29 C.F.R. 1926.200(h) meets the requirements of this section ~~if[when]~~ the information required by this section is included on the tag.

(6) The employer **shall[must]** ensure the tag or copy of the citation attached to movable equipment **shall not be[is-not]** altered, defaced, or covered, or obscured by other material.

(7) The employer shall ensure the tag or copy of the citation attached to movable equipment **shall remain[remains]** attached until:

(a) The violation is abated and all abatement verification documents required by this administrative regulation are submitted to the commissioner;~~[or]~~

(b) The cited equipment is permanently removed from service

or is no longer in the employer's control; or

(c) The review commission issues a final order vacating the citation.

Section 9. The commissioner shall assume authority to modify abatement pursuant to KRS 338.141(2) ~~if[when]~~ review commission jurisdiction expires.

Section 10. **Nonmandatory examples of abatement-related forms that apply to 29 C.F.R. 1903.19 appendices shall include:**

(a) Appendix A, Sample Abatement Certification Letter;

(b) Appendix B, Sample Abatement Plan or Progress Report; and

(c) Appendix C, Sample Warning Tag.

Section 11. Incorporation by Reference. (1) The following nonmandatory appendices to 29 C.F.R. 1903.19 are incorporated by reference:

(a) Appendix A, Sample Abatement Certification Letter;

(b) Appendix B, Sample Abatement Plan or Progress Report; and

(c) Appendix C, Sample Warning Tag.[

Section 4. Where jurisdiction of the Review Commission has expired, the Commissioner of the Department of Workplace Standards shall again assume authority to modify abatement under KRS 338.141(2).]

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803 KAR 2:125. Posting of citation[citations].

RELATES TO: KRS 338.101 [164]

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [Pursuant to the authority granted] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes procedures for [by KRS 338.051, the following rules and administrative regulations are adopted as they pertain to] the posting of citations by the employer.

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

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

(3) "Review commission" is defined by KRS 338.015(8).

(4) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, **and[as well as]** the day of receipt of notice.

Section 2. Posting [of Citations]. (1) Upon receipt of any citation [under KRS Chapter 338], the employer shall immediately post the unedited [such] citation, or a copy of the unedited citation [a copy thereof, unedited], at or near each place the [an] alleged violation [referred to in the citation] occurred, except as **established in subsections (1) through (6) of this**

section[provided below].

(2) ~~If [Where],~~ because of the nature of the employer's operations, it is not practicable to post the unedited citation, or a copy of the unedited citation, at or near each place of alleged violation, ~~the unedited [such] citation, or a copy of the unedited citation,~~ shall be posted ~~[, unedited,]~~ in a prominent place where it is ~~[will be]~~ readily observable by all affected employees such as a ~~[-~~ For example, where employers are engaged in activities which are physically dispersed (see 803 KAR 2:060) the citation may be posted at the location where [to which] employees report each day.

(3) The unedited citation, or a copy of the unedited citation, may be posted at the location employees carry out their activities if the employees do not primarily work at, or report to, a single location [Where employees do not primarily work at or report to a single location (see 803 KAR 2:060) the citation may be posted at the location from which the employees operate to carry out their activities].

(4) The employer shall ~~[take steps to]~~ ensure ~~[that]~~ the unedited citation or copy of the unedited citation **shall not be/is not** altered, defaced, or obscured ~~[covered by other material which would obscure the citation. Notices of de minimis violations need not be posted].~~

(5)(a) [(2)] Each unedited citation, or copy of the unedited citation ~~[a copy thereof],~~ shall remain posted until the violation is ~~[has been]~~ abated, or for three (3) working days, whichever is later.

(b) The filing by the employer of a notice ~~[of intention]~~ to contest shall not affect the [his] posting responsibility ~~[under this section]~~ unless ~~[and until]~~ the review commission issues a final order vacating the citation.

(6)(a)/(3)(a) An employer that receives ~~[to whom]~~ a citation shall ~~[has been issued may]~~ post a notice indicating the citation is contested in the same location where the unedited [such] citation, or copy of the unedited citation, is posted ~~[indicating that the citation is being contested before the review commission, and such].~~

(b) The notice may explain the reason[reasons] for the [such] contest.

(c) The employer may ~~[also]~~ indicate specific ~~[that specified]~~ steps ~~[have been]~~ taken to abate the violation ~~[-~~.

(4) Any employer failing to comply with the provisions of subsections (1) and (2) of this section shall be subject to citation and penalty of \$100 per first instance per authority of KRS 338.991(4).

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(As Amended at ARRS, August 10, 2021)

803 KAR 2:127. Failure to correct violation[, additional penalty].

RELATES TO: KRS 338.071, 338.141~~[(4)]~~, 338.991(4)

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards [The Commissioner of the Department of Workplace Standards is empowered by KRS 338.141(1) to issue a citation to

an employer who has violated any requirement of KRS Chapter 338. KRS 338.991(4) empowers the Commissioner of the Department of Workplace Standards to propose penalties for any employer who fails to correct a violation for which a citation has been issued]. This administrative regulation establishes failure to correct violation procedures followed by the Department of Workplace Standards and employers[is necessary as it prescribes the procedure to be followed by the Division of Occupational Safety and Health Compliance and by cited employers who have been notified of a failure to correct a violation and permits the commissioner to propose penalties according to KRS 338.991(4) for failure to correct a violation. This administrative regulation spells out the procedures to be used by the Division of Occupational Safety and Health Compliance in notifying the employer of a failure to correct an alleged violation stating the time limits within which the employer has to contest the notification of failure to correct].

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

(2) "Employer" is defined in KRS 338.015(1).

(3) "Review commission" is defined in KRS 338.015(8).

(4) "Working day" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, **and[as well as]** the day of receipt of notice.

Section 2. (1) If an inspection discloses that an employer ~~[has]~~ failed to correct an alleged violation for which a citation ~~was~~ ~~[has been]~~ issued within the period permitted for its correction, the commissioner ~~[district supervisor shall consult with the Director of Compliance who may consult with the general counsel, if appropriate, and he]~~ shall notify the employer ~~[by certified mail or by personal service by the compliance safety and health officer]~~ of the [such] failure and [of] the additional penalty proposed pursuant to [under] KRS 338.991(4) [by reason of such failure].

(2) The period for the correction of a violation ~~[for which a citation has been issued]~~ shall not begin ~~[to run]~~ until the entry of a final order of the review commission in the case of any ~~[review]~~ proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

Section 3 [2]. (1) Any employer receiving a notification of failure to correct a violation and ~~[of]~~ proposed additional penalty pursuant to [authorized by] KRS 338.991(4) may notify the commissioner or designee ~~[Director of Compliance]~~ in writing that she or he contests ~~[intends to contest such notification or proposed additional penalty before the review commission].~~

(2)(a) The ~~[Such]~~ notice of ~~[intention to]~~ contest shall be transmitted ~~[postmarked]~~ within fifteen (15) working days of ~~[the]~~ receipt ~~[by the employer of the notification of failure to correct a violation and of proposed additional penalty].~~

(b) The commissioner shall ~~[Director of Compliance shall immediately]~~ transmit the [such] notice to the review commission in accordance with the rules of procedure prescribed by the commission **in accordance with KRS 338.071.**

Section 4[3]. Each notification of failure to correct a violation and ~~[of]~~ proposed additional penalty shall state that it shall be a ~~[deemed to be the]~~ final order of the review commission and not subject to review by any court or agency, **as established by KRS 338.141,** unless, within fifteen (15) working days from the date of receipt of the [such] notification, the employer notifies the commissioner or designee ~~[Director of Compliance]~~ in writing that she or he contests ~~[he intends to contest]~~ the notification of ~~[or the]~~ proposed additional penalty before the review commission.

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)

803 KAR 2:130. Informal ~~conference~~[conferences].

RELATES TO: KRS 338.101

STATUTORY AUTHORITY: KRS 338.051, 338.061[KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [Pursuant to the authority granted] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes procedures [by KRS 338.051, the following administrative regulation is adopted, identifying the procedure] to be followed in conducting informal conferences requested by the employer, employee, or representative of employees.

Section 1. Definitions. (1) Commissioner is defined by/in KRS 338.015.

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

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

(4) "Working day" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, and/as well as the day of receipt of notice.

Section 2. Informal Conference[Conferences]. (1) At the request of an affected employer, employee, or representative of employees, the commissioner or designee [Division of Occupational Safety and Health Compliance] may hold an informal conference for the purpose of discussing [any] issues raised by an inspection, investigation, citation, notice of proposed penalty, [variance,] or notice [of intention] to contest [The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the review commission].

(2) If the informal conference is requested by the employer, an affected employee, or employee [his] representative shall/may[shall] be afforded an opportunity to participate, at the discretion of the commissioner or designee.

(3) If the informal conference is requested by an employee or representative of employees, the employer shall/may[shall] be afforded an opportunity to participate, at the discretion of the commissioner or designee.

(4) Any party may be represented by counsel [at such conference].

(5) An/No informal [such] conference or request for an informal [such] conference shall not serve/serves [shall operate] as a stay or extension of the [any] fifteen (15) working day [working-day] period to file [for filing] a notice of [intention to] contest pursuant to [as prescribed in] 803 KAR 2:140.

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)

803 KAR 2:140. Contest of citation[Employer and employee contests].

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [Pursuant to the authority granted] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health [by KRS 338.051, the following rules and] administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This [are adopted, governing the employer and employee contests before the review commission. The function of this] administrative regulation establishes procedures [is to inform the employer and employees of the proper procedure] to be followed in contesting a citation or/and/or penalty issued by the Commissioner of the Department of Workplace Standards.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

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

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

(4) "Review commission" is defined by KRS 339.015(8).

(5) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal or state holidays, and the day of receipt of notice.

Section 2. [Contesting] Procedure. (1)(a) An [Any] employer that receives a citation may [to whom a citation or notice or penalty has been issued may, under KRS Chapter] notify the commissioner [Commissioner of the Department of Workplace Standards] in writing that she or he contests [intends to contest] the citation, proposed penalty, or both [such citation, or notice of proposed penalty before the review commission].

(b) The [Such] notice of [intention to] contest shall be transmitted by the employer [postmarked] within fifteen (15) working days of [the] receipt of citation [by the employer of the notice of proposed penalty].

(c) The [Every] notice of [intention to] contest shall specify whether it is directed to the citation, proposed penalty, or both [the proposed penalty, or a variance].

(d) The commissioner shall immediately transmit the [such] notice to the review commission in accordance with the rules of procedure prescribed by the commission in accordance with KRS 338.071.

(2) Any employee or representative of employees of an employer that receives [to whom] a citation [has been issued] may notify the commissioner in writing that she or he contest the:

(a) [Notify] [File a written notice with] [the commissioner in writing that she or he contests] [alleging that] [the] [period of] Time established [fixed] in the citation for the abatement of the violation [is unreasonable]; or

(b) [Notify] [File a written notice to] [the commissioner in writing that she or he contests] [alleging that] [the] [Citation, or proposed penalty, or both] [and penalties are unreasonable].

(3)(a) The notice [Such notices] shall be postmarked within fifteen (15) working days of the receipt by the employer of the notice of the citation [proposed penalty or notice that no penalty is being proposed].

(b) The commissioner shall immediately transmit the [such] notice to the review commission in accordance with the rules of procedure prescribed by the commission in accordance with KRS

338.071.

(3) If any party is adversely affected by a variance issued under KRS 338.151 he may file an appeal to the review commission.]

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LABOR CABINET

**Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)**

803 KAR 2:170. Variance and interim order[Variances].

RELATES TO: KRS 338.081, 338.153

STATUTORY AUTHORITY: KRS 333.051, 338.0161 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes proceedings to grant variances and other relief pursuant to KRS Chapter 338 [338.153 authorizes the granting of temporary and general variances from occupational safety and health standards to employers who can show that they are unable to comply with such standards by their effective dates, or they are providing conditions of employment as safe and healthful for those which would result from compliance with the terms of the standards. The following administrative regulation delineates the purpose and scope of the variances and the procedure to be followed when an employer wishes to be granted a variance].

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

(2) "Employee" is defined by KRS 338.0159(2).

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

(4) "Review commission" is defined by KRS 338.015(8).

Section 2. (1) [Purpose and Scope. (1) This administrative regulation contains rules or practice for administrative proceedings to grant variances and other relief under the Kentucky Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

(3) This [The rules of practice in this] administrative regulation shall/does [do] not apply to variances granted pursuant to [the granting of variances under] KRS 338.153(2)(c)].

2. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Act" means KRS Chapter 338.

(2) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a state.

(3) "Party" means a person admitted to participate in a hearing conducted in accordance with Sections 14 and through 24 of this administrative regulation. An applicant for relief and any affected employee shall be entitled to be named parties. The Division of Occupational Safety and Health, represented by the commissioner shall be deemed to be a party without the necessity of being named.

(4) "Affected employee" means an employee who would be affected by the grant or denial of a variance, or any of his

authorized representatives, such as his collective bargaining agent.

Section 3. Petitions for Amendments to the Administrative Regulation. Any person may at any time petition the Commissioner of the Department of Workplace Standards in writing to revise, amend, or revoke any provisions of this administrative regulation. The petition shall set forth either the terms or the substance of rule desired, with concise statement of the reasons thereof and the effects thereof.

Section 4. Amendments to this Administrative Regulation. The commissioner may at any time revise, amend, or revoke any provisions of this administrative regulation].

Section 3 [5]. Effect of Variances and Interim Order. (1) All variances and interim orders granted pursuant to this administrative regulation shall have only future effect.

(2) The [In his discretion, the] commissioner may decline until the completion of the proceeding, [to entertain] a variance or interim order [an] application for [a variance on] a subject or issue if/when [concerning which] a citation has been issued to the employer involved or a [and] proceeding on a [the] citation or [a] related issue [concerning a proposed penalty or period of abatement] is pending before the review commission, or any other court[, Kentucky Occupational Safety and Health Review Commission][until the completion of the][such][proceeding].

Section 4 [6]. Public Notice of a Granted Variance or Interim Order. Every final action granting a variance or interim order establishing/specifying the alternative to the standard the variance permits shall be posted on the Labor Cabinet Web site [under this administrative regulation shall be published in a newspaper of general circulation. Every such final action shall specify the alternative to the standard involved which the particular variance permits].

Section 5. Applications and [7. Forms of] Documents[; Subscriptions; Copies]. (1) There shall not be a standard form for applications and documents. Information to be submitted in applications and documents shall be as established in this administrative regulation[No particular form is prescribed for applications and other documents][papers which may be][filed][in proceedings][for a variance or interim order][under this administrative regulation].

(2) Applications [However, any applications] and other documents [papers] shall be clearly legible. [An original and six (6) copies of any application or other papers shall be filed. The original shall be typewritten. Clean carbon copies, or printed or processed copies are acceptable copies.]

(3)[(2)] Each application or other document [paper which is filed in proceedings under this administrative regulation] shall be signed [subscribed] by the person filing the application or document [same] or by her or his attorney or other authorized representative.

Section 6 [8]. Temporary Variance [Variances Under KRS 338.153(2)(a) (Temporary Variances)]. (1) Application [for variance]. Any employer requesting [or class of employers, desiring] a temporary variance shall [from a standard, or portion thereof, authorized by KRS 338.153(2)(a), may] file a written application with the commissioner [containing the information specified in subsection (2) of this section with the commissioner].

(2) An application [filed pursuant to subsection (1) of this section] shall include:

- (a) The name and address of the applicant;
- (b) The address of the place or places of employment involved;
- (c) The specific [A specification of the] standard [or portion thereof] from which the applicant seeks a variance;
- (d) A representation by the applicant supported by representations from [qualified] persons having firsthand knowledge of:

1. The [the] facts represented; [;]

2. Inability [that he is unable] to comply with the standard; and

[or portion thereof by its effective date and]

3. A [a] detailed statement of the reasons therefore;[.];[.]

(e) A statement of the steps the applicant took or [has taken and] will take, with specific dates [where appropriate], to protect employees against the hazard covered by the standard;

(f) A statement of when the applicant will [expects to be able to] comply with the standard and steps taken [of what steps he has taken and will take], with specific dates [where appropriate], to come into compliance with the standard;

(g) A statement of the facts establishing the applicant[the applicant would show to establish that]:

1. [The applicant] is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel, [or] of materials and equipment needed to come into compliance with the standard, or because necessary construction or alteration of facilities cannot be completed by the effective date;

2. [The applicant][He] is taking all available steps to safeguard [his] employees against the hazards covered by the standard; and

3. [The applicant][He] has an effective program for coming into compliance with the standard as quickly as practicable;

(h) Any request for a hearing [, as provided in this administrative regulation];

(i) A statement attesting[that] the applicant:

1. Informed [has informed his] affected employees of application by providing [giving] a copy of the application [thereof] to the employees' [their] authorized representative; and [.]

2. Posted [posting a statement] at the place or places where notices to employees are normally posted, and by other appropriate means, a summary of the application including, [giving a summary of the application and specifying] where a copy of the full application may be examined [at the place or places where notices to employees are normally posted, and by other appropriate means]; and

(j) A description of how affected employees were [have been] informed of the application and [of] their right to petition the commissioner for a hearing [.]

(3) Interim order.

(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule ex parte upon the application.

(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by a brief statement of the grounds therefore.

(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Section 7. Permanent Variance [9. Variances Under KRS 338.153(1) (Permanent Variances)]. (1) Application [for variance]. Any employer requesting [or class of employers desiring] a permanent variance shall [from a standard, or portion thereof, authorized by KRS 338.153(1), may] file a written application with the commissioner [containing the information specified in subsection (2) of this section with the commissioner].

(2) Contents. An application [filed pursuant to subsection (1) of this section] shall include:

(a) The name and address of the applicant;

(b) The address of the place or places of employment involved;

(c) A description of the condition, practice, means, method, operation or process [conditions, practices, means, methods, operations, or processes used or] proposed [to be used] by the applicant;

(d) A statement showing how the condition, practice, means, method, operation or process [conditions, practices, means,

methods, operations, or processes used or] proposed [to be used would] provide employment and places of employment to employees that [which] are as safe and healthful as [those] required by the standard [from which a variation is sought];

(e) Certification [A certification that] the applicant [has] informed all [his] employees of the [his] application that includes:

1. Providing [Giving] a copy of the application [thereof] to the employees' [their] authorized representative; and

2. Posting at the place or places where notices to employees are normally posted, and by other appropriate means, a summary of the application including where a copy of the full application may be examined [a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

3. By other appropriate means];

(f) Any request for a hearing [, as provided in this administrative regulation]; and

(g) A description of how employees were [have been] informed of the application and [of] their right to petition the commissioner for a hearing.

(3) Interim order.

(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule ex parte upon the application.

(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of denial, which shall include, or be accompanied by a brief statement of the grounds therefore.

(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Section 8. Interim Order. (1) Application. An application may be made for an interim order in lieu of a variance or an order to be effective until a decision on a temporary or permanent variance application is rendered.

(a) An application made for an interim order in lieu of a temporary or permanent variance shall include the information required in **Section 7(2)** of this administrative regulation for a permanent variance.

(b) An application made for an interim order to be effective until a decision on a temporary or permanent variance application is rendered shall include statements of fact why the interim order should be granted.

(c) The commissioner may rule ex parte upon any application for an interim order.

(2) Denial of application. If an interim order application is denied, the commissioner shall provide written notice to the applicant accompanied by a statement of the grounds therefore.

(3) Grant of an interim order.

(a) If an interim order is granted, a copy of the order shall be provided to the applicant and, if necessary, other affected parties.

(b) The applicant shall provide notice within five (5) working days to affected employees by the same means used to inform them of the application.

(c) The interim order shall be published on the Labor Cabinet's Web site until it expires.

Section 9 [10]. Modification, Revocation, and Renewal of a Variance or Interim Order [Rules or Orders]. (1) Modification or revocation. An affected employer or an affected employee may apply in writing to the commissioner for a modification or revocation of a variance [rule] or interim order issued pursuant to [under] KRS 338.153. The application shall contain:

- (a) The name and address of the applicant;
- (b) A description of the relief ~~[which is]~~ sought;
- (c) A statement ~~[setting forth]~~ with detailed particularity the grounds for relief;
- (d) If the applicant is an employer, [a] certification [that] the applicant ~~[has]~~ informed ~~[his]~~ affected employees of the application by:

1. Giving a copy ~~[thereof]~~ to the employees' ~~[their]~~ authorized representative; and

2. Posting at the place or places where notices to employees are normally posted, and by other appropriate means, a summary of the application including where a copy of the full application may be examined or posting the application in lieu of the summary. ~~[Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and~~

3. Other appropriate means ~~[.]~~

(e) If the applicant is an affected employee, [a] certification that a copy of the application was ~~[has been]~~ provided ~~[furnished]~~ to the employer; and

(f) Any request for a hearing ~~[as provided in this administrative regulation]~~.

(2)(a) The commissioner may ~~[on his own motion proceed to]~~ modify or revoke a variance ~~[rule]~~ or interim order in accordance with this administrative regulation ~~[issued under KRS 338.153]~~.

(b) The ~~[In such event, the]~~ commissioner shall:

1. Publish a notice on the Labor Cabinet Web site ~~[cause to be published in a newspaper of general circulation a notice]~~ of her or his intention, which affords ~~[affording]~~ interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and

2. Take ~~[shall taken such]~~ other appropriate action ~~[as may be appropriate]~~ to provide ~~[give actual]~~ notice to affected employees.

(c) Any request for a hearing shall include a short and plain statement of:

1. ~~[(a)]~~ How the proposed modification or revocation affects ~~[would affect]~~ the requesting party; and

2. ~~[(b)]~~ What the requesting party seeks ~~[would seek]~~ to show on the subject ~~[subjects]~~ or issue ~~[issues]~~ involved.

(3) Renewal. Any variance ~~[final rule]~~ or interim order issued pursuant to ~~[under]~~ KRS 338.153 may be renewed or extended ~~[as permitted by the applicable section and in the manner prescribed for its issuance]~~.

Section 10 [44]. Action on Applications. (1) Defective applications.

(a) If an application ~~[filed pursuant to this administrative regulation]~~ does not conform to this administrative regulation ~~[the applicable section]~~, the commissioner shall ~~[may]~~ deny the application.

(b) The commissioner shall give the applicant prompt written ~~[Prompt]~~ notice of the denial ~~[of an application shall be given to the applicant]~~.

(c) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

(d) A denial of an application ~~[pursuant to this subsection]~~ shall not prejudice ~~[be without prejudice to]~~ the filing of another application.

(2) Adequate applications.

(a) If an application is not ~~[has not been]~~ denied ~~[pursuant to subsection (1) of this section]~~, the commissioner shall publish notice of the application on the Labor Cabinet's Web site ~~[cause to be published in a newspaper of general circulation a notice of the filing of the application]~~.

(b) The ~~[A]~~ notice ~~[of the filing of an application]~~ shall include:

1. The terms, or an accurate summary, of the application;

2. An invitation to ~~[interested persons to]~~ submit ~~[within a stated period of time]~~ written data, views, or arguments regarding the application; and

3. Information to ~~[affected employers and employees of any]~~

~~right to]~~ request a hearing on the application.

Section 11 [42]. Requests for a Hearing on an Application ~~[Hearings on Applications]~~. (1) Request for hearing. Within the time established in the notice of the ~~[allowed by a notice of the filing of an]~~ application, any affected employer or affected ~~[affected]~~ employee may file ~~[with the commissioner, in quadruplicate,]~~ a request for a hearing on the application with the commissioner.

(2) Contents of a request for a hearing. A request for a hearing ~~[filed pursuant to subsection (1) of this section]~~ shall include:

(a) A concise statement of facts showing how the employer or employee is ~~[would be]~~ affected by the relief applied for;

(b) A specification of any statement or representation in the denied ~~[which is denied]~~ application and a concise summary of the evidence that would be adduced in support of each denial; and

(c) Any views or arguments on any issue of fact or law presented.

Section 12 [43]. Consolidation of Proceedings. The commissioner ~~[on his own motion or that of any party]~~ may consolidate or contemporaneously consider two (2) or more proceedings involving ~~[which involve]~~ the same or closely related issues.

Section 13 [44]. Notice of Hearing. (1) Service. Upon request for a hearing ~~[as provided in this administrative regulation, or upon his own initiative]~~, the commissioner shall serve a ~~[or cause to be served, a reasonable]~~ notice of hearing.

(2) Contents. A notice of hearing ~~[served under subsection (1) of this section]~~ shall include:

(a) The time, place, and nature of the hearing;

(b) The legal authority under which the hearing is to be held;

(c) A specification of issues of fact and law; and

(d) A designation of a hearing examiner as an authorized representative of the commissioner if ~~[is]~~ the commissioner is not conducting ~~[going to conduct]~~ the hearing.

(3) Referral to hearing examiner. A copy of the hearing notice ~~[a notice of hearing served pursuant to subsection (1) of this section]~~ shall be provided ~~[referred]~~ to the hearing examiner ~~[designated therein, together]~~ with a copy of the original application and a copy of any written request for a hearing ~~[thereon filed pursuant to this administrative regulation]~~.

Section 14 [45]. Manner of Service. (1) Service of any document upon any party shall ~~[may]~~ be made by personal delivery, mail, or other means ~~[of, or by mailing, a copy of the document to the last known address of the party]~~.

(2) If service is by personal delivery, the ~~[The]~~ person serving the document shall certify ~~[to]~~ the manner and ~~[the]~~ date of ~~[the]~~ service.

Section 15 [46]. Hearing Examiners ~~[:]~~ Powers and Duties. (1) Powers. In accordance with KRS 338.081, the commissioner or [a] hearing examiner ~~[designated by the commissioner to preside over a hearing]~~ shall have all powers necessary ~~[or appropriate]~~ to conduct a fair, full, and impartial hearing, including the authority to ~~[following]~~:

(a) Administer ~~[To administer]~~ oaths and affirmations;

(b) Rule ~~[To rule]~~ upon offers of proof and receive relevant evidence;

(c) Provide ~~[To provide]~~ for discovery and ~~[to]~~ determine its scope;

(d) Regulate ~~[To regulate]~~ the course of the hearing and ~~[the]~~ conduct of the parties and their counsel ~~[therein]~~;

(e) Consider ~~[To consider]~~ and rule upon procedural requests;

(f) Hold ~~[To hold]~~ conferences for ~~[the]~~ settlement or simplification of the issues by consent of the parties;

(g) Make ~~[To make]~~, or to cause to be made, an inspection of the employment or place of employment involved;

(h) Make ~~[To make]~~ decisions in accordance with KRS Chapter 338; and

(i) Take ~~[To take]~~ any other appropriate action authorized by KRS Chapter 338 or 803 KAR Chapter 2 ~~[any administrative]~~

regulation issued pursuant thereto.

(2) Private consultation. Except to the extent required for the disposition of ex parte matters, a hearing examiner **shall[may]** not consult a person or party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(3) Disqualification.

(a) **If[When]** a hearing examiner deems **herself or** himself disqualified to preside over a particular hearing, **she or** he shall withdraw therefrom by notice on the record directed to the commissioner.

(b) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file ~~[with the commissioner]~~ a motion **with the commissioner** to disqualify and remove the hearing examiner supported ~~[such motion to be supported]~~ by **an affidavit stating[affidavits setting forth]** all alleged grounds for disqualification.

(c) The commissioner shall rule upon the motion.

(4) Contumacious conduct; failure or refusal to appear or obey the rulings of ~~the~~ **a presiding** hearing examiner.

(a) Contumacious conduct at any hearing before the hearing examiner shall be grounds for conclusion of the hearing.

(b) If a witness or a party refuses to answer a question ~~[after being directed to do so]~~, **or** refuses to obey an order to provide or permit discovery, the hearing examiner may **rule[make such orders]** with regard to the refusal ~~[as are just and appropriate]~~, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(c) Referral to Kentucky Rules of Civil Procedure. On any procedural question not regulated by this administrative regulation, ~~the~~ **a** hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Kentucky Rules of Civil Procedure.

Section 16 [47]. Prehearing Conferences. (1) Convening a conference. Upon **her or** his own motion or ~~[the]~~ motion of a party, the hearing examiner may direct the parties or their counsel to meet ~~[with him]~~ for a conference to consider:

(a) Simplification of the issues;

(b) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

(c) Stipulations, admissions of fact, and ~~[of]~~ contents and authenticity of documents;

(d) Limitation of the number of parties ~~or~~ ~~[and of]~~ expert witnesses; and

(e) **Other matters** ~~[Such other matters as may tend]~~ to expedite the disposition of the proceeding, and ~~[to]~~ assure a just conclusion ~~[thereof]~~.

(2) Record of conference.

(a) The hearing examiner shall make an order **that[which]** recites the:

1. Action ~~[action]~~ taken at the conference;

2. **Amendments** ~~[the amendments]~~ allowed to any documents **that[which]** have been filed~~;~~ and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. ~~[:]~~

(b) **An entered order shall control[Such]** ~~[and such]~~ **order, when entered, controls** the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

Section 17 [48]. Consent Findings and ~~[Rules of]~~ Orders. (1) General.

(a) At any time before the reception of evidence in any hearing~~s~~, or during any hearing, a reasonable opportunity **shall[may]** be afforded to permit negotiation by the parties of an agreement containing consent findings and ~~an~~ **a rule of** order disposing of the whole or any part of the proceeding.

(b) The allowance of **this[such]** opportunity and the duration thereof shall be in the discretion of the **presiding** hearing examiner~~;~~ after **considering** ~~[consideration of]~~ the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement

that[which] will result in a just disposition of the issues involved.

(2) Contents. Any agreement containing consent findings ~~[and rule]~~ or order disposing of a proceeding shall **include** ~~[also provide]~~:

(a) That the **finding** ~~[rule]~~ or order shall have the same force and effect as if made after a full hearing;

(b) That the entire record on which any **finding** ~~[rule]~~ or order may be based shall consist solely of the application and the agreement;

(c) A waiver of any further procedural steps before the hearing examiner and the commissioner; and

(d) A waiver of any right to challenge or contest the validity of the **finding** ~~[findings and of the rule]~~ or order made in accordance with the agreement.

(3) Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(a) Submit the proposed agreement to the **presiding** hearing examiner for **her or** his consideration; or

(b) Inform the **presiding** hearing examiner that agreement cannot be reached.

(4) Disposition. In the event an agreement containing consent findings ~~[and rule]~~ or order is submitted within the time allowed ~~[therefore]~~, the **presiding** hearing examiner may accept **the[such]** agreement by issuing **her or** his decision based upon the agreed findings.

Section 18 [49]. Discovery. (1) Depositions.

(a) **1.** For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition.

2. Depositions may be taken orally or upon written interrogatories before any person designated by the **presiding** hearing examiner and having power to administer oaths.

(b) Application. Any party desiring to take the deposition of a witness **shall** ~~[may]~~ make application in writing to the **presiding** hearing examiner, **stating[setting forth]**:

1. The reasons ~~the~~ **why such** deposition should be taken;

2. The **date**, time ~~[when]~~, ~~[the]~~ place ~~[where]~~, ~~[and the]~~ name, and ~~[post office]~~ address of the person before whom the deposition is to be taken;

3. The name ~~and~~ ~~[of]~~ address of each witness; and

4. The subject matter concerning which each witness is expected to testify.

(c) Notice. **[Such]** Notice as the **presiding** hearing examiner may order shall be given by the party taking the deposition to every other party.

(d) Taking and receiving in evidence.

1. Each witness testifying upon deposition shall have the right to cross-examine **her or** him.

2. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken.

3. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the **presiding** hearing examiner.

4. Subject to **[such]** objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, **the[such]** deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition or who had due notice thereof.

(e) No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(2) Other discovery. **If[Whenever]** appropriate to a just disposition of any issue in a hearing, the **presiding** hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

Section 19 [20]. Hearings. (1) Order of proceeding. Except as **[may be]** ordered otherwise by the **presiding** hearing examiner, the party applicant for relief shall proceed first at a hearing.

(2) Burden of proof. The party applicant shall have the burden of proof.

(3) Evidence.

(a) Admissibility.

1. A party shall be entitled to present its [his] case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as ~~[may be]~~ required for a full and true disclosure of the facts.

2. Any oral or documentary evidence may be received, but the hearing [a ~~presiding~~] examiner shall exclude evidence that [which] is irrelevant, immaterial, or unduly repetitious.

(b) Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the [presiding] hearing examiner.

(c) Objections.

1. a. If a party objects to the admission or rejection of any evidence, ~~[or]~~ to the limitation of the scope of any examination or cross-examination, or to the failure to limit the[such] scope, it [he] shall state briefly the grounds for the[such] objection.

b. Rulings on all objections shall appear in the record.

2. Only objections made before the [presiding] hearing examiner shall[may] be relied upon subsequently in a proceeding.

(d) Exceptions. Formal exception to an adverse ruling shall not be[is not] required.

(4) Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Division of Occupational Safety and Health Compliance by reason of its functions is presumed to be expert[; ~~if provided~~], that the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(5) Transcript.

(a) Hearings shall be [stenographically reported/transcribed].

(b) Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

Section 20 [24]. Decisions of Hearing Examiner [Examiners].

(1) Proposed findings of fact, conclusions, and [rules-or] orders.

(a) Within ten (10) calendar days after receipt of notice that the transcript of the testimony has been filed or such additional time as the [presiding] hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, [and rule] or order, together with a supporting brief expressing the reasons for the[such] proposals.

(b) The[Such] proposals and briefs shall be served on all [other] parties[;] and shall cite [refer] to all portions of the record and to all authorities relied upon in support of each proposal.

(2) Decision of the hearing examiner. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and [rule-or] order, the [presiding] hearing examiner shall make and serve ~~[upon each party]~~ her or his decision upon each party, which shall become final on [upon] the 20th calendar day after service thereof, unless exceptions are filed thereto, as established[provided] in [Section 22-of] this administrative regulation. The decision of the hearing examiner shall include:

(a) A statement of findings and conclusions, with reasons and bases therefore, upon each material issue of fact, law, or discretion presented on the record; and

(b) The appropriate [rule,] order, relief, or denial thereof.

(3) The decision of the hearing examiner shall be based upon a consideration of the whole record, [and shall] state all facts officially noticed and relied upon, and based on ~~[-It shall be made on the basis-of]~~ a preponderance of reliable and probative evidence.

Section 21 [22]. Exceptions. (1) Within twenty (20) days after service of the hearing examiner's decision ~~[a decision-of a~~

~~presiding hearing examiner]~~, any party may file with the hearing examiner written exceptions thereto with supporting reasons.

(2) [Such] Exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the ~~[rule-or]~~ order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings of [of] fact, conclusions of law, or terms of the [rule-or] order.

(3) Upon receipt of any exceptions, the hearing examiner shall establish ~~[fix]~~ a time for filing any objections to the exceptions and any supporting reasons.

Section 22 [23]. Transmission of Record. (1) If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the commissioner for review.

(2) The record shall include:

(a) The [the] application[;]

(b) Any [any] request for hearing thereon[;]

(c) Motions [motions] and requests filed in written form[;]

(d) Rulings [rulings] [thereon][;]

(e) The [the] transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence[;]

(f) All [any] documents or papers filed in connection with prehearing conference[;]

(g) Proposed ~~[such proposed]~~ findings of fact, conclusions of law, [rules] ~~[or]~~ orders, and supporting reasons[; ~~as may have been filed~~]; and,

(h) The [the] hearing examiner's decision, and [such] exceptions, statements of objections, and briefs in support thereof[; ~~as may have been filed in the proceeding~~].

Section 23 [24]. Decision of the Commissioner. (1)

~~[Commissioner of the Department of Workplace Standards.]~~ If exceptions to a decision of a hearing examiner are taken pursuant to [Section 22-of] this administrative regulation, the commissioner shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make her or his decision.

(2) The decision shall[may] affirm, modify, or set aside, in whole or part, the findings, conclusions, and the ~~[rule-or]~~ order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken on each exception presented.

Section 24 [25]. Motion for Summary Decision.

(1)(a) Any party may, at least twenty (20) days before the date established ~~[fixed]~~ for any hearing pursuant to ~~[under Sections 14 through 24-of]~~ this administrative regulation, move with or without supporting affidavits for a summary decision in his or her favor on all or any part of the proceeding.

(b) Any other party may, within ten (10) days after service of the motion, serve opposing affidavits or countermove for summary decision.

(c) The presiding examiner may, in her or his discretion, set the matter for argument and call for the submission of briefs.

(2) The filing of any documents pursuant to ~~[under subsection (4)-of]~~ this section shall be with the hearing examiner, and copies of any [such] documents shall be served in accordance with [Section 15-of] this administrative regulation.

(3)(a) The hearing examiner shall grant the[may grant such] motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(b) The hearing examiner may deny a motion if[such motion whenever] the moving party denies access to information by means of discovery to a party opposing the motion.

(4)(a) Affidavits shall state[set forth such] facts as would be admissible in evidence in a Kentucky court of law and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(b) If[When] a motion for summary decision is made and supported as provided in this section, a party opposing the motion

~~shall[may]~~ not rest upon the mere allegations or denials of this pleading; ~~her or his response~~ shall state[must set forth] specific facts showing that there is genuine issue of fact for the hearing.

(5) ~~If the affidavits of a party opposing the motion cannot present facts essential to justify the party's opposition, the hearing examiner may deny the motion for summary decision, order a continuance to allow affidavits to be obtained or discovery to be had.[Should it appear from the affidavits of a party opposing the motion that she or he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had]~~ or make other order as is just.

(6) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the commissioner unless the hearing examiner certified in writing that:

(a) ~~The~~ [That the] ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion; and

(b) ~~An~~ [That an] immediate appeal from the ruling may materially advance the ultimate termination of the proceeding.

(7) The allowance of ~~[such]~~an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the commissioner shall so order.

Section 25 [26]. Summary Decision. (1) No genuine issue of material fact.

(a) ~~If[Where]~~ no genuine issue of [a] material fact is found to have been raised, the hearing examiner may issue an initial decision to become final twenty (20) days after service thereof, unless, within ~~that[such]~~ period of time any party ~~files~~ [has filed] written exceptions to the decision.

(b) If any timely exception is filed, the hearing examiner shall fix a time for filing any supporting reasons.

(c) Thereafter, the commissioner, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(d) ~~[(b)]~~ An initial decision and a final decision ~~[made under this subsection]~~ shall include a statement of:

1. Findings and conclusions, and the reasons or bases thereof, on all issues presented; and

2. The terms and conditions of the ~~[rule or]~~ order made.

(2) Hearings on issues of fact, ~~if[where]~~ a genuine material question of fact is raised, the hearing examiner shall, and in any other case ~~[he]~~ may, set the case for an evidentiary hearing in accordance with ~~[Sections 14 through 24 of]~~ this administrative regulation.

Section 26 [27]. Effect of Appeal of a Hearing Examiner's Decision. A hearing examiner's decision ~~[under this administrative regulation]~~ shall not be ~~final~~ [operative] pending a decision on appeal by the commissioner.

Section 27 [28]. Finality for Purposes of Judicial Review. ~~A~~ [Only a] decision by the commissioner shall be deemed final agency action for purposes of judicial review.

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LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)

803 KAR 2:220. Refusal [Employees' refusal] to work when dangerous condition[conditions] exist.

RELATES TO: KRS 338.121(3)(a)
STATUTORY AUTHORITY: KRS 338.051, 338.061[KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes requirements regarding employee refusal to work when a dangerous condition exists ~~[The Commissioner of the Department of Workplace Standards has the authority and responsibility for promulgating administrative regulations necessary to accomplish the purposes of this chapter. The function of this administrative regulation is to afford employees the right to refuse to be exposed to dangerous conditions without subsequent employer discrimination].~~

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

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

Section 2. Employee Refusal to Work. (1) ~~If[When]~~ [Where] an employee is confronted with a choice between not performing assigned tasks or being subjected to death, ~~or~~ [serious injury, or illness arising from a dangerous condition at the workplace, the [such] employee may refuse in good faith to expose herself or himself [himself/herself] to the dangerous condition.

(2) The condition causing the employee's apprehension of death, serious injury, or serious illness ~~[or injury]~~ shall[must] be of ~~[such]~~a nature that a reasonable person under the same or similar circumstances ~~[then]~~ confronting the employee would conclude ~~[that]~~ there is a real danger of death, serious injury, or serious illness ~~[or serious injury]~~ and ~~[that]~~ there is insufficient time, due to the urgency of the situation, to eliminate the danger through ~~[resort to]~~ regular statutory enforcement channels.

(3) ~~Additionally, [In addition in such circumstances,]~~ the employee, ~~if[where]~~ possible, shall[must] [also] have sought corrective action from ~~her or his~~ [his/her] employer ~~[.]~~ and ~~was~~ [been] unable to obtain [a] correction of the dangerous condition.

(4) ~~[(2)]~~ If[When] an employee in good faith refuses to expose herself or himself ~~[himself/herself]~~ to a dangerous condition at the workplace, the employee ~~[he/she]~~ shall not be subjected to subsequent discrimination by the employer.

(5) ~~The~~ ~~[(3)]~~ ~~Provided, however, that the~~ provisions of this administrative regulation shall not apply if ~~an~~ [it is found that the] employee acted unreasonably or in bad faith.

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(As Amended at ARRS, August 10, 2021)

803 KAR 2:250. Discrimination.

RELATES TO: KRS 338.015[(7)], **338.071**, 338.121, **338.141**, 338.991

STATUTORY AUTHORITY: KRS 338.051, **338.061**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes the procedure for discrimination complaints pursuant to KRS 338.121.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).

(2) "Complainant" means any person who makes a "complaint" as defined by subsection (3) of this section.

(3) "Complaint" means any oral or written communication related to an occupational safety and health concern made by an employee to an employer, governmental agency, or made to the commissioner or the commissioner's designee.

(4) "Review commission" is defined by KRS 338.015(8).

(5) [(4)] "Secretary" is defined by KRS 338.015(12).

(6) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, **and/as well as** the day of receipt of notice.

Section 2. Complaint [~~Procedure for Complaint to the Commissioner; Recipient of; Time for Filing; Form of Complaints~~].

(1) An employee or former employee may file an oral or written complaint with the commissioner or commissioner's designee alleging discrimination [~~with the commissioner or the commissioner's designee~~].

(2) A complaint shall be filed no more than 120 days from the occurrence of the alleged discriminatory activity.

(3) A complaint shall provide [state] the name and address of the complainant, name and address of employer, and description of alleged discrimination.

(4) The commissioner or commissioner's designee shall provide the employer notification of the complaint upon initiation of an investigation [Notification shall be given to the employer of the receipt by the commissioner of a complaint within five (5) working days].

Section 3. Settlement. (1) Settlement **shall be/is** encouraged at any stage of the proceedings if the settlement is consistent with [~~the provisions and objectives of~~] KRS Chapter 338.

(2) Primary consideration shall be the reinstatement of a complainant to his or her former position with back pay and assurance of the future protection of the rights of all employees pursuant to [~~under~~] KRS Chapter 338.

Section 4. Withdrawal of Complaint to the Commissioner. (1) A request by the complainant to withdraw a complaint filed with the commissioner shall be given careful consideration and substantial weight.

(2) The commissioner or commissioner's designee shall make the final determination if a complaint and subsequent investigation will be **withdrawn and** terminated.

Section 5. Arbitration or Other Agency Proceedings. (1) A complainant may pursue grievance arbitration proceedings in collective bargaining agreements while requesting relief from other

agencies such as the National Labor Relations Board.

(2) The commissioner's jurisdiction to receive KRS 338.121(3) complaints, to investigate, and to determine if discrimination [has] occurred shall be independent of the jurisdiction of other agencies or bodies.

(3) The commissioner or commissioner's designee may investigate and issue citations against any party found in violation regardless of the pendency or determination of other proceedings.

(4) If a complainant is pursuing remedies other than those **established/provided** by KRS 338.121, the commissioner's determination [~~and deferral to the results of the proceedings~~] **shall/may** be postponed.

Section 6. [~~Investigation of Complaint to the Commissioner; Issuance of Citation; Notice to Parties; Right of Review.~~] (1) Investigation.

(a) Upon receipt of a complaint [~~under Section 2 of this administrative regulation~~], the commissioner or commissioner's designee shall initiate [cause] an investigation [~~to be instituted~~].

(b) The investigation shall be completed and the commissioner's determination issued within ninety (90) days, absent extenuating circumstances.

(2) Citation.

(a) [(2)] If the commissioner finds a violation of KRS 338.121, he or she shall issue a citation, with delivery or receipt confirmation, and recommend a penalty pursuant to KRS 338.991.

(b) The citation shall include a determination by the commissioner as to the merits of the alleged violation.

(c) The commissioner or commissioner's designee shall provide notice of the determination to all affected parties.

(d) The citation shall state that it shall be deemed the final order of the review commission and not subject to review by any court or agency, as established by KRS 338.141, unless, within fifteen (15) working days from the date of receipt of the notice, the employer notifies the commissioner in writing that the employer intends to contest the citation before the review commission.

(e) The commissioner shall immediately transmit a notice to contest to the review commission in accordance with the rules of procedure prescribed by the commission **in accordance with KRS 338.071**.

(3) Penalty.

(a) The commissioner shall determine the amount of a proposed penalty, based on the appropriateness of the penalty with respect to the:

1. Size of the business of the employer being charged.

2. Gravity of the violation.

3. Good faith of the employer, and

4. History of previous violations.

(b) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer immediately abates, or initiates steps to abate, the alleged violation.

(3) Notice of the determination shall be given to all affected parties.

(4)(a) If the commissioner determines there has not been discriminatory action, the complainant shall be notified of his or her rights of review [~~of the determination~~].

(b)[(a)] 1. The complainant may petition the secretary for a review of the determination.

2. The petition shall be in writing and state reasons why the review is requested.

(c)[(b)] The secretary shall affirm the determination or remand it to the commissioner for further investigation[.

Section 7. Employer Contest. A citation and notice of proposed penalty shall state that it shall be deemed the final order of the Review Commission and not be subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of the notice, the employer notifies the Commissioner of the Department of Workplace Standards in writing that the employer intends to contest the citation and notification of proposed penalty before the Review Commission. Within seven (7) days of receipt of contest, the commissioner shall forward copies of the citation and proposed penalty and notice of contest to the Review Commission.

Section 8. Proposed Penalties. (1) If a citation is issued, the commissioner shall notify the employer by certified mail of the proposed penalty established in KRS 338.991.

(2) The commissioner shall determine the amount of a proposed penalty, based on the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(3) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer immediately abates, or initiates steps to abate, the alleged violation].

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Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, August 10, 2021)

803 KAR 2:435. Supply lines in excess of 600 volts [Construction industry standards].

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051(3), ~~[KRS]~~ 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and 338.061 ~~authorize~~] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health [rules, administrative] regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards in construction, [and contains those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following administrative regulations applicable to the construction industry.]

Section 1. Definitions. (1) "Disconnected" means disconnected from any electrical source or supply.

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

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

(4) "Guarded" means protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects but does not include insulated wires not otherwise protected.

(5) "Hold cards" or "hold tags" means a card or tag-type device, usually having a predominant color of white or red that warns against or cautions against the operation of a particular switch, device, circuit, tool, machine, or other piece of equipment.

(6) "Near" means a distance no closer than shown in the table in Section 2 of this administrative regulation.

(7) "Qualified person" means a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

Section 2. Safety and Testing [of Supply Lines in Excess of 600 Volts]. (1) Definitions.

(a) Disconnected means disconnected from any electrical source of supply.

(b) Guarded: protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens,

mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: wires, which are insulated but not otherwise protected, are not considered as guarded.)

(c) Hold cards: (also called "hold tags") a card or tag-type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.

(d) Near: a distance no closer than that shown in the table in subsection (3)(c) of this section.

(e) Qualified person: a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

(2) Purpose.

(a) The intent and purpose of this administrative regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage.

(b) This administrative regulation shall apply[applies] [shall apply] to nonutility electrical employees [workers who are] engaged in electrical construction [and/or maintenance] of electrical conductors and equipment rated at 600 volts and above.

~~[2/2]~~ [(3)] Energized conductors and equipment.

~~[a/1]~~ [(a)] Only qualified employees shall work on or near high voltage conductors or equipment.

~~[b/2]~~ [(b)] Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors, or equipment.

~~[3/a]~~ [(c)] An[No] employee shall not approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the Minimum Clear Distance From Live Parts table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the energized part [live parts].

(b) Rubber gloves, and sleeves if necessary, [(sleeves if necessary)] rated for the voltage involved shall be considered effective insulation of the employee from the energized part.

Minimum Clear Distance From Live Parts		
Voltage Phase to Phase (Kilovolts)	Distance	Phase to Employee
0.6 to 34.5	2'	
34.5 to 46	2 1/2'	
46 to 69	3'	
69 to 115	3' 4"	
115 to 138	3' 6"	
138 to 169	3' 8"	

Section 3. [(4)] Deenergized conductor or equipment.

(1) [(a)] Existing conditions shall be determined before starting work on an electrical conductor or [and/or] equipment.

(2) [(b)] Before any work is performed, all electrical switches, breakers, and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge.

(3) Employees shall be trained and thoroughly instructed in the tagging procedure.

(4) One (1) qualified person such as the [for example:] foreman, general foreman, or first class electrician [.] of each crew shall be responsible for attaching hold tags or [and/or] hold cards to the disconnecting means.

(5) If[When] more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the handle of the disconnecting equipment.

(6) The use of such tags shall [must] be respected.

(7) Equipment or items [se] tagged shall [must] not be activated or used without full and proper authority of the [a] responsible person whose signature appears on the tag.

(8) [(e)] Conductors shall be short-circuited and grounded wherever possible.

(9) [(d)] Capacitors may be components of apparatus of the disconnected electrical system.

(10) Before employees are allowed to work, the capacitors shall be discharged, short-circuited, and grounded.

(11) [(e)] if[when] deenergizing conductors and equipment and the means of disconnecting from the energy source is not visibly open, a voltage test shall be made before starting work.

(12) An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device.

(13) The test device shall ~~[must]~~ be handled and used while wearing or using approved protective equipment during the test.

(14) [(f)] All conductors and equipment shall be treated as energized until tested, short-circuited and effectively grounded except if[when] the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed.

(15) [(g)] The voltage condition of deenergized conductors and ~~[and/or]~~ equipment shall be determined with testing equipment designed for the applicable voltage.

(16) [(h)] Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under her or his jurisdiction are clear and that all protective short-circuit and grounding lines are removed.

(17) The qualified person[person(s)] shall then remove her or his hold tag[tag(s)].

(18) Only at this time shall conductors and equipment be reenergized.

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LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, August 10, 2021)

803 KAR 2:440. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. ~~[Part]~~ 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061~~[-E.O. 2018-586]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~[and 338.061 authorize]~~ the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and ~~[rules and]~~ administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards ~~[standards. Executive Order 2018-586 transfers the authority to adopt, amend, or repeal administrative regulations from the Occupational Safety and Health Standards Board to the Secretary of the Kentucky Labor Cabinet].~~ This administrative regulation establishes the standards that are ~~[to be]~~ enforced by the Department of Workplace Standards in ~~[Division of Occupational Safety and Health Compliance in the area of]~~ construction.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

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

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

(4) ~~["Established federal standard" is defined by KRS 338.015(10).~~

(5) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(5) [(6)] "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified ~~[established]~~ by the definitions in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart CC, Cranes and Derricks in Construction ~~[the following established federal standards]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [:

(1) ~~29 C.F.R. 1926.1400-1926.1441, effective July 1, 2018; and~~

(2) ~~The amendments to 29 C.F.R. 1926.1427 published in the November 9, 2018 Federal Register, Volume 83, Number 218].~~

Section 3. Fall Protection. (1)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(e)(1)(iii) [shall be replaced with: "On horizontal lattice booms where the fall distance is ten (10) feet or more."].

(b) On horizontal lattice booms where the fall distance is ten (10) feet or more.

(2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(f) [shall be replaced with: "For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."].

(b) For assembly/disassembly work, the employer shall[must] provide and ensure the use of fall protection equipment for any employee who is on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

(3)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(h)(2) [shall be replaced with: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking working surface with an unprotected side or edge more than ten (10) feet above a lower level."].

(b) For erecting, climbing, and dismantling work, the employer shall[must] provide and ensure the use of fall protection equipment for any employee who is on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level.

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LABOR CABINET

Department of Workers' Claims

(As Amended at ARRS, August 10, 2021)

803 KAR 25:021. Individual self-insurers.

RELATES TO: KRS ~~13B.140,~~ 342.0011, ~~342.267,~~ 342.340, 342.342, 342.345, 342.347, 342.920

STATUTORY AUTHORITY: KRS 342.260(1), 342.340, 342.345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner ~~[Executive Director]~~ of the Department ~~[Office]~~ of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the commissioner ~~[executive director]~~ to establish requirements for individual self-insured employers ~~[self-insurers]~~. This administrative regulation establishes minimum requirements for an individual employer who seeks to or is authorized to self-insure for the purpose of [self-insures] workers' compensation ~~[liability]~~.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday, or any day which is a legal holiday. ["Employer" means an employer subject to KRS Chapter 342.]

(2) "Calendar day" means all days in a month, including Saturday, Sunday, and any day which is a legal holiday.

(3) [(2)] "Commissioner[Executive director]" is defined by KRS 342.0011(9).

(4) "Employer" means an employer subject to KRS Chapter 342.

(5) [(3)] "Guarantor" means a parent entity; [company whose financial statement is used by the applicant to obtain self-insurance status].

(a) That agrees it is responsible for and shall meet any and all workers' compensation obligations of the subsidiary when the subsidiary fails to meet its responsibilities as a self-insured employer; and

(b) Whose financial condition and affairs related to workers' compensation are the basis upon which the subsidiary is authorized to self-insure.

(6) "Lapsed" means there is no possibility of compensation under KRS Chapter 342 because the claim is barred by time or otherwise.

(7) "Loss Statement," or "loss run" means a statement of all claims stemming from a self-insured employer's entire period of self-insurance in the form required by the Department of Workers' Claims of:

(a) All past known liabilities and amounts paid at a given point in time; **[and]**

(b) Reserve estimates for all future liabilities; and

(c) Known liabilities and amounts paid or amounts anticipated to be paid for the immediate prior calendar year.

(8) "Paid" means there is no possibility of further compensation under KRS Chapter 342 because the employee and any eligible dependent of the employee has been provided all compensation awarded or that could possibly be awarded under KRS Chapter 342 with respect to a compensable claim.

(9) "Period of self-insurance" means the period an employer was authorized by the commissioner to pay directly the compensation provided in KRS Chapter 342 in the amount, manner, and when due.

(10) "Reserve" means an estimate by the employer of the undiscounted total compensation to be paid over the entire life of a claim, **which, A reserve** may be limited to a specific portion of the entire compensation when so designated; a medical reserve would refer to the medical compensation to be paid through the entire life of the claim.

(11) "Security" means a required deposit by an employer authorized to self-insure, acceptable to the commissioner and in the amount he directs, that provides the commissioner immediate access to security proceeds sufficient to make direct payment of compensation in claims arising from the employer's period of self-insurance until each claim for compensation has been fully paid, fully settled, or lapsed, so there is no possibility of further liability.

(12) "Security proceeds" means:

(a) Security in the form of cash money paid by an issuer of security from its own property in response to the commissioner's call or demand; or

(b) Cash money deposited directly with the commissioner in a financial institution's account.

(13) "Self-Insurance" or "Self-Insure" means the nontransferable status of an employer:

(a) That secured its liability for workers' compensation by depositing with the commissioner acceptable security, in the amount directed by the commissioner, to secure the payment of compensation provided by KRS Chapter 342 until every claim for compensation has been fully paid, fully settled, or lapsed, so that there is no possibility of further liability; and

(b) That has been authorized by the commissioner to pay directly the compensation provided in KRS Chapter 342, in the amount, manner, and when due, rather than the employer insuring and keeping insured his liability for compensation in an entity authorized to transact the business of workers' compensation insurance in this state;

(14) "Self-Insured Employer" means an employer currently authorized by the commissioner to self-insure and is synonymous with the term "self-insurer" as that term is defined in KRS 342.0011.

(15) [(4)] "Service organization" or "third party administrator," means a person or entity which provides services including claims adjustment, safety engineering, computation of statistics, preparation of loss statements, preparation of any other required self-insurance report, and other services that may be required by a self-insured employer.

(16) "Settled" means there is no possibility of future compensation arising from an injury because the employee has bargained for and received money for all compensation the employee and any eligible dependent could be awarded under KRS Chapter 342 for that injury and the bargain has been approved by an administrative law judge.

(17) [or tax reports, purchase of excess insurance, or preparation of another required self-insurance report.

(5)] "Specific excess insurance" means a contract or policy of insurance whereby a self-insured employer is indemnified for amounts paid in excess of a specific dollar amount stemming from one (1) injury or exposure for which compensation is provided in this chapter. [an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.]

Section 2. Certification. (1) A person, party, or employer shall not act as or hold itself out as an [approved] individual self-insured employer [self-insurer] unless the employer has been approved by the commissioner [executive director] in accordance with this administrative regulation.

(2) An employer authorized[A certification issued] by the commissioner [executive director] to self-insure shall be self-insured until voluntary surrender by the employer pursuant to Section 10 of this administrative regulation or revocation [revoked or modified] by the commissioner [executive director] pursuant to Section 11 [40] of this administrative regulation.

(3) A self-insured employer shall adjust to a final conclusion each claim that arises during the period the employer is authorized to self-insure. An employer shall hire only those persons **[duly]** licensed under Kentucky law to administer and adjust workers' compensation claims.

(a) A self-insured employer may contract with an individual, service organization, or third party administrator, to adjust to a final conclusion each claim that arises during the period the employer is authorized to self-insure. The employees and agents of the contracted individual, service organization, or third party administrator, shall be **[duly]** licensed under Kentucky law to administer and adjust workers' compensation claims.

(b) **If [Where]** an employer has contracted with an individual, service organization, or third party administrator, to perform these functions:**f.]**

1. The actions of the individual, service organization, or third party administrator, **shall be [are]** subject to the standards set forth in KRS 342.267 and 803 KAR 25:240; and

2. The self-insured employer for whom the individual, service organization, or third party administrator, is acting **shall be [is]** subject to any penalties which may be assessed for failure to meet those standards.

Section 3. Application Process. (1) In order to be certified as an individual self-insured employer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000.

(2) [(4)] An initial application for individual self-insurance shall be submitted to the commissioner [executive director] on Form SI-02, Employer's [Employers] Application for Permission to Carry Its [His] Own Risk Without Insurance, and shall include:

(a) 1. The Employer's name;**f.]**

2. The location of its principal office;**f.]**

3. The date of organization;**f.]**

4. The identification of its immediate parent organization, if any, and its ultimate parent;

5.f.] The Percentage of shareholder ownership of its immediate parent organization; **and**

6. An.f.] identification of its fiscal year and federal identification number;f.]

(b) Disclosure and full identification of [The applicant shall disclose and fully identify] the relationship with all subsidiaries.f.] [A subsidiary which is to be covered under the application, or who is already self-insured, shall be identified with the relationship to the applicant described fully];

(c) [(b)] A statement of the principal business activities engaged in Kentucky by the applicant, [including] a list of site locations, and the number of employees at each site; and

(d) [(e)]1. A certified audit report of the applicant's financial status for three (3) years immediately preceding the application, prepared and executed by a certified public accountant; or

2.f.] If the applicant is a subsidiary desiring its parent to be a Guarantor, a certified audit report of the parent's financial status for three (3) years immediately preceding the application, prepared and executed by a certified public accountant.

(3) The department shall review the applicant's Form SI-02 and certified audit reports and notify the applicant within sixty (60) days after receipt of the Form SI-02 and certified audit reports whether its application has been rejected or whether the applicant may continue with the application process.

(4) Within fifteen (15) days of notification by the department that the applicant may proceed with the application process, the applicant shall provide:

(a) Loss Statements in the required electronic format of all claim payments for the five (5) years immediately preceding the application;

(b) An estimate of annual payroll;

(c) Any Occupation Safety and Health Administration ("OSHA") violations for five (5) years; and

(d) Any other states in which the employer is authorized to self-insure.

(5) The department shall:

(a) Review the applicant's Loss Statements, estimate of annual payroll, any OSHA violations, and any other states in which the employer is authorized to self-insure; and

(b) Notify the applicant within sixty (60) days after receipt of this [the applicant's] information that:

1. The[whether its] application has been rejected; or

2. [whether] The applicant may continue with the application process.

(6) Upon notification the applicant may continue **with the application process**, the applicant shall provide:

(a) The proposed specimen specific excess insurance policy, identifying the insurance company, retention level and limits of liability; and

(b) If an individual or service organization shall be responsible for administration or adjustment of a workers' compensation claim:

1. A statement to the commissioner attesting to the individual or organization's qualifications to administer and adjust a workers' compensation claim; and

2. A statement from the service organization and self-insured employer that any contract between the employer and service organization shall include one (1) of the following provisions:

a. [(a)] The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

b. [(b)] The service organization shall adjust each claim for a period of sixty (60) days following an order from the commissioner finding the self-insured employer in default unless a substitute service organization has been procured.

(7) The department shall:

(a) Review the applicant's proposed specimen specific excess insurance policy, statement attesting to the qualifications of the proposed service organization, and statement from the proposed service organization; f.] and

(b) Notify the applicant within thirty (30) days after receipt that:

1. [whether] The [applicant's] application has been rejected; or

2. [whether] The applicant may continue with the application process. If the applicant may continue with the application process, the department **shall [will]** notify the applicant of the amount of required security.

(8) Upon notification that the applicant may continue **the application process**, the applicant shall provide:

(a) A copy of the proposed letter of credit, bond, or security deposit instrument required by Section 5 of this administrative regulation;

(b) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure; and

(c) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent on Form SI-01, Self-Insurers' Guarantee Agreement.f.]

(9) The commissioner shall consider all relevant factors, the prospect of increased losses due to the employer's cessation of operations, and the information supplied by the applicant during the application process when evaluating whether an applicant may be authorized to directly pay its workers' compensation liabilities as incurred. The information submitted during the application process shall accurately reflect:

(a) The financial strength of the applicant or guarantor;

(b) The experience of the proposed service organization;

(c) 1.a. The applicant's ratio of current assets to current liabilities;

b.f.] The applicant's ratio of long-term debt to net worth; f.] and

c. Shareholder equity; f.] or

2. If [When] applicable:

a.f.] The guarantor's ratio of current assets to current liabilities;

b.f.] The guarantor's ratio of long-term debt to net worth; f.] and

c. Shareholder equity;

(d) The profit and loss history of the applicant or guarantor;

(e) The workers' compensation loss history of the applicant or guarantor;

(f) The number of employees and degree of hazard to which employees are exposed;

(g) Any functioning safety programs;

(h) [(i)] Whether the applicant uses an approved managed care plan for treatment of injured workers;

(i) [(k)] Any Occupation Safety and Health Administration ("OSHA") violations for **the preceding** five (5) years; and

(j) [(9)] Any other states in which the employer is authorized to self-insure.

(10) The commissioner shall render a decision regarding whether the applicant is authorized to self-insure within thirty (30) days of completion of the application process and submission of all required documents.

(a) The commissioner's decision shall state the date upon which the applicant is authorized to self-insure.f.]

(b) The security to be deposited by the applicant with the commissioner shall be received by the commissioner no later than fifteen (15) days prior to the date upon which the applicant becomes authorized to self-insure.f.]

(c) A copy of the specific excess insurance policy obtained by the applicant shall be received by the commissioner no later than fifteen (15) days prior to the date upon which the applicant becomes authorized to self-insure.

(11) Variation from the requirements of this section may be sought by application to the commissioner.f.] variation may be granted by the commissioner for good cause shown. [(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance shall be received by the executive director at least five (5) days prior to certification of self-insurance;

(d) A copy of the proposed surety deposit or letter of credit instrument required by Section 5 of this administrative regulation. The surety shall be received by the executive director prior to certification of self-insurance;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years

preceding the application;

(f) An estimate of annual payroll and a statement of loss runs;
(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on Form SI-01, Self-Insurers' Guarantee Agreement;

(j) If an individual or service organization shall be responsible for administration or adjustment of a workers' compensation claim, satisfactory evidence submitted to the executive director as to the organization's qualifications to administer and adjust a workers' compensation claim; and

(k) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in subsection (4) of this section.

(2) An applicant may perform, if qualified, a function of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents shall be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance.

(4) Upon receipt of a complete application and all required documents, the executive director shall approve or reject status as a self-insurer within thirty (30) days.

(5) A contract with a service organization shall include one (1) of the following provisions:

(a) The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

(b) The service organization shall adjust each claim for a period of sixty (60) days following an order from the executive director finding the self-insured employer in default unless a substitute service organization has been procured.

(6) Variation from the requirements of this section, for good cause shown, may be sought by application to the executive director.

Section 4. Approval. (1) In determining if an applicant is eligible for self-insurance and in establishing the amount of surety required, the executive director shall consider all relevant factors including the following:

- (a) The financial strength of the applicant or guarantor;
- (b) The excess insurance policy and retention level;
- (c) The experience of the service organization;
- (d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;
- (e) Profit and loss history;
- (f) Workers' compensation loss history of the applicant;
- (g) The prospect of increased losses by the employer's cessation of operations in Kentucky;
- (h) The number of employees and degree of hazard to which employees are exposed;
- (i) Safety programs; and
- (j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000. Variance from this requirement may be granted to a currently certified individual self-insurer who has demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted if the executive director:

- (a) Finds the applicant has complied with all sections of this administrative regulation; and
- (b) Is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced

in the administration of workers' compensation self-insurance.]

Section 4[5]. Specific Excess Insurance [and—Surety Requirements]. (1) Specific excess insurance shall be purchased with:

(a) A coverage limit of at least \$10,000,000 per occurrence in excess of the retention level; and

(b) A maximum retention level of \$1,000,000 per occurrence unless a different retention level is specifically approved by the commissioner; upon approval of a retention level in excess of \$1,000,000, additional security may be required [executive director].

(2)(a) To be eligible to write specific excess insurance for an individual self-insured employer [self-insurer] in Kentucky, a casualty insurance company, admitted to do business in the Commonwealth of Kentucky, on its latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000.

(b) The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

Section 5. Security. (1) [(3)] Except as provided in subsection (4) of this section, each employer authorized to self-insure [who qualifies for a self-insurance certificate] shall [prior to the certificate being issued,] provide [primary] security in the form of a continuous surety bond on Form SI-03, Continuous Bond, or by irrevocable letter of credit on Form SI-04, Letter of Credit, in the [an] amount specified by the commissioner in accordance with subsection (2) of this section [executive director], but not less than \$500,000.

(2) In fixing the amount of security, the commissioner [executive director] shall consider all relevant factors which may include the following:

(a) Liability associated with the cessation of operations by the individual self-insured employer;

(b) Examination of injury claims reported to the Department of Workers' Claims;

(c) Examination of the loss history associated with injury claims reported to the Department of Workers' Claims;

(d) Examination of the financial condition of the employer;

(e) Examination of the service organization, if any;

(f) Examination of the financial condition and assets of the issuer of the security;

(g) Additional factors found pertinent by the commissioner; and

(h) The experience of the Department of Workers' Claims.

(3) The amount of security maintained with or under the commissioner's control shall be the amount determined by the commissioner to be necessary to secure the payment of all compensation liabilities incurred by a self-insured employer until each claim for compensation has been fully paid, fully settled, or lapsed, so there is no possibility of further liability. The failure to challenge the commissioner's determination as provided in section 13 of this administrative regulation shall constitute an admission by the employer that the determined amount is necessary to pay all incurred claims until fully paid, fully settled, or lapsed, so there is no possibility of further liability to the employer and a waiver of any future challenge by the employer of the determined security amount.

(4) Only upon approval by the commissioner, in lieu of a bond or letter of credit, may an employer deposit cash or securities in an amount specified by the commissioner and in a financial institution approved by the commissioner, but not less than \$5,000,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies. The deposited cash or securities shall be maintained directly with the commissioner or be in the commissioner's control, and a perfected security interest shall be granted to the commissioner in the deposited cash or securities. [including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky.

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of

~~Form SI-05, Deposit Contract, in an amount specified by the executive director, but not less than \$500,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies.~~

~~(5) If an employer is no longer self-insured, the amount of surety shall be set by the executive director in accordance with the minimum amounts established in this subsection.~~

~~(a) A minimum surety of \$250,000 shall be maintained for a period of ten (10) years.~~

~~(b) A minimum surety of \$100,000 shall be maintained for the eleventh to twentieth year after the employer's departure from self-insured status.]~~

Section 6. Coverage of Subsidiary or Related Corporations. (1) A corporation having a wholly-owned subsidiary may submit one (1) joint application to the commissioner [executive director], if the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and the subsidiary. A joint application shall be accompanied by a certificate from [of] the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) days written notice to the commissioner [executive director].

(2) Any employer currently authorized to self-insure shall immediately notify the commissioner and fully identify any and all subsidiaries obtained during the employer's period of self-insurance and shall execute a Form SI-01, Self Insurer's Guaranty Agreement.

Section 7. Examination and Review of Filings. A certified public accountant or one or more other qualified individuals [individual] may be employed by the Department [Office] of Workers' Claims for the purpose of:

(1) Reviewing and analyzing the annual filings of individual self-insured employers [self-insurers] and applicants for self-insurance; [i] and

(2)[For] Making recommendations based on that review.

Section 8. Annual Filings. (1) Annually, the department shall by facsimile, electronic mail, or the United States Postal Service, deliver to every employer authorized by the commissioner to self-insure a letter stating the requirements to maintain[the employer's] certification to self-insure. The letter shall include a request for:

(a) A completed Employers Application for Recertification, Form SI-02R;

(b) A certified version of the most current audited financial statements;

(c) The amount and form of the security to be deposited with the commissioner;

(d) Information related to the employer's required specification excess insurance; and

(e) Information related to any service organization used by the employer. [; and]

(2) The letter [(f)] may include a request for the completion of a Self-Insurer's Guarantee Agreement, SI-01, if [when] applicable, or any other information [the commissioner may deem] necessary in order to determine the employer has the financial ability to directly pay the compensation provided in KRS Chapter 342.

(3) [(2)] Annually, the department shall by facsimile, electronic mail, or the United States Postal Service, deliver to every employer authorized by the commissioner to self-insure a letter instructing self-insured employers to file the following no later than the third Monday in February of each year:

(a) A loss statement;

(b) A statement furnishing the premium specified in KRS 342.0011(28) and its calculation;

(c) A statement of the total payroll for the prior calendar year by quarter;

(d) A certification that the medical reserves are calculated and

projected for the life of a claim pursuant to KRS 342.0011(28)(a); and

(e) Any other reasonable information requested by the commissioner, including relevant claim data.

(4) [(3)] In order to maintain its certification to self-insure, an employer shall timely complete and provide all information and documentation requested in the annual letters.[;] Failure to do so may subject the employer's self-insurance certification to revocation, in accordance with KRS 342.345. [(1) An individual self-insured employer shall file with the executive director on or before 120 days from the end of the self-insured's fiscal year:

(a) The statement of financial condition required by KRS 342.347(2);

(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information requested by the executive director, including relevant claim data; and

(c) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in Section 3(4) of this administrative regulation.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the executive director.

(3) An individual self-insured employer shall file loss data reports which shall:

(a) Include a surety loss report;

(b) Include a premium loss report;

(c) Include a certification that the medical reserves are calculated and projected for the life of a claim pursuant to KRS 342.0011(28)(a); and

(d) Be filed no later than the third Monday in February of each year.

(4) If the annual required filings are not timely made, the self-insurance certificate shall be subject to modification or revocation.]

Section 9. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) If [When] [if] there is a change in majority ownership of a self-insured employer or its [a] parent company, the individual self-insured employer [self-insurer] shall notify the commissioner [executive director] within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.

(2) If [When] [if] another [an] employer is added to, merged, [acquired,] or otherwise acquired by an employer currently authorized to self-insure [brought within the self-insurance coverage], the individual self-insured employer shall notify the commissioner [executive director] within thirty (30) days. The commissioner shall review[and] the adequacy of the employer's premium and security [surety bond] [shall be reviewed] and shall increase the premium and security[be increased] if the review determines an increase is necessary. [accordingly if necessary to remain adequate.]

(3) If [When] there is a change in majority ownership of a formerly self-insured employer or its parent company, the individual self-insured employer shall notify the commissioner within thirty (30) days of that change. [If the payroll of the individual self-insurer during a quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the executive director and the surety bond requirements may be reviewed and the bond shall be increased accordingly.]

Section 10. Voluntary Surrender of Certificate.

(1) An employer shall voluntarily ~~surrender[surrenders]~~ its Certificate to self-insure upon:

(a) [Upon] Written notice to the commissioner that the employer no longer desires to be self-insured, including the date and time ~~when[at which]~~ the employer intends to cease to be self-insured; [or]

(b) [Upon] The effective date of a policy of workers' compensation insurance securing the employers' liability for the compensation provided in this chapter; [or]

(c) [Upon] Notification to the commissioner the employer shall

cease to pay directly the compensation provided in this chapter;
~~[or]~~

(d) ~~[Upon]~~ The failure to deposit adequate security in the amount required by the commissioner; or

(e) ~~[Upon]~~ Filing an action in bankruptcy, unless the employer notifies the commissioner of its intent to continue to pay the compensation provided in this chapter, and the commissioner agrees to authorize the continued direct payment.

(2) An employer that intends to secure its liability for compensation by obtaining a policy of workers' compensation insurance shall notify the commissioner of the:

(a) Name of the insurance carrier whose policy shall become effective; and

(b) The date and time ~~the[such]~~ coverage shall become effective.

(3) A formerly self-insured employer shall not be relieved of the compensation obligations incurred during its period of self-insurance until every claim has been fully paid, fully settled, or lapsed, so ~~that~~ there is no possibility of further liability.

(4)(a) ~~If [When]~~ the employer is no longer self-insured due to the voluntary surrender of its certificate, the employer shall continue to deposit security with the commissioner in the amount and in the form last determined by the commissioner for a period no less than five (5) years from the date the employer ceased to be self-insured. ~~At; no~~ request for reduction shall ~~not~~ be considered during this initial five (5) year period. After an initial request for reduction in the amount of required security has been made, each subsequent request for reduction ~~[thereafter]~~ shall ~~not~~ be considered ~~[no]~~ more frequently than every thirty (30) months following the conclusion of the prior request, if any.

(b) The formerly self-insured employer ~~shall bear [bears]~~ the burden to persuade the commissioner ~~that~~ the amount and form of the security, as last determined by the commissioner, is excessive and ~~that~~ a reduction is warranted. The commissioner may consider the factors set forth in Section 5 of this administrative regulation or any other factor the commissioner finds relevant when evaluating the formerly self-insured employer's request to reduce the amount of its required security deposit.

(5) ~~If [When]~~ the employer is no longer self-insured due to the voluntary surrender of its certificate, the security required by the commissioner shall not be less than:

(a) \$250,000 for the first ten (10) years following the date on which the employer ceased to be self-insured; and

(b) ~~[shall not be less than]~~ \$100,000 for the eleventh year through, and including, the twentieth year ~~[years]~~ following the date on which the employer ceased to be self-insured.

Section 11[40]. Revocation ~~[or Modification]~~ of Certification. (1) A self-insured employer's certification may be revoked by the commissioner after a hearing is held, ~~in accordance with subsection (2) of this section.~~

(a) The hearing order shall set forth the grounds for revocation and set a hearing date no sooner than ten (10) business days from the date of the order.

(b) The hearing shall be conducted pursuant to Section 13 of this administrative regulation. Upon a prima facie showing by the Department of Workers' Claims of one (1) or more of the grounds set forth in subsection (2)[2] of this section, ~~[there shall exist]~~ a rebuttable presumption ~~shall exist~~ that the employer's authorization should be revoked.

(4) If the executive director receives information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 or this administrative regulation, a hearing order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for a hearing.

(2) The commissioner ~~[executive director]~~ may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insured employer ~~[self-insurer]~~ is operating in:

1. Contravention of its submitted application; or

2. In material violation of this administrative regulation;

(b) The individual self-insured employer ~~[self-insurer]~~ or its parental guarantor no longer has the financial stability to assure its ability to meet its obligations for the payment of workers' compensation benefits; ~~[or]~~

(c) The self-insured employer ~~[insurer]~~ has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity; ~~[or]~~

(d) The self-insured employer failed to pay an assessment by the appropriate guaranty fund; or

(e) The self-insured employer failed to pay compensation provided in ~~KRS Chapter 342 [this chapter].~~

(3) ~~If [When]~~ If the commissioner ~~[executive director]~~ revokes an individual self-insured employer's ~~[self-insurer's]~~ certification, the commissioner ~~[executive director]~~ shall notify either the Kentucky individual self-insurance guaranty fund or the Kentucky coal employers' self-insurance guaranty fund.

(4) Self-insurance certification may be revoked by the executive director after a hearing is held.

(a) The hearing order shall set the grounds of revocation and set a hearing date in not less than ten (10) days.

(b) The hearing shall be conducted pursuant to Section 14 of this administrative regulation.

(4) ~~[(e)]~~ During the pendency of a hearing or appeal, the commissioner shall call the entirety of the security deposited ~~[executive director may utilize the surety deposit provided]~~ by the individual self-insured employer ~~if~~.

(a) ~~[When]~~ The commissioner has received information indicating the deposited security will not be maintained or timely replaced with other acceptable security; ~~[or]~~

(b) ~~[When]~~ Compensation is due but has not been paid by the self-insured employer, ~~[self-insurer to make a payment of workers' compensation benefits which is currently due for which a payment is not being made by the individual self-insurer or its service organization.]~~

(5)(a) ~~If [When]~~ the employer is no longer self-insured due to revocation of its certificate, unless the commissioner calls the deposited security, the employer shall continue to deposit security with the commissioner in the amount and in the form last determined by the commissioner for a period no less than five (5) years from the date the employer ceased to be self-insured. ~~A ; no~~ request for reduction shall ~~not~~ be considered during this initial five (5) year period. After an initial request for reduction in the amount of required security has been made, each subsequent request for reduction ~~[thereafter]~~ shall ~~not~~ be considered ~~[no]~~ more frequently than every thirty (30) months following the conclusion of the prior request.

(b) The formerly self-insured employer ~~shall bear [bears]~~ the burden to persuade the commissioner ~~that~~ the amount and form of the security, as last determined by the commissioner, is excessive and ~~that~~ a reduction is warranted. The commissioner may consider the factors set forth in Section 5 of this administrative regulation or any other factor the commissioner finds relevant when evaluating the formerly self-insured employer's request to reduce the amount of its required security deposit.

(6) ~~If [When]~~ the employer is no longer self-insured due to revocation of its certificate, unless the commissioner calls the deposited security, the security required by the commissioner shall not be less than: (a) \$250,000 for the first ten (10) years following the date on which the employer ceased to be self-insured; and

(b) ~~[shall not be less than]~~ \$100,000 for the eleventh year through, and including, the twentieth year ~~[years]~~ following the date ~~[on which]~~ the employer ceased to be self-insured.

Section 12. Default. (1) ~~If [When]~~ a self-insured employer or a formerly self-insured employer fails to meet an obligation as a self-insured employer, including the obligation to deposit acceptable security in the amount required by the commissioner, ~~fails [the failure]~~ to timely pay a compensation obligation to an employee injured during the employer's period of self-insurance, or ~~fails [the failure]~~ to pay an assessment by a guaranty fund, the commissioner shall:

~~[a] [(4)]~~ Call the entirety of the deposited security;

(b)(2)] Retain the security proceeds in the commissioner's possession or control until each claim for workers' compensation benefits has been fully paid, fully settled, or lapsed, so there is no possibility of further liability; and

(c)(3)] Use the security proceeds to pay the compensation provided in KRS Chapter 342 in claims incurred during the employer's period of self-insurance as follows:

1. [(a)] If [Where] the employer was a member of a guaranty fund, forward to the appropriate guaranty fund the security proceeds and order the guaranty fund to commence payment of the member's incurred compensation liabilities using the security proceeds; or

2. [(b)] If [Where] the employer was not a member of a guaranty fund, [the commissioner shall] use the security proceeds to pay the employer's incurred compensation liabilities.

(2)(4)] When the commissioner determines all claims of the employer have been fully paid, fully settled, or lapsed, so there is no possibility of further liability, and the security proceeds are not exhausted, the commissioner shall pay any remaining security proceeds into the Franklin Circuit Court for determination as to whether there is an entity legally entitled to the remaining security proceeds. If no claim is made alleging entitlement to the remaining security proceeds within sixty (60) days of the payment into the court, or the court ultimately determines there is no rightful entitlement claim, the commissioner may petition the court to deposit the remaining security proceeds into the fund established pursuant to KRS 342.920.

(5) The obligations of a self-insured employer or formerly self-insured employer may be guaranteed by a parent entity by way of a fully executed form SI-01, *Self Insurer's Guarantee Agreement*. [;] This [The] form shall [SI-01, *Guarantee Agreement*, does] not preclude the commissioner from calling the security or [nor does it] preclude the commissioner from pursuing all available means to separately recover from the defaulting employer or its guarantor.

Section 13 [44]. Aggrieved Parties. (1) A person aggrieved by an action of the commissioner [executive director] may request a hearing by filing a written request with the commissioner within thirty (30) [executive director setting forth the basis within sixty (60)] days of the action of the commissioner. [;] The request shall set forth the specific basis for the challenge to the commissioner's action. [executive director.] Upon receipt of the written [a] request, the commissioner [executive director] shall issue a notice of hearing within ten (10) business days of receipt of the written request. The notice of hearing shall set the date, time, and place of the hearing to be held no sooner than ten (10) business days after the date of the notice of hearing and no later than ninety (90) business days after the date of the notice of hearing and may provide the date, time, and place for an informal conference between the aggrieved party and the commissioner. The date and time of the hearing may be rescheduled as required upon motion by either party or upon agreement of the parties. [to be held no sooner than ten (10) days and no later than thirty (30) days after the notice.]

(2) The aggrieved person shall have [has] the burden to persuade the commissioner that the action taken by the commissioner should be amended or withdrawn. The aggrieved person may present evidence to support his or her [its] position and to contest evidence presented by other parties.

(3) [(2)] No later than thirty (30) days after the termination of the hearing, the commissioner [executive director] shall issue a written ruling [order] addressing all matters involved at the hearing and if applicable, any further basis for the [his] action, creating an adequate record for review. The ruling shall contain concise findings of fact and conclusions of law. The commissioner shall serve a copy of the ruling [order] upon each party. [The order shall contain a concise findings of fact and conclusions of law. The executive director's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.]

(4) [(3)] The ruling of the commissioner [executive director] may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 14. [42.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Self-Insurers' Guarantee Agreement, Form SI-01", (November 2005 edition);

(b) "Employer's [Employers] Application for Permission to Carry Its [His] Own Risk Without Insurance, Form SI-02", (January 2021 [2004] edition);

(c) "Employer's Application for Recertification", Form SI-02R (January 2021 edition);

(d) [(e)] "Continuous Bond, Form SI-03", (January 2004 edition); and

(e) [(d)] "Letter of Credit, Form SI-04", (January 2004 edition); [; and

(e) "Deposit Contract, Form SI-05", (January 2006 edition.)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [Office] of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlin Avenue,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and may also be found at
<https://labor.ky.gov/comp/Forms/Pages/default.aspx>.

LABOR CABINET

Department of Workers' Claims

(As Amended at ARRS, August 10, 2021)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS 216B.105, 342.020, 342.035, 342.315

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. This administrative regulation establishes hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Ambulatory surgery center" means a public or private institution that is:

(a) Hospital based or freestanding;

(b) Operated under the supervision of an organized medical staff; and

(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) "Hospital" means a facility; surgical center; [or] psychiatric, [rehabilitative,] or other treatment or specialty center that is licensed pursuant to KRS 216B.105 or, if located in another state, is licensed pursuant to the laws of the [such] other state, [;] and shall include a facility that is approved as a rehabilitation agency under the Medicare or Medicaid programs.

(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.

(4) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089, on a contract basis and who is not a regular employee of the hospital.

(5) "New hospital" means a hospital that has not completed its first fiscal year. [

(6) "Surgical hardware" means any object that provides internal fixation but is not intended to replace or alter the part of an internal body organ and is not intended to replace all or part of the function of a permanently inoperative or

malfunctioning internal body organ. Surgical hardware can be removed after a healing period."

(7) "Surgical implant" means any single-use item/object/device which replaces all or part of an internal body organ, or replaces all or part of the function of a permanently inoperative or malfunctioning internal body organ.]

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital and ambulatory surgery center fees for each hospital and ambulatory surgery center for each compensable service or supply.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a) The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file as of October 31 of each calendar year.

(c) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 118 [95,] plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 10 [42] and 28 [35] of Worksheet A-8, by the total patient revenues as reflected on line 28 of Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as established[set forth] in paragraph (d) of this subsection.

(d) 1. The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's website [Web-site] or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year, the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by subparagraph 1. of this paragraph.

a. This reduction shall be subject to an appeal pursuant to Section 4 of this administrative regulation.

b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances, the commissioner shall waive the reduction for no more than one (1) consecutive year.

c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

(e)1. Except as established[provided] in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:

a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site;

b. Is designated as a Level I trauma center by the American College of Surgeons;

c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services; or

d. Has a base cost-to-charge ratio of fifty (50) percent or more.

(2)(a) Except as established[provided] in paragraph (b) and (c) of this subsection, the reimbursement to a hospital for services or supplies furnished to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the hospital's [total] charges by its adjusted cost-to-charge ratio after removing any duplicative charges, billing errors, [or] charges for services or supplies not confirmed by the hospital records, and charges for

surgical implants and surgical hardware.

(b) If part of a bill for services or supplies is alleged to be noncompensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection. [

(c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping, handling and taxes shall be reimbursed at the amount paid for those charges/[listed on the invoice] [.] [The hospital shall provide a copy of the invoice and shall certify the actual cost of the item or items.]

Section 4. Appeal of Assigned Ratio. (1) A hospital may request a review of its assigned ratio. A written appeal to request a review shall be filed with the commissioner no later than thirty (30) calendar days after the ratio has been assigned and the hospital notified of its proposed cost-to-charge ratio.

(2) The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

Section 5. Calculations of New Hospitals, Hospitals that do not file Worksheets A and G-2 of HCFA-2552 and ASC's within the Commonwealth of Kentucky.

(1)(a) A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals until it has been in operation for one (1) full fiscal year.

(b) A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to 125 percent of the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center;

b. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located, if an acute care hospital is not located in the county of the ambulatory surgery center; or

c. The adjusted cost-to-charge ratio of the base hospital if:

(i) The center is hospital based;

(ii) It is a licensed ambulatory surgery center pursuant to 902 KAR 20:106; and

(iii) It is a Medicare provider based entity;

d. Except as provided in subparagraph c, an ambulatory surgical center's adjusted cost-to-charge ratio shall not exceed fifty (50) percent; and

3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties.

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner.

(3)(a) Reimbursement to an ambulatory surgical center for services or supplies furnished to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the ambulatory surgical center's charges by its assigned cost-to-charge ratio after removing any duplicative charges, billing errors, charges for services or supplies not confirmed by ambulatory surgical center records, and charges for surgical implants and surgical hardware.

(b) If part of a bill for services or supplies is alleged to be noncompensable under KRS 342.020 and that part of the bill is

challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.]

(c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping, handling and taxes shall be reimbursed at the amount paid for those charges listed on the invoice. The ambulatory service center shall provide a copy of the invoice and shall certify the actual cost of the item or items.

Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Outside the Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

(3) An out-of-state ambulatory surgery center having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to 120 percent of the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(b)2.b. of this administrative regulation.

(5) An out-of-state ambulatory surgical center's assigned cost-to-charge ratio shall not exceed fifty (50) percent.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), as required by 803 KAR 25:096.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as required by 803 KAR 25:096.

(3) If [When] more than one (1) procedure is performed during a surgical session, an [An] Ambulatory Surgical Center may charge a facility fee for each procedure performed. However, for the purpose of reimbursement, the total charge for all facility fees shall not exceed 150 percent [one hundred fifty percent 150%] of the facility fee charged for the primary procedure. Only one facility fee for one surgical session even though the surgical session may involve multiple procedures and CPT codes; more than one facility charge shall constitute a duplicate charge. A [The] physician may submit charges on form HCFA 1500 using appropriate CPT codes.

Section 9. Miscellaneous. (1) A new hospital shall file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services **established [defined]** by 803 KAR 25:096 if billing for professional services and shall be compensated pursuant to the Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Kentucky Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is directly

compensated for services by the contracting hospital.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he **or she** shall receive payment or salary directly from the employing hospital.[]

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

(a) Form UB-04, 10-23-06; and

(b) HCFA 1500, 12-90.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

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.

LABOR CABINET

Department of Workers' Claims (As Amended at ARRS, August 10, 2021)

803 KAR 25:220. Guaranty funds.

RELATES TO: KRS 342.900-342.912

STATUTORY AUTHORITY: KRS 342.260, 342.900-342.912

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260

requires the ~~commissioner~~[~~executive director~~] to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.906(4) requires the ~~commissioner~~[~~executive director~~] to promulgate administrative regulations to establish a plan of operation for each guaranty fund created pursuant to KRS 342.906. This administrative regulation establishes the requirements for a guaranty fund written plan of operation and regulates the powers and duties of the guaranty funds.

Section 1. [Definition. "Kentucky coal employers' self-insurance fund" means the self-insurance fund that consists of self-insured employers engaged in the severance or processing of coal, excluding the transportation or processing of coal by the end user.

Section 2.] Plan of Operation. (1) Each guaranty fund shall submit to the ~~commissioner~~[~~executive director~~] a plan of operation and each amendment necessary to assure the fair, reasonable, and equitable administration of the fund. The plan of operation and amendments shall become effective upon approval in writing by the ~~commissioner~~[~~executive director~~].

(2) If a guaranty fund fails to submit an acceptable plan of operation ~~[by March 1, 1997]~~ or fails to submit a suitable amendment to the plan, the ~~commissioner~~[~~executive director~~] may, after notice and hearing, adopt or amend a plan of operation for the guaranty fund. The plan adopted or amended by the ~~commissioner~~[~~executive director~~] shall continue in force until modified by the ~~commissioner~~[~~executive director~~] or superseded by a plan submitted by the guaranty fund and approved by the ~~commissioner~~[~~executive director~~].

(3) A member of a guaranty fund shall comply with the plan of operation.

(4) The plan of operation shall establish:

(a) Procedures whereby all the powers and duties of the guaranty fund established by KRS Chapter 342 shall be performed;[]

~~(b) Procedures to prorate a security posted by the insolvent self-insurer and turned over to the guaranty fund, by allocating the security to reserves for injuries incurred before and after March 1, 1997.]~~

~~(b) [(c)] Procedures for the collection of assessments, the sound investment, and disbursement of assets of the guaranty~~

fund;

(c) [(d)] The amount and method of reimbursing a member of the board of directors for attendance at a board meeting or other reasonably necessary function of the guaranty fund;

(d) [(e)] Procedures by which a claim shall be filed with the guaranty fund and acceptable forms for proof of a claim. Notice of a claim against the insolvent self-insurer to a bankruptcy court or other court of competent jurisdiction shall be deemed notice to the guaranty fund;

(e) [(f)] A regular place and time for a meeting of the board of directors;

(f) [(g)] Procedures for a record to be kept of a financial transaction of the guaranty fund, its agents, or the board of directors;

(g) [(h)] Procedures for the expeditious and informal resolution of a member grievance;

(h) [(i)] Additional provisions necessary or proper for the execution of the powers and duties of the guaranty fund.

Section **2.3**] Powers and Duties of the Guaranty Funds. (1) Each guaranty fund shall:

(a) Be [the insurer] required to pay the workers' compensation benefits incurred during the period in which an insolvent self-insurer was a member of the guaranty fund, subject to the limitations established by KRS 342.908(4).[

1. ~~For a group self-insurer, membership in the Kentucky group self-insurance fund shall continue until coverage of every group member has been terminated by normal expiration or order of a court of competent jurisdiction.]~~

1. [2.] For an individual self-insurer, membership in a guaranty fund shall continue until the employer:

a. Becomes an insolvent self-insurer, as defined in KRS 342.901(1); or

b. Secures coverage through an authorized carrier or self-insurance group;

(b) Have the rights, duties, and obligations of the insolvent self-insurer, except as otherwise provided by law;

(c) Determine the outstanding liabilities of the insolvent self-insurer and establish ~~actuarially~~[actuarially] responsible reserves for an incurred claim. ~~[The reserves shall be applied pro-rata to a claim incurred before and after March 1, 1997. The guaranty fund shall:]~~

1. If [When] an insolvent self-insurer's security has been exhausted, the guaranty fund shall not [Not] be responsible for payment of [a deficiency between the reserves so calculated and the total claims liability for] a claim incurred prior to March 1, 1997; and

2. If [When] an insolvent self-insurer's security has been exhausted, the guaranty fund shall pay [Pay] a claim [liability] incurred on or after March 1, 1997;

(d) Establish a mechanism consistent with 803 KAR 25:021, Section 12(4), for a distribution of security proceeds after the commissioner has determined that every claim for which an insolvent self-insurer is responsible has been fully paid, fully settled, or lapsed so that the insolvent self-insurer has no possibility of additional liability. [return to the insolvent self-insured or the individual or entity posting the surety the remaining surety if there is a surplus.]

(e) Take possession of the books and records of the insolvent self-insurer necessary to fulfill the duties of the guaranty fund;

(f) Investigate claims brought against the guaranty fund and adjust, compromise, settle, and pay workers' compensation benefits which might otherwise be delayed or terminated due to the failure of an insolvent self-insurer to meet its obligations under KRS Chapter 342;

(g) Notify a claimant of the insolvent self-insurer of his rights through the guaranty fund;

(h) Reimburse each servicing facility for an obligation of the guaranty fund paid by the facility and for an expense incurred by the facility while handling a claim on behalf of the guaranty fund; and

(i) Notify the ~~commissioner~~[executive director] of information indicating that a member may be insolvent or in a financial

condition jeopardizing payment of claims.

(2) A guaranty fund may:

(a) Appear in, defend, and appeal an action on a claim brought against the guaranty fund;

(b) Employ or retain persons necessary to handle claims and perform other duties of the guaranty fund;

(c) Borrow funds necessary to effect the purposes of KRS Chapter 342 and this administrative regulation in accordance with the fund's plan of operation;

(d) Sue or be sued;

(e) Negotiate and become a party to a contract necessary to carry out the purpose of KRS Chapter 342 and this administrative regulation; and

(f) Perform an act necessary to effectuate the purpose of the guaranty fund.

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**PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty
(As Amended at ARRS, August 10, 2021)**

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance.

RELATES TO: KRS 304.2-100, 304.2-165, 304.2-340, 304.3-200(1)(e), 304.12-010, 304.12-220, 304.12-230, 304.12-235, 304.14-400, 304.20-070, 304.20-150 to 304.20-180, 342.325

STATUTORY AUTHORITY: KRS 304.2-110[, 304.3-200(1)(e)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner [Executive Director] of Insurance to make reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes unfair property and casualty insurance claims settlement practices, effectuating KRS 304.3-200(1)(e), 304.12-010, and 304.12-230.

Section 1. Definitions. (1) "Agent" means any person authorized to represent an insurer with respect to a claim;

(2) "Claimant" means either a first party claimant, a third-party claimant, or both and includes:

(a) The [the] claimant's designated legal representative, including [such as] an administrator, executor, guardian, or similar person, and

(b) A [includes a] member of the insured's immediate family designated by the claimant;

(3) "Claim file" means any retrievable electronic file, paper file, or both;

(4) "Commissioner" ["Executive Director"] is defined by KRS 304.1-050(1);

(5) "Days" means any day, Monday through Friday, except holidays;

(6) "First-party claimant" means a person asserting a right to payment under an insurance policy, certificate, or contract arising out of the occurrence of the contingency or loss covered by the policy, certificate, or contract;

(7) "Insurer" is defined by KRS 304.1-040;

(8) "Investigation" means all activities of an insurer related to the determination of liabilities under coverages afforded by a policy, certificate, or contract;

(9) "Local market area" means a reasonable distance surrounding the area where a motor vehicle is principally garaged[, or the usual location of the article covered by the policy. This area does not mean[shall not be] limited to the geographic boundaries of the Commonwealth;

(10) "Notification of claim" means any notification, whether in writing or by other means acceptable under the terms of the policy,

certificate, or contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

(11) "Policy", ~~[or]~~ "certificate", or "contract" means any contract of insurance or indemnity, except for:

(a) Fidelity, suretyship, or boiler and machinery insurance; or

(b) A contract of workers' compensation insurance unless it satisfies the requirements of Section 2 of this administrative regulation.

(12) "Replacement crash part" means sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels; and

(13) "Third-party claimant" means any person asserting a claim against any person under a policy, contract, or certificate of an insurer.

Section 2. Scope and Purpose of this Administrative Regulation.

(1) This administrative regulation establishes:

(a) Minimum standards for the investigation and disposition of property and casualty insurance claims arising under policies, certificates, and contracts;

(b) Procedures and practices which constitute unfair claims settlement practices; and

(c) Standards for the commissioner in investigations, examinations, and administrative adjudication and appeals.

(2) This administrative regulation shall not cover claims involving:

(a) Fidelity, suretyship, or boiler and machinery insurance;
[.]

~~(b) Suretyship;]; or]~~

~~(c) Boiler and machinery insurance;] or~~

~~(b)(d)]~~ [– This administrative regulation shall not cover claims involving] Workers' compensation unless:

1. The claim involves a question that does not [if those questions] arise under KRS Chapter 342; or

2. The claim is ~~since these questions shall be resolved by workers' compensation administrative law judges or arbitrators, pursuant to KRS 342.325;.]~~

~~(3) This administrative regulation shall apply to claims] for unearned premium refunds, [under workers' compensation policies] [since workers' compensation administrative law judges or arbitrators do not have jurisdiction over those claims. This administrative regulation establishes procedures and practices which constitute unfair claims settlement practices.]~~

~~(3)(4)]~~ [(2)] Statement of enforcement policy. If complaints are filed with the commissioner ~~[executive director]~~, the commissioner ~~[executive director]~~ shall note violations of this administrative regulation after the insurer or agent has been given an opportunity to pay the claim and any interest ~~[thereon]~~.

~~(4)(5)]~~ [(3)– This administrative regulation establishes standards for the executive director in investigations, examinations, and administrative adjudication and appeals therefrom.] A violation of this administrative regulation shall be found only by the commissioner ~~[executive director]~~. This administrative regulation shall not create or imply a private cause of action for violation of this administrative regulation.

Section 3. File and Record Documentation. Each insurer's claim files for policies, certificates, or contracts are subject to examination by the commissioner or the commissioner's designees. To aid in an examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial or date closed without payment. This data shall be available for all open and closed files for the current year and the five (5) preceding years.

(2) The insurer shall maintain documentation in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(3) The insurer shall note each relevant document within the claim file as to date received, date processed, or date mailed.

(4) If an insurer does not maintain hard copy files, claim files shall be accessible to examiners electronically ~~[from a computer terminal available to examiners or micrographics]~~ and be capable of duplication to legible hard copy.

Section 4. Misrepresentation of Policy Provisions. (1) Insurers and agents shall not misrepresent or conceal from first-party claimants any pertinent benefits, coverages, or other provisions of any insurance policy or insurance contract if the benefits, coverages, or other provisions are pertinent to a claim, pursuant to KRS 304.12-230(1).

(2) Insurers shall not deny a claim on the basis of failure to exhibit property unless there is documentation in the claim file of breach of the policy provisions.

(3) Insurers shall not deny a claim based upon the failure of a first-party claimant to give written notice of loss within a specified time limit unless written notice of loss is a written condition in the policy, certificate, or contract and the first-party claimant's failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of the first-party claimant's duty to cooperate with the insurer.

(4) Insurers shall not indicate to a first-party claimant on a payment draft, check, or in an accompanying letter that payment is "final" or "a release" of any claim unless:

(a) The policy limit has been paid; or

(b) There has been a compromise settlement agreed to by the first-party claimant and the insurer as to coverage and amount payable under the policy, certificate, or contract.

(5) Insurers shall not issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which releases the insurer or its insured from total liability.

Section 5. Failure to Acknowledge Pertinent Communications.

(1) Every insurer, upon receiving notification of a claim shall, within fifteen (15) days, acknowledge the receipt of the notice unless payment is made within that period of time. If an acknowledgement is made by means other than writing, an appropriate notation of the acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(2) If an insurer receives an inquiry from the Department of Insurance respecting a claim, the insurer shall, within fifteen (15) days of receipt of the inquiry, furnish the Department of Insurance with an adequate response to the inquiry in duplicate.

(3) The insurer shall make an appropriate reply within fifteen (15) days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(4) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance to first-party claimants so that they can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection within fifteen (15) days of notification of a claim shall constitute compliance with subsection (1) of this section.

Section 6. Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers.

(1)(a) Except as provided in this subsection ~~[Pursuant to KRS 304.12-230(5)],~~ an insurer shall, ~~[pursuant to KRS 304.12-235(4), affirm or deny any liability on claims within a reasonable time and shall]~~ offer any payment due within thirty (30) calendar days of receipt of [due] proof of loss. If claims involve multiple coverages, payments which are not in dispute shall be tendered within thirty (30) calendar days of receipt of [due] proof of loss.

(b) If there is a reasonable basis, which shall be supported by specific information available for review by the commissioner, ~~[executive director]~~ that a claimant has fraudulently caused or contributed to the loss, the insurer shall:

1. Be relieved from the requirements of this subsection; and

2.] advise the first-party claimant of the acceptance or denial of

the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(c)(2)(a)] If the insurer needs more time to determine whether a first-party claim shall[should] be accepted or denied, it shall [so] notify the first-party claimant within thirty (30) calendar days after receipt of the proofs of loss, giving the reasons more time is needed.

(d)(b)] If the investigation remains incomplete, the insurer shall, forty-five (45) calendar days from the date of the initial notification and every forty-five (45) calendar days thereafter, send to the first-party claimant a letter stating the reasons additional time is needed for investigation.

(2)(3)] Insurers shall not fail to settle first-party claims on the basis that responsibility for payment shall[should] be assumed by others except as may otherwise be provided by policy provisions.

(3)(4)] Insurers shall not continue negotiations for settlement of a claim directly with a first-party claimant who is not legally represented if the first-party claimant's rights may be affected by a statute of limitations or a time limit in a policy, certificate, or contract, unless the insurer has given the first-party claimant written notice of the limitation. The notice shall be given to the first party claimant at least thirty (30) calendar days before the date on which the time limit expires.

(4)(5)] Insurers shall not make statements which indicate that the rights of a third-party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

(5)(6)] Subject to subsection (1)(a) of this section relating to first-party claims, insurers shall affirm or deny liability on claims within a reasonable time and shall tender payment within thirty (30) days of affirmation of liability, if the amount of the claim is determined and not in dispute. If claims involve multiple coverages, and if the payee is known, payments which are not in dispute shall be tendered within thirty (30) calendar days.

(6)(7)] Insurers shall not request or require any insured to submit to a polygraph examination unless authorized under the applicable policy, certificate, contract, or applicable law.

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. (1) If the policy, certificate, or contract provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods shall apply:

(a) The insurer may elect to offer a replacement motor vehicle, which is an available[a] specific and comparable motor vehicle, [available] to the insured, with all applicable taxes, license fees [(if these fees cannot be refunded by the Transportation Cabinet)], and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer, and any rejection thereof, shall be documented in the claim file;

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle, including all applicable taxes, license fees [(if these fees cannot be refunded by the Transportation Cabinet)], and other fees incident to transfer of evidence of ownership of a comparable motor vehicle. The actual cost shall be determined by any one (1) of the following:

1. The cost of a comparable motor vehicle in the local market area if a comparable motor vehicle is available in the local market area;

2. If a comparable motor vehicle is not available in the local market area, one (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified and licensed dealers which engage in the buying and selling of comparable motor vehicles in the ordinary course of their business located within the local market area; or

3. Any source for determining statistically valid fair market values, including nationally-recognized automobile evaluation publications that meet all of the following criteria:

a. The source shall give consideration to the values of vehicles

in the local market area and may consider data on vehicles outside the area;

b. The source's database[data-base] shall produce values for at least eighty-five (85) percent of all makes and models for the last eight (8) model years taking into account the values of all major options for these vehicles;

c. The source shall produce fair market values based on current data available from the local market area where the insured vehicle was principally garaged or a necessary expansion of parameters such as travel time and area to assure statistical validity;

4. Actual cash value as determined by the use of the source's database shall be adjusted to reflect any value of enhancements to the motor vehicle not accounted for by the database;

5. If the vehicle's condition does not meet the criteria for value used in the source's database, the actual cash value amount may be adjusted; and

6. Absent an appraisal provision in the insurance contract, if the insured demonstrates, by presenting two (2) independent appraisals~~[,]~~ based on measurable and discernable factors, that the vehicle would have a higher cash value in the local market area than the value reflected in the source's database, the local market value shall be considered when determining the actual cash value;

(c) Right of recourse. If the insurer is notified within thirty-five (35) days of the receipt of the settlement check[claim draft] that the insured cannot purchase a comparable motor vehicle for fair market value, as determined under[defined in] paragraph (b)3, of this subsection, the insurer shall reopen its claim file and comply with the following procedures:

1. The insurer may locate a comparable motor vehicle by the same manufacturer, same year, similar body style, and similar options and price range for the insured for the fair market value determined by the insurer at the time of settlement. This vehicle shall be available through licensed motor vehicle dealers;

2. The insurer shall either pay the insured the difference between the fair market value before applicable deductions and the cost of the comparable motor vehicle of like kind and quality which the insured has located~~[,]~~ or negotiate and effect the purchase of this motor vehicle for the insured; or

3. The insurer may conclude the loss settlement as prepared for under the appraisal provision of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or law; or

(d) If a first-party motor vehicle's total loss is settled on a basis which deviates from the methods described in subsection (1)(a) or[and] (b) of this section, the deviation shall be supported by documentation giving particulars of the motor vehicle's condition. Any deductions from the cost, including deduction for salvage, shall be measurable, discernable, itemized, and specified as to dollar amount and shall be appropriate in amount. The basis for the alternative method of settlement shall be explained fully to the first-party claimant.

(2) The measure of damages in a third-party motor vehicle loss shall be the difference between the fair market value of the motor vehicle immediately before and after the loss, proportioned by the third party's contributory negligence, if any. Repair estimates or appraisers' reports may be used to indicate the difference in fair market value. The measure of damages in a first-party vehicle loss shall be governed by the policy of insurance issued to the first party and shall not include any measure of damages not specifically provided for in the policy.

(3) If liability and damages are reasonably clear, insurers shall not recommend that third-party claimants make claims under their own policies, certificates, or contracts solely to avoid paying claims under the insurers' policies, contracts, or certificates.

(4) Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement motor vehicle.

(5) If requested by the claimant, insurers shall include the first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first-party claimant, unless the deductible amount has been otherwise recovered. Deduction for expenses shall not be

made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction shall then be for only a pro rata share of the allocated loss adjustment expense.

Section 8. Repairs to Motor Vehicles. (1)(a) If losses involving motor vehicle repairs are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based.

(b) The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike[worker-like] manner.

(c) If the insured subsequently claims, based upon a written estimate which the insured obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall pay the difference between the written estimate and a higher estimate obtained by the insured~~[,]~~ or promptly provide the insured with the name of at least one (1) repair shop that will make the repairs for the amount of the written estimate. If the insurer designates only one (1) or two (2) repair shops, the insurer shall assure that the repairs are performed in a workmanlike[worker-like] manner. The insurer shall maintain documentation of all of these communications.

(2) If the amount claimed is reduced because of betterment or depreciation, all information for the reduction shall be contained in the claim file. These deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(3)(a) Betterment deductions shall be allowed only if the deductions reflect a measurable decrease in the market value and general overall condition of the motor vehicle.

(b) The deductions set forth in paragraph (a) of this subsection shall be measurable, itemized, specified as to dollar amount, and documented in the claim file.

(c) Insurers shall not require the insured or claimant to supply parts for replacement.

(4) Insurers shall not require the use of replacement crash parts in the repair of a motor vehicle unless the replacement crash part is at least equal in kind and quality to the part to be replaced in terms of fit, quality, and performance. Insurers specifying the use of replacement crash parts shall consider the cost of any modifications which may be necessary when making the repair.

(5) Insurers shall not require a claimant to travel an unreasonable distance to:

(a) ~~[To]~~ Obtain a repair estimate; or

(b) ~~[To]~~ Have the motor vehicle repaired at a specific repair shop.

Section 9. Standards for Prompt, Fair, and Equitable Settlements Applicable to Fire~~and-Extended-Coverage-Type~~ Policies with Replacement Cost Coverage.

(1) If the policy, contract, or certificate authorizes the adjustment and settlement of first-party losses based on replacement cost, the following shall apply:

(a) If a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making the repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment nor any other cost to the extent of replacement cost, except for the applicable deductible.

(b) If a loss requires replacement of items and the replaced items do not reasonably match in quality, color, and ~~[or]~~ size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible.

(2) Actual cash value.

(a) If the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows: replacement cost of property at the time of the loss less depreciation, if any. If provided for in the policy, depreciation may include the costs of goods, materials, labor,

equipment, overhead and profit, taxes, fees, and services necessary to replace, repair, or rebuild the damaged property. If requested by the insured, the insurer shall provide a copy of the claim file worksheets showing any and all deductions for depreciation.

(b) If the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth in paragraph (a) of this subsection shall not be required. If requested by the insured, the insurer shall provide a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

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PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS, August 10, 2021)

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

RELATES TO: KRS 304.14-120, 304.15-075

STATUTORY AUTHORITY: KRS 304.2-110, 304.15-075(1), (3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.15-075(1) requires[authorizes] ~~[requires]~~ the commissioner to develop a notice to inform the owner of a life insurance policy [policy-of-life-insurance] issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075(4) authorizes the commissioner to promulgate administrative regulations that ~~[to]~~ establish that ~~[the]~~ notice shall only be required[made] ~~[be made-only]~~ with respect to policies with a net death benefit that is \$100,000 or greater. This administrative regulation establishes the notice that shall be provided to owners of life insurance policies at times specified in KRS 304.15-075(3) and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than \$100,000.

Section 1. When required by KRS 304.15-075(3), an insurer shall provide the owner of an individual life insurance policy with a net death benefit of \$100,000 or greater with either of the following:

(1) Important Information About Your Life Insurance Policy, Notice 126~~[, 2/2021]~~, 8/2010; or

(2) A notice developed by the insurer that [shall] ~~[which]~~:

(a) Meets[Meet] ~~[Meets]~~ the requirements of KRS 304.15-075(2); and

(b) Has been[Be] ~~[Has-been]~~ approved by the commissioner.

Section 2. Incorporation by Reference. (1) "Important Information About Your Life Insurance Policy", Notice 126, 2/2021 ~~[8/2010]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero St., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department Web[web] site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>~~[http://insurance.ky.gov]~~.

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PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS, August 10, 2021)

806 KAR 17:580. Definition of Health Care Provider

RELATES TO: KRS 304.17A-005(23)

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-005(23)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-005(23)(j) authorizes the Department to promulgate an administrative regulation to determine other health care practitioners to be added to the definition of "health care provider" or "provider" for use in KRS Chapter 304, Subtitle 17A. **This administrative regulation implements KRS 304.17A-005(23)(j).**

Section 1. In addition to the health care practitioners listed in KRS 304.17A-005(23)(a) – ~~(j)(1)~~, the definition of "health care provider" or "provider" in KRS 304.17A-005(23) shall include a pharmacy licensed under the provisions of KRS Chapter 315.

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PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty
(As Amended at ARRS, August 10, 2021)

806 KAR 52:030. Workers' compensation self-insured group rate, rule and form filings.

RELATES TO: KRS 304.4-010, 304.13-053, 304.14-120, 304.50-010, 304.50-115, **304.50-055, 304.50-065**

STATUTORY AUTHORITY: KRS 304.4-010, 304.50-010(2), 304.50-115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.50-010(2), **requires [authorizes]** the Commissioner of the **Department [Executive Director of the Office]** of Insurance to promulgate administrative regulations as necessary to govern admission certification and regulation of workers' compensation self-insured groups. KRS 304.50-115, requires workers' compensation self-insured groups to file rates, supplementary rating information, and coverage form filings with the **commissioner [executive director]**. This administrative regulation establishes workers' compensation self-insured group rate, rule and form filing procedures.

Section 1. Definitions. (1) "Coverage form" is defined **by [in]** KRS 304.50-015(10).

(2) "**Commissioner**" is defined **by KRS 304.1-050(1).** [~~Executive director~~] means the ~~Executive Director of the Office of Insurance.~~

(3) "**Department**" is defined **by KRS 304.1-050(2).** [~~Office~~] means the ~~Office of Insurance.~~

(4) "Self-insured group" is defined **by [in]** KRS 304.50-015(29).

Section 2. General Filing Requirements. (1) Every self-insured group shall file with the **commissioner [executive director]** its coverage forms, rates, loss costs, rating plans, rating rules, underwriting rules or guidelines, statistical plans, supporting information, supplementary information, and premium payment plans accompanied by a completed and signed Form WC SIG; F-1A P&C, "Face Sheet and Verification Form for Workers Compensation Self-Insured Groups".

(2) All filings shall include two (2) full document sets on 8 1/2

in. x 11 in. white paper with three (3) cover letters and a self-addressed stamped envelope.

(3) A filing may include any number of documents, filed together on a particular date. Rates, loss costs, and rules shall be filed separately from coverage forms.

(4) **Pursuant to** KRS 304.4-010(2), **[requires]** all fees and charges payable under the insurance code **shall [to]** be collected in advance. The period of time **that the commissioner [in which the executive director]** may affirmatively approve or disapprove the filing shall not begin until a complete filing and the appropriate fee, as set forth in 806 KAR 4:010, Section 1 **(22) [(21)]**, is received.

Section 3. Rate and Rule Filings. (1) Form WC SIG: S-1 P & C, "Filing Synopsis for Rates and or Rules" shall be filed with all rate or rule filings.

(2)(a) Form WC SIG: LC-1 P & C, "Calculation of Loss Cost Multiplier" shall be filed with all rate filings referencing loss costs formulated by any advisory organization.

(b) Form WC SIG: LC-2 P & C, "Expense Constant Supplement" shall be filed with all rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used.

(3) Form WC SIG: EMA P & C, "E-Mod Affidavit" shall be filed with all rate or rule filings containing experience modification factors.

(4)(a) All rate or rule filings containing schedule rating plans shall identify the characteristics of the risk not reflected in an experience modification factor.

(b) Any application of the schedule rating plan shall be based on evidence contained in the self-insured group's file at the time it is applied. The schedule rating plan debit or credit factor(s) applied shall be made available to the member upon request.

(c) If the reason for application of any schedule debit is corrected by the member to the satisfaction of the self-insured group, the debit may be removed when evidence of the correction is received by the group.

Section 4. Coverage Form Filings. (1) Form WC SIG: S-2 P & C, "Filing Synopsis Form" and Form WC SIG: F-2 P & C, "Forms Index" shall be filed with all coverage form filings.

(2) A coverage form shall not be used until it has been approved by the **commissioner [executive director]**. If the rates pertaining to a coverage form are required by law to be filed with or approved by the **commissioner [executive director]**, the coverage form shall not be used until the appropriate rates have been filed or approved as required.

(3) A filing which amends, replaces, or supplements a coverage form previously filed and approved shall include an explanation setting forth all changes contained in the newly filed coverage form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and an explanation as to the effect on the rates applicable thereto.

(4) A change of signature of the executing officer on a coverage form shall not, because of this change alone, require a new filing.

Section 5. Advisory Organization Filings. (1) A self-insured group that is a member, subscriber, or service purchaser of an advisory organization, statistical agent, or forms provider may choose to adopt coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or statistical agent by doing so in accordance with the procedures established in this administrative regulation and shall clearly identify each filing of the advisory organization or statistical agent it is adopting.

(2) If a self-insured group chooses to adopt only a specific filing of an advisory organization, statistical agent, or form provider it shall do so in accordance with the procedures established in this administrative regulation, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting. Loss cost filings shall be specifically adopted.

(3)(a) If a self-insured group chooses to adopt all of the current

and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, and statistical plans, excluding loss costs, of an advisory organization, statistical agent, or forms provider, it may file written notice with the commissioner ~~[executive director]~~ that it is adopting by blanket reference all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, and statistical plans, excluding loss costs, as filed by the advisory organization, statistical agent, or forms provider. Loss cost filings shall not be adopted on this blanket reference basis.

(b) If a self-insured group previously notified the commissioner ~~[executive director]~~ of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses not to adopt certain coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans, the group shall file notice of the nonadoption with the commissioner ~~[executive director]~~ and shall pay the appropriate filing fee, as set forth in 806 KAR 4:010, Section 1 ~~(22)~~ **(24)**.

1. If a self-insured group previously notified the commissioner ~~[executive director]~~ of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to delay the effective date of its adoption, it shall submit a letter to the commissioner ~~[executive director]~~ requesting the revised date upon which it will adopt the filing.

2. The delayed adoption date shall be within six (6) months of the original effective date.

3. If additional time is needed, a second letter shall be submitted to the commissioner ~~[executive director]~~ **[,]** requesting a revised delayed adoption date.

4. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization, statistical agent, or forms provider.

5. If a self-insured group fails to adopt the advisory organization, statistical agent, or forms provider filing within one (1) year of the original effective date as filed by the advisory organization, statistical agent, or forms provider, the insurer shall submit a filing to the commissioner ~~[executive director]~~ indicating it is nonadopting.

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

(a) Form WC SIG: F-1A P & C, "Face Sheet and Verification Form for Workers Compensation Self Insurance Groups," March 2005, Department ~~[Office]~~ of Insurance;

(b) Form WC SIG: F-2 P & C, "Forms Index," March 2005, Department ~~[Office]~~ of Insurance;

(c) Form WC SIG: S-1 P & C, "Filing Synopsis for Rates and or Rules," March 2005, Department ~~[Office]~~ of Insurance;

(d) Form WC SIG: S-2 P & C, "Filing Synopsis Form," March 2005, Department ~~[Office]~~ of Insurance;

(e) Form WC SIG: LC-1 P & C, "Calculation of Loss Cost Multiplier," March 2005, Department ~~[Office]~~ of Insurance;

(f) Form WC SIG: LC-2 P & C, "Expense Constant Supplement," March 2005, Department ~~[Office]~~ of Insurance; and

(g) Form WC SIG: EMA P & C, "E-mod Affidavit," March 2005, Department ~~[Office]~~ of Insurance.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Insurance ~~[Office of Insurance]~~, The Mayo-Underwood Building, 500 Mero Street ~~[215 West Main Street]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department's Web site at ~~http://www.insurance.ky.gov~~ http://doi.ppr.ky.gov/kentucky ~~[Office of Insurance Internet Web site http://doi.ppr.ky.gov/kentucky]~~.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Kentucky Board of Medical Licensure
(Amended After Comments)

201 KAR 9:270. Professional standards for prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

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

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 218A.205(3)(a) and (b) require the board to establish mandatory prescribing and dispensing standards related to controlled substances. KRS 311.842(1)(b) requires that the board promulgate administrative regulations establishing professional standards for prescribing and administering controlled substances by physician assistants. This administrative regulation establishes the professional standards for any board licensee [physicians practicing in Kentucky] who prescribes, [or] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky. Nothing within this regulation shall be interpreted to grant physician assistants authority to dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone, unless otherwise authorized by KRS 311.824.

Section 1. Minimum Qualifications for Prescribing, [or] Dispensing, or Administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. Except as provided in Section 3 of this administrative regulation, a licensee [licensed physician] shall not prescribe, [or] dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that licensee [physician] possesses the minimum qualifications established in this section.

(1) The licensee [physician] shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid use disorder in the Commonwealth of Kentucky.

(2) The licensee [physician] shall successfully complete the approved educational programs required by this subsection.

(a) The prescribing licensee [physician] shall be a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone and shall have obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course.

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education certified in Category I specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310 and 201 KAR 9:360.

(3) The licensee [physician] shall enroll in the Kentucky Health Information Exchange to the extent necessary to query and pull information from the Kentucky Health Information Exchange. The licensee [physician] shall not report the prescribing, [or] dispensing, or administering [of] Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or as maintenance treatment for a patient diagnosed with opioid use disorder into the Kentucky Health Information Exchange unless otherwise required by law.

Section 2. Professional Standards for Prescribing, [or] Dispensing, or Administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised

Withdrawal or the Treatment of Opioid Use Disorder.

(1)(a) Except as provided in paragraph (b) of this subsection, transmucosal Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed, [or] dispensed, or administered for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder.

(b) Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be used for the treatment of pain or any other condition, unless delivered in a Federal Drug Administration (FDA) approved form and for an FDA approved purpose.

(2) Buprenorphine-Mono-Product shall not be prescribed, [or] dispensed, or administered for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder, except:

(a) To a pregnant patient;

(b) To a patient with demonstrated hypersensitivity to naloxone;

(c) As administered under supervision in a physician's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

(d) To a patient transitioning from methadone to buprenorphine, limited to a period of no longer than one week.

(3)(a) Except as provided in paragraph (b) of this section, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be prescribed, [or] dispensed, or administered to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry.

(b) A licensee [physician] may prescribe, [or] dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Except as provided in Section 3 of this administrative regulation, each licensee [licensed physician] who prescribes, [or] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of opioid use disorder shall fully comply with the professional standards established in this subsection.

(a) Prior to or at least within two (2) weeks of initiating treatment, the prescribing, [or] dispensing, or administering licensee [physician] shall:

1. Obtain and record a complete and appropriate evaluation of the patient which shall at a minimum include:

- The patient's history of present illness;
- The patient's history of substance use;
- The patient's social and family history;
- The patient's past medical and psychiatric histories;
- A focused physical examination of the patient;
- Screening for HIV and hepatitis serology; and
- Arranging appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to obtain the patient's prior medical records.

a. Upon receipt of the medical records, the prescribing, [or] dispensing, or administering licensee [physician] shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the prescribing, [or] dispensing, or administering licensee [physician] is unable, despite best efforts, to obtain the patient's prior medical records, the licensee [physician] shall document

those efforts in the patient's chart;

3. Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, meet the requirements of paragraph (b) of this subsection.

(b) Except as provided in Section 3 of this administrative regulation, the requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.

1. Prior to initiating treatment, the licensee [physician] shall require that the patient submit to a pregnancy test and, if pregnant, the licensee [physician] shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance.

2.a. Unless the licensee is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or an obstetrician or maternal-fetal medicine specialist, a licensee [physician] who prescribes, [or] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is pregnant or breastfeeding shall first obtain and document consultation with another independent physician that the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.

b. The consultation shall be obtained from a physician who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the licensee [prescribing or dispensing physician] shall comply with the requirements of this paragraph.

1. The licensee [prescribing or dispensing physician] shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the licensee [prescribing or dispensing physician] shall supervise the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the licensee [prescribing or dispensing physician] shall appropriately record the circumstances in the patient chart.

2. The licensee [prescribing or dispensing physician] shall document the presence of opioid withdrawal before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The licensee [prescribing or dispensing physician] shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the licensee [prescribing or dispensing physician] shall:

1. Document that fact;

2. Educate the patient about the potential for precipitated withdrawal; and

3. Continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider

and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the licensee [prescribing or dispensing physician] shall meet the requirements established in this paragraph.

1. If the licensee [physician] prescribes, [or] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the licensee [physician] shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The licensee [physician] shall prescribe, [or] dispense, or administer to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

a. Is necessary to minimize craving and opiate withdrawal;

b. Does not produce opiate sedation;

c. Except as provided in subclauses (i) through (iv) of this clause, is to be taken no more frequently than once daily;

(i) If the patient is pregnant, is to be taken no more than twice daily;

(ii) If the patient is receiving a daily dosage of less than 16mg, is to be taken no more than twice daily;

(iii) If the patient is simultaneously engaged in cancer treatment, hospice or palliative care, is to be taken bid or tid; or

(iv) If the patient is undergoing a major surgery, being any operative or invasive procedure or delivery, or has suffered a significant physical trauma, being any acute, blunt, blast or penetrating bodily injury that has a risk of death, physical disability or impairment, is to be taken bid or tid for up to fourteen (14) days; and

d. Is able only to supply the patient until the next licensee [physician] visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.a. The licensee [prescribing or dispensing physician] shall ensure that the patient is seen:

(i) No later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction; and

(ii) At intervals of no more than fourteen (14) days for the second month after induction.

b.(i) If the patient demonstrates objective signs of positive treatment progress, the licensee [prescribing or dispensing physician] shall ensure that the patient is seen at least once monthly thereafter.

(ii) If two (2) years after initiation of treatment, the patient is being prescribed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid use disorder and the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives for at least two (2) years, then the licensee [prescribing or dispensing physician] may require that the patient be seen only by the licensee [prescribing or dispensing physician] at least once every three (3) months.

(iii) The licensee [prescribing or dispensing physician] shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the licensee [prescribing or dispensing physician] shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. At least every three (3) months after initiation of treatment, the licensee [prescribing or dispensing physician] shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the licensee [prescribing or dispensing physician] shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any abnormal findings, the licensee

~~[prescribing or dispensing physician]~~ shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength, adjustment of frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

c. Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day and the licensee ~~[prescribing or dispensing physician]~~ is not certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry, then the licensee ~~[prescribing or dispensing physician]~~ shall obtain a consultation from a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart.

d. The licensee ~~[prescribing or dispensing physician]~~ shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the licensee ~~[prescribing or dispensing physician]~~ shall evaluate for and document the medical necessity for continued treatment at the established dose.

f. The licensee ~~[prescribing or dispensing physician]~~ shall ensure that the patient is drug tested. A patient in early stages of treatment shall be tested at least once weekly and as the patient becomes more stable in treatment, the frequency of drug testing may be decreased, but shall be performed at least on a monthly basis. Individual consideration may be given for less frequent testing if a patient is in sustained remission. If the patient returns to substance use after a period of abstinence, the licensee ~~[prescribing or dispensing physician]~~ shall resume the early treatment testing schedule, in conjunction with an adapted or intensified treatment plan.

(i) Each drug screen shall at a minimum screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, and cocaine.

(ii) If a drug screen indicates any abnormal findings, the licensee ~~[prescribing or dispensing physician]~~ shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

(iii) Appropriate clinical reasoning may include adjustment of dose strength, adjustment of frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

6. The licensee ~~[prescribing or dispensing physician]~~ shall document a plan for handling any lost or stolen medication, which shall not provide for the automatic replacement of medication prior to the specified interval date.

Section 3. Use of transmucosal buprenorphine-mono-product or buprenorphine-combined-with-naloxone for treatment of opioid use disorder in an emergency situation or inpatient setting. (1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, licensees ~~[physicians]~~ may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 1 and 2 of this administrative regulation and to the extent permitted by federal law, if:

(a) The licensee ~~[physician]~~ has determined that the use of

buprenorphine-mono-product or buprenorphine-combined-with-naloxone will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;

(b) The licensee ~~[physician]~~ obtains and documents written informed consent from the patient specific to risks and benefits of buprenorphine treatment; and

(c) The licensee ~~[physician]~~ provides the patient with written instructions and contact information for appropriate follow up care, including bridge-provider services, residential treatment providers, and outpatient treatment providers.

(2) The licensee ~~[physician]~~ shall initiate buprenorphine treatment under an observed induction protocol with an initial dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which may be followed by subsequent doses, up to a maximum of twenty-four (24) milligrams buprenorphine generic tablet, if withdrawal persists and is not improving.

Section 4. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes, and Monitoring.

(1) Each licensee ~~[physician]~~ prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the licensee ~~[physician]~~ is conforming to professional standards for prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone and other relevant professional standards.

(2) If a licensee ~~[physician]~~ is unable to conform to professional standards for prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone as set forth in this administrative regulation due to circumstances beyond the licensee's ~~[physician's]~~ control, or the licensee ~~[physician]~~ makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the licensee ~~[physician]~~ shall document those circumstances in the patient's record and only prescribe, [or] dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone to the patient if the patient record appropriately justifies the prescribing, [or] dispensing, or administering of Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone under the circumstances and in accordance with SAMHSA guidelines **as set forth in: Substance Abuse and Mental Health Services Administration. Medications for Opioid Use Disorder. Treatment Improvement Protocol (TIP) Series 63. Publication No. PEP20-02-01-006. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2020.**

Section 5. Violations. Failure to comply with or a violation of the professional standards established in Sections 2, 3 and 4 of this administrative regulation shall constitute a "departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.850(1)(p) and (s), KRS 311.595(12) and (9), as illustrated by KRS 311.597(4), and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensee ~~[licensed physician]~~ to sanctions authorized by KRS 311.595 and 311.850.

SANDRA R. SHUFFETT, President

APPROVED BY AGENCY: July 26, 2021

FILED WITH LRC: July 30, 2021 at 10:36 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish acceptable and prevailing medical standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for Board licensees prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for individual Board licensees prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: During the 2020 regular legislative session, the General Assembly amended the physician assistant statutes in order to allow that they may prescribe and administer controlled substances, including Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, and require that the Board adopt regulation setting forth prescribing standards for them. This administrative regulation amendment is necessary in order to hold physician assistants who prescribe or administer buprenorphine products accountable to the same standards as physicians.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the administrative regulation in order to hold physician assistants who prescribe or administer buprenorphine products accountable to the same standards as physicians.

(c) How the amendment conforms to the content of the authorizing statutes: During the 2020 regular legislative session, the General Assembly amended the physician assistant statutes in order to allow that they may prescribe and administer controlled substances, including Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, and require that the Board adopt regulation setting forth prescribing standards for them. This administrative regulation amendment is necessary in order to hold physician assistants who prescribe or administer buprenorphine products accountable to the same standards as physicians.

(d) How the amendment will assist in the effective administration of the statutes: During the 2020 regular legislative session, the General Assembly amended the physician assistant statutes in order to allow that they may prescribe and administer controlled substances, including Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, and require that the Board adopt regulation setting forth prescribing standards for them. This administrative regulation amendment is necessary in order to hold physician assistants who prescribe or administer buprenorphine products accountable to the same standards as physicians.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physician assistants licensed in the Commonwealth of Kentucky who prescribe, dispense or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians and physician assistants will be required to follow the same professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to physicians and physician assistants include having consistent professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone; benefits to the agency and the Commonwealth of Kentucky include curbing of the prescription drug epidemic and increasing patient access to appropriate treatment.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(a) and (b), 311.565(1)(a), 311.842(1)(b)

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

LABOR CABINET
Department of Workers' Claims
(Amended After Comments)

803 KAR 25:165. Electronic data interchange vendor approval.

RELATES TO: KRS 342.0011(1), (6), (7), (22), (26), 342.038, 342.039, 342.260, 342.340

STATUTORY AUTHORITY: KRS 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department. KRS 342.038 requires an employer to keep a record of all injuries received by the employer's employees and to report to the department any injury causing the employee's absence from more than one day of work. KRS 342.039 requires insurance carriers, each self-insured group, and each employer authorized to carry its own risk to file detailed claim information with the department. KRS 342.340 requires information to be filed when a workers' compensation policy is issued, modified, cancelled, lapsed, or terminated. The department requires approved vendors to communicate the required data. This administrative regulation establishes the procedure to become an approved vendor.

Section 1. Definitions.

(1) "Applicant" means a vendor seeking to become an approved vendor.

(2) ~~[(4)]~~ "Approved vendor" means a vendor approved and certified by the commissioner of the Department of Workers' Claims in accordance with this administrative regulation.

(3) ~~[(2)]~~ "Electronic Data Interchange" or "EDI" means the electronic transmission of data to and from the Department of Workers' Claims by use of EDI Claims Release, 3.0 version, and Proof of Coverage Release, 2.1 version, of the International Association of Industrial Accident Boards and Commissions.

(4) ~~[(3)]~~ "Vendor" means an entity that formats electronic data for transmission to the Department of Workers' Claims, transmits electronic data to the Department of Workers' Claims, and responds to any technical issues related to the content or structure of an electronic data interchange file. ~~[transcribes information into an electronic format, accepts data transmissions, and sorts the resulting data for delivery to and from the Department of Workers' Claims.]~~

Section 2. Application and Qualifications.

(1) An application for approval as an EDI vendor shall be submitted to the commissioner on Form EDIVEN-01, EDI Vendor Application.

(2) An applicant shall meet all of the following qualifications:

(a) The applicant shall submit EDI transactions from trading partners and claim administrators to the Department of Workers' Claims using only EDI Claims Release, 3.0 version, and Proof of Coverage Release, 2.1 version, of the International Association of Industrial Accident Boards and Commissions ("IAIABC"). Kentucky-specific edits for EDI may be found at <http://www.labor.ky.gov/workersclaims/Pages/EDI.aspx>;

(b) The applicant shall be capable of transmitting and receiving data through secure file transfer protocol ("SFTP").

(c) The applicant shall be able to send and receive data on a daily basis.

(d) The applicant shall provide and identify a contact person capable of providing quick resolution of issues that arise during attempted data delivery. The contact information shall include the contact's name, phone number, email address, and physical address.

(f) The applicant shall submit a list of all insurance carriers for which it will be delivering and receiving data. The list shall include the name of the insurance carrier, the insurance carrier's federal employer identification number, the name of a contact person for the insurance carrier, that person's email, phone number and mailing address.

(g) The applicant shall submit data for no less than **eight (8)**

~~[ten (10)]~~ insurance carriers.

(h) The applicant shall be and remain a member of the IAIABC.
(i) The applicant shall comply with the provisions of KRS Chapter 342 and the administrative regulations promulgated by the commissioner of the Department of Workers' Claims.

Section 3. Application process.

(1) Upon notification that the application has been accepted, the applicant shall contact the Data Management Branch of the Division of Information Technology and Support Services of the Kentucky Labor Cabinet to schedule two (2) test data transmissions.

(2) If both transmissions are successfully completed, trading partner information from the vendor will be added to the database of the Department of Workers' Claims. The vendor may begin submission of data once notified that it has been certified as an approved EDI vendor by the Department of Workers' Claims.

Section 4. Certification.

(1) A person or entity shall not act as or hold itself out as an approved EDI vendor unless that person or entity has been approved by the commissioner of the Department of Workers' Claims in accordance with this administrative regulation.

(2) Certification that a vendor has been approved by the commissioner shall remain in effect until revoked by the commissioner pursuant to Section 5 of this administrative regulation or voluntarily surrendered. A vendor that voluntarily surrenders its certificate shall notify the commissioner in writing.

(3) When a vendor desires to deliver and receive data for an insurance carrier not previously reported to the Department an email shall be sent to the Department seeking approval to deliver and send data for the new insurance carrier. The email shall contain the name and FEIN of the new insurance carrier. Attached to the email shall be an updated carrier list that includes that new insurance carrier. Upon receipt of an email confirmation from the Department of Workers' Claims approving the transmittal of data for the new insurance carrier, the vendor may begin transmitting data for the new carrier.

Section 5. Revocation of Certification. The commissioner may revoke a vendor's certification as an approved EDI vendor when one or more of the following occur:

(1) The vendor resigns or is removed from membership in the IAIABC;

(2) The vendor is unable to be contacted for resolution of transmission issues;

(3) The vendor **does not actively take steps to assist in the resolution of EDI related issues** ~~[is unable to resolve transmission issues within ten (10) days of discovery];~~

(4) The vendor no longer meets the requirements contained in subsection 2(2) of this administrative regulation.

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

(a) "Electronic Data Interchange Vendor Application", EDIVEN-1, **August 10 [March 4]**, 2021 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and may also be found at <https://labor.ky.gov/comp/Forms/Pages/default.aspx>.

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: August 12, 2021

FILED WITH LRC: August 12, 2021 at 1:53 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: The function of this administrative regulation is to establish the approval procedure for electronic data interchange ("EDI") vendors.

(b) The necessity of this administrative regulation: To provide guidance to entities desiring to be approved EDI vendors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.038 requires an employer to keep a record of all injuries received by the employer's employees and to report to the department any injury causing the employee's absence from more than one day of work. KRS 342.039 requires insurance carriers, each self-insured group, and each employer authorized to carry its own risk to file detailed claim information with the department. KRS 342.340 requires information to be filed when a workers' compensation policy is issued, modified, cancelled, lapsed, or terminated. The department uses approved vendors to communicate the required data. This administrative regulation establishes the procedure to become an approved vendor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedure for becoming an approved EDI vendor.

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

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

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will apply to the Department to be an approved vendor.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will know the process to be approved as an electronic data interchange vendor.

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

(a) Initially: None

(b) On a continuing basis: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

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

fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and those parts of state and local government that use a vendor to report data to the Department.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.038, 342.039, 342.260, 342.340.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Department does not anticipate this administrative regulation to have any effect on the expenditures and revenues of a state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Fiscal Management

(Amended After Comments)

907 KAR 3:060. Ambulance provider assessment program.

RELATES TO: KRS 45.229, 142.301, 142.318, 142.343, 142.359, 194A.030(2), 205.5601, 205.5602, 205.5603, 42 Part C.F.R. 413, 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 205.5601[205.560(1)], 205.5602(2), 205.5603

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law to qualify for federal funds. KRS 205.5602(2) requires the department to promulgate an administrative regulation to implement the Ambulance Provider Assessment Program, as established pursuant to KRS 205.5601 and 205.5603. This administrative regulation establishes the requirements for implementing the Ambulance Provider Assessment Program for ground ambulance providers.

Section 1. Definitions. (1) "Assessment" is defined by KRS 205.5602(1)(b).

(2) "Department" is defined by KRS 205.5602(1)(e).

(3) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(4) "Ground ambulance provider" is defined by KRS 205.5602(1)(a).

(5) "Medicaid" is defined by KRS 142.301(14).

(6) "MMIS" means the Medicaid Management Information System or its successor program.

(7) "Program year" means the calendar year during which supplemental payments and tax assessments are made.

Section 2. Ambulance Provider Assessment Program. (1) Prior to the program year, the department shall calculate for eligible ground ambulance providers an interim uniform add-on amount for:

(a) Emergent transports that the ground ambulance provider is eligible to receive as a supplemental payment for the program year for Medicaid fee-for-service transports; and

(b) Non-emergent transports that the ground ambulance provider is eligible to receive as a supplemental payment for the program year for Medicaid managed care transports.

(2) On an annual basis, the department shall calculate a lump sum periodic, of at least once per quarter, [monthly] interim supplemental payment for each eligible ground ambulance provider by:

(a) Utilizing the uniform add-on amounts referenced in subsection (1)(a) and (1)(b) of this section;

(b) Utilizing MMIS fee-for-service data, MMIS managed care encounter data, and ground ambulance survey data to calculate the transport volume; and

(c) Reducing the payment volume by a five (5) percent reserve in order to avoid overpayment to ambulance providers.

(3) At least once per quarter [For each month] in a program year, the department shall make a [monthly] Medicaid:

(a) Fee-for-service interim payment to each qualifying ground ambulance provider in accordance with the methodology established by KRS 205.5602; and

(b) Managed care interim payment to each qualifying ground ambulance provider in accordance with the methodology established by KRS 205.5602.

(4) Payment of the [monthly] Medicaid managed care interim payment shall be made at least once per quarter by distribution to each Medicaid managed care organization through a [monthly] supplemental capitation payment.

(5) At least once per quarter, the department shall submit to each Medicaid managed care organization a listing of the [monthly] Medicaid managed care supplemental payments that the Medicaid managed care organization shall make to each eligible ground ambulance providers.

(6) Each Medicaid managed care organization shall remit to each ground ambulance provider, as directed by the department, the [monthly] Medicaid managed care supplemental payment within ten (10) business days of receipt of the [monthly] supplemental payment.

(7) On an annual basis, the department shall calculate the monthly tax assessment for each ground ambulance provider in accordance with KRS 142.318 and KRS 205.5602.

(8) If a ground ambulance provider tax assessment is not received in a timely manner, the requirements of this subsection shall be met.

(a) The department may deny or withhold future [monthly] supplemental payments until the assessment is submitted.

(b) The department shall refer a provider to the Kentucky Board of Emergency Medical Services (KBEMS) for potential action related to licensure.

(c) Additional penalties and interest may be assessed in accordance with KRS 142.343 and KRS 142.359.

Section 3. Annual Reconciliation. (1) On an annual basis following the program year, the department shall make final reconciled payments to ground ambulance providers based on:

(a) A review of the interim emergent and non-emergent transport add-ons from Section 2(1)(a) and (b) of this administrative regulation;

(b) Any interim add-ons that may be adjusted to account for differences between:

1. Expected utilization known at the time of the interim add-

ons; and

2. Actual utilization following the program year; and

(c) Final add-ons that shall be applied to actual transport utilization, based on MMIS data, to determine the final supplemental payment amount owed to each provider.

(2) Interim payments shall be subtracted from the final supplemental payment owed.

(a) A positive balance shall be paid to the provider.

(b) A negative balance shall be paid to the department.

(3) When a survey is not received, the department may use a statewide average of revenue per transport multiplied by provider transport count data, collected by KBEMS, as a proxy for calculating taxable revenues for the following program year.

Section 4. Reporting Requirements. (1) By April 1 of each program year, a ground ambulance provider shall submit a completed revenue survey. An extension may be granted on a temporary and case-by-case basis, not to exceed thirty (30) days, following a written request detailing the exigent circumstances that prevented timely filing of the completed revenue survey.

(2) If a complete revenue survey is not received in a timely manner the department may deny or withhold future [monthly] supplemental payments until a complete survey is submitted.

(3) A ground ambulance provider, licensed in Kentucky, operating outside of the state of Kentucky shall report only revenues for transports originating in Kentucky on the revenue survey.

Section 5. Access to Supporting Records. Pursuant to 907 KAR 1:672, Section 2(6)(b), a ground ambulance provider shall maintain and make available, upon request of the department or any other auditing or investigating entity, any records and data necessary to justify and document:

(1) Revenue survey amounts, submitted in accordance with Section 4, of this administrative regulation;

(2) Resolution of a supplemental payment that the ground ambulance provider suspects is in error; or

(3) Quality metrics necessary for program reporting to the Centers for Medicare and Medicaid Services.

Section 6. Appeal Rights. An appeal of a department decision regarding final reconciled payments shall be in accordance with 907 KAR 1:671.

Section 7. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 29, 2021

FILED WITH LRC: August 6, 2021 at noon

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) ambulance provider assessment program. This administrative regulation serves to implement HB 8 from the 2020 Regular Session of the Kentucky General Assembly. Specifically, DMS is required to calculate annual assessment amounts, make payments for Medicaid fee-for-service ambulance transports, and

an annual reconciling payment. The administrative regulation also requires DMS to distribute supplemental payments to qualifying ambulance providers by means of a supplemental capitation payment to managed care organizations (MCOs). The MCOs then forward the payments to the qualifying ambulance providers. The MCOs are required to remit the payment within 5 days, and failure to forward the entire payment within 5 days will result in the department assessing penalties. The administrative regulation also establishes requirements relating to the ambulance assessments, and establishes departmental actions when a payment is not received in a timely manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and penalty provisions for the ambulance assessment program required by 2020 HB 8.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements the provisions of 2020 HB 8.

(d) How this administrative regulation currently assists or shall assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing a statutorily required ambulance assessment program.

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

(a) How the amendment shall change this existing administrative regulation: The Amended after Comments version of this administrative regulation allows for future flexibility in the design and operation of this program by requiring that ambulance provider payments be submitted at least quarterly. The department intends to implement this program, however, with monthly payments. In addition, a process to estimate a payment when a revenue survey is not submitted has also been included.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 180 licensed ground ambulance providers in Kentucky who will report revenue and participate in the ambulance provider assessment program.

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

(a) List the actions that each of the regulated entities identified in question (3) shall have to take to comply with this administrative regulation or amendment. Participating ambulance providers will submit required assessments and comply with reporting requirements to enable the department to calculate each monthly assessment.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): Costs will vary by ambulance provider and reporting period for the payment of assessments, the supplemental payments disbursed will likely exceed the amount of assessments.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Ambulance providers will benefit from enhanced rates available as part of this provider assessment program submitted as supplemental payments via the MCOs and as FFS reimbursement from DMS.

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

(a) Initially: DMS anticipates no additional costs to the department to implement this administrative regulation beyond the appropriation contained in 2020 HB 8.

(b) On a continuing basis: DMS anticipates no additional costs to the department to implement this administrative regulation.

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

implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding shall be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation as it applies equally to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)

2. State compliance standards. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Medicaid reimbursement for services is required to be consistent with efficiency, economy, and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter or different than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.5602(2)(a), and 42 U.S.C. 1396a(a)(30).

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

(a) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates that this administrative regulation will be revenue neutral to the department in the first year.

(b) How much revenue shall this administrative regulation

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generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates that this administrative regulation will be revenue neutral to the department in subsequent years.

(c) How much shall it cost to administer this program for the first year? The costs associated with this program will be met by the appropriations contained in 2020 HB 8 in the first year of operation.

(d) How much shall it cost to administer this program for subsequent years? The costs associated with this program will be met by the appropriations to the department contained in 2020 HB 8 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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
Office of Adult Education (Kentucky Skills U)
(Amendment)

13 KAR 3:010. GED® Testing Program.

RELATES TO: KRS 151B.403 [~~KRS 164.0064(1)(a)~~]
 STATUTORY AUTHORITY: KRS 151B.403 [~~KRS 164.0064(1)(a)~~], 151B.408 [~~164.0234~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.408 [~~KRS 164.0234(1)~~] requires the Kentucky Skills U [~~Adult Education~~] Program to promulgate necessary administrative regulations and administer a statewide adult education [~~and literacy~~] system. KRS 151B.408 [~~KRS 164.0064~~] requires that a high school equivalency diploma be issued upon passage of the test given by the Kentucky Skills U [~~Adult Education~~] Program [~~Program's~~] approved testing centers in conformance with requirements of the GED® Testing Service and authorizes Kentucky Skills U [~~Adult Education~~] to establish fees for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate transcript. This administrative regulation establishes the procedure for testing an adult for the GED® diploma.

Section 1. Test Purpose. The GED® test shall provide a valid means of measuring the educational achievement of an adult who is a non-high school graduate and of comparing the adult's competency to that of high school graduates. The test shall cover:

- (1) Writing;
- (2) Social studies;
- (3) Science;
- (4) Reading; and
- (5) Mathematics.

Section 2. Test Centers. Official GED® testing centers shall be established under agreement with the GED® Testing Service. Kentucky Skills U [~~Adult Education~~] shall authorize the location of these centers so that they provide applicants with sufficient access and are able to meet the expected testing volume.

Section 3. Test Scores. In order for an applicant to be issued a Commonwealth of Kentucky High School Equivalency Diploma and an official GED® transcript, an applicant shall achieve the minimum passing standard on the Official GED® test as set by GED® Testing Service.

Section 4. Commonwealth of Kentucky High School Equivalency Diploma. Kentucky Skills U [~~Adult Education~~] shall provide a high school equivalency diploma to an applicant who meets all the provisions of this administrative regulation and the eligibility requirements established by 13 KAR 3:050.

Section 5. Test Fees. (1) The GED® test shall be offered at official GED® testing centers at a fee set and collected by GED® Testing Service.

(2) A request for a duplicate transcript or diploma from Kentucky Skills U [~~Adult Education~~] shall:

- (a) Be in writing;
- (b) Carry the signature, birth date, and Social Security number of the test-taker; and
- (c) Be accompanied by the payment of:
 1. A fifteen (15) [~~ten (10)~~] dollar processing fee assessed for the issuance of a duplicate transcript request; or
 2. A thirty (30) [~~twenty-five (25)~~] dollar fee assessed for the issuance of a duplicate diploma, to include a duplicate transcript.

JOHN C. GREGORY, Executive Director

For JACQUELINE COLEMAN, Secretary
 APPROVED BY AGENCY: August 4, 2021
 FILED WITH LRC: August 4, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at October 26, 2021, 1:00 p.m. at 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 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: Natalie Cummins, GED® Administrator, Office of Adult Education (Kentucky Skills U), 500 Mero Street Mail Stop 5SC, Frankfort Kentucky 40601; phone 502-892-3021; email Natalie.Cummins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Natalie Cummins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for testing an adult for the GED® diploma and for collecting fees associated with issuing duplicate educational credentials.

(b) The necessity of this administrative regulation: KRS 151B.408 requires the Kentucky Skills U Program to promulgate necessary administrative regulations and administer a statewide adult education system. KRS 151B.403 requires that a high school equivalency diploma be issued upon passage of the test given by Kentucky Skills U Program approved testing centers in conformance with requirements of the GED® Testing Service and authorizes Kentucky Skills U to establish fees for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate transcript.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The relevant statutes require the promulgation of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently assists with the establishment of the GED® exam for high school equivalency and for the collection of fees for duplicate educational documents.

(2) If 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 language to reflect Kentucky Skills U now being a part of the EWDC. It also updates the fees associated with duplicate educational documents.

(b) The necessity of the amendment to this administrative regulation: KYSU no longer resides within the Council on Postsecondary Education. Language changes are necessary to reflect inclusion in the EWDC.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment still conforms with the content of the authorizing statutes. It has not been substantively changed.

(d) How the amendment will assist in the effective administration of the statutes: This amendment aligns language to

reflect existing structures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Recipients of the GED® (past and present), colleges performing educational record searches, employers performing educational record searches.

(4) Provide an analysis of how the entities identified in question (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: GED® test-takers will have to adhere to the requirements of the administration of the GED® exam. Credential recipients and those requesting credentials will have to comply with document request procedures and payment submission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of the GED® exam is determined through GED Testing Service/Pearson VUE. At present, the exam costs \$30 per section (4 sections). Replacement credentials will increase in price to \$15 per transcript and \$30 per duplicate diploma (to include a transcript).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits are consistent with previous versions of this regulation. Entities receive the high school equivalency diploma and proof thereof.

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

(a) Initially: This regulation is already administered. There is no additional cost.

(b) On a continuing basis: This regulation is already administered. There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Adult Education receives Title II Workforce Innovation and Opportunity Act funding (through the Adult Education and Family Literacy Act) and funding through Senate Bill 1 (2000) from the Commonwealth of Kentucky. The funds raised through this regulation are self-sustaining the process of administering the regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases the fee associated with the issuance of duplicate educational credentials.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Adult Education (Kentucky Skills U) and the Skills U programs that are recipients of OAE funding.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.403 151B.408; Workforce Innovation and Opportunity Act (Adult Education and Family Literacy Act).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$150,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? Approximately \$150,000 per year.

(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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Office of Adult Education (Kentucky Skills U) (Amendment)

13 KAR 3:020. Provision of instruction for individuals sentenced by a court to participate in educational programs.

RELATES TO: KRS 151B.408 [~~KRS 151B.023, 151B.110~~], 533.200, 533.210

STATUTORY AUTHORITY: KRS 13A.100, 151B.408 [~~151B.023, 151B.110~~], 533.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 533.200 allows a judge to sentence individuals without high school credentials who are convicted of a crime by a court to participate in a program designed to improve their reading, living and employment skills. KRS 533.210 delegates responsibility for administering the program described in KRS 533.200 to the Office of Adult Education [~~Department for Adult Education and Literacy~~], KRS 151B.408 [~~KRS 151B.023 and 151B.110~~] delegates to the Education and Workforce Development Cabinet, Office of Adult Education [~~Department for Adult Education and Literacy and the State Board for Adult and Technical Education~~] the responsibility for adult education programs and services. This administrative regulation describes the method of providing services to this population, the cost of individual participation in the program, and the qualifications [~~manner of licensing~~] of teachers providing instruction.

Section 1. Instructional Program, Costs, Licensing. There shall be no costs to students ordered by the court to attend a [the] Kentucky Skills U instructional program described in KRS 533.200. The program services shall be services presently provided students enrolling in Skills U [adult education] programs. [Licensing and] Qualifications of instructors shall be determined by Kentucky Skills U [~~the local program providers~~].

JOHN C. GREGORY, Executive Director

For JACQUELINE COLEMAN, Secretary

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at October 26, 2021, 1:00 p.m. at 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 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: Natalie Cummins, GED® Administrator,

Office of Adult Education (Kentucky Skills U), 500 Mero Street Mail Stop 5SC, Frankfort Kentucky 40601; phone 502-892-3021; email Natalie.Cummins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Natalie Cummins

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 533.200 allows a judge to sentence individuals without high school credentials who are convicted of a crime by a court to participate in a program designed to improve their reading, living and employment skills. KRS 533.210 delegates responsibility for administering the program described in KRS 533.200 to the Office of Adult Education. KRS 151B.408 delegates to the Education & Workforce Development Cabinet, Office of Adult Education the responsibility for adult education programs and services.

(b) The necessity of this administrative regulation: This administrative regulation describes the method of providing services to the court-ordered population, the cost of individual participation in the program, and the qualifications of teachers providing instruction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The relevant statutes require the promulgation of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists with the implementation of 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 changes naming only.

(b) The necessity of the amendment to this administrative regulation: KYSU no longer resides within the Council on Postsecondary Education. Language changes are necessary to reflect inclusion in the EWDC.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation currently conforms to the content of the authorizing statutes. The amendment does not change the substance of the current regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment does not change the substance of the current regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Court-ordered adult education participants (numbers vary from year to year); Office of Adult Education (Kentucky Skills U) and Skills U programs located in 120 counties (funded by OAE).

(4) Provide an analysis of how the entities identified in question (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 regulated entities already comply with this regulation. The amendment changes language associated with OAE (KYSU) being moved to the EWDC.

(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 incurred by the affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Court-ordered adult education participants benefit from free education to help them improve their academic and employability skills. Skills U program benefit from guidance and coordination by OAE (KYSU).

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

(a) Initially: This administrative regulation is already being administered as part of basic funding.

(b) On a continuing basis: This administrative regulation is

already being administered as part of basic funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Adult Education receives Title II Workforce Innovation and Opportunity Act funding (through the Adult Education and Family Literacy Act) and funding through Senate Bill 1 (2000) from the Commonwealth of Kentucky.

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

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

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

The Office of Adult Education (Kentucky Skills U) and the Skills U programs that are recipients of OAE funding.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 533.200; KRS 533.210; KRS 533.200; KRS 151B.408

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

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 Office of Adult Education (Kentucky Skills U) (Amendment)

13 KAR 3:030. Qualifications for progressing satisfactorily through a GED® preparation program.

RELATES TO: KRS 151B.408 [KRS 151B.110], 151B.403 [151B.125], 161.011

STATUTORY AUTHORITY: KRS 151B.408 [KRS 151B.110], 161.011

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.408 [KRS 151B.110] delegates to the Office of Adult Education [State Board for Adult and Technical Education] the responsibility for adult education programs and services in Kentucky. KRS 161.011 authorizes the Office of Adult Education [State Board for Adult and Technical Education] to define

progressing satisfactorily through the GED® Preparation Program for the purposes of minimum qualifications for local school district classified employment positions. This administrative regulation provides the necessary definition.

Section 1. Satisfactory Progress Requirement. Making progress toward obtaining a [General Educational Development] GED® Diploma means:

(1) Enrollment in a Skills U [an Adult Education] program on an appropriate instructional level as determined by a reliable, commercially prepared, standardized test designed for adult students;

(2) Monthly verification of attendance by the local Skills U [an adult education] program official; and

(3) A [satisfactory progress rating on an annual] report documenting student hours of participation, along with their pre- and post-assessment results. The report will be submitted to the local school superintendent for determination of satisfactory progress [that is based upon periodic testing results by adult education teachers].

JOHN C. GREGORY, Executive Director

For JACQUELINE COLEMAN, Secretary

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at October 26, 2021, 1:00 p.m. at 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 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: Natalie Cummins, GED® Administrator, Office of Adult Education (Kentucky Skills U), 500 Mero Street Mail Stop 5SC, Frankfort Kentucky 40601; phone 502-892-3021; email Natalie.Cummins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Natalie Cummins

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 151B.408 delegates to the Office of Adult Education the responsibility for adult education programs and services in Kentucky. KRS 161.011 authorizes the Office of Adult Education to define progressing satisfactorily through the GED® Preparation Program for the purposes of minimum qualifications for local school district classified employment positions.

(b) The necessity of this administrative regulation: This administrative regulation provides the necessary definition.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The relevant statutes require the promulgation of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists with the implementation of 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 changes naming only.

(b) The necessity of the amendment to this administrative regulation: KYSU no longer resides within the Council on Postsecondary Education. Language changes are necessary to

reflect inclusion in the EWDC.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation currently conforms to the content of the authorizing statutes. The amendment does not change the substance of the current regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment does not change the substance of the current regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school boards in all 120 counties; Office of Adult Education (Kentucky Skills U); local Skills U programs in all 120 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: The affected entities currently comply with the administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in the proper submission of a report of satisfactory progress of those school board employees receiving adult education services.

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

(a) Initially: This administrative regulation is already being administered as part of basic funding.

(b) On a continuing basis: This administrative regulation is already being administered as part of basic funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Adult Education receives Title II Workforce Innovation and Opportunity Act funding (through the Adult Education and Family Literacy Act) and funding through Senate Bill 1 (2000) from the Commonwealth of Kentucky.

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

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

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts in all 120 counties; Office of Adult Education (Kentucky Skills U); Skills U Programs in all 120 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.408; KRS 161.011

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

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 Office of Adult Education (Kentucky Skills U) (Amendment)

13 KAR 3:040. GED Incentives Program.

RELATES TO: KRS 151B.408 [KRS 151B.023(1)], 151B.402 [151B.127], 151B.408 [151B.410]

STATUTORY AUTHORITY: KRS 151B.402 [KRS 151B.127(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.402 [KRS 151B.127] requires the Office of Adult Education [Department for Adult Education and Literacy], in conjunction with the Education and Workforce Development Cabinet [Council on Postsecondary Education], to promulgate administrative regulations for an incentive program provided to full-time employees (and their employers) who complete a [general education development] GED® diploma [(GED)] within one (1) year [and to their employers]. This administrative regulation prescribes the policies, activities, and procedures required for participants in this incentive program.

Section 1. Learning Contract Requirement. A learning contract between an eligible employee, the employer, and the adult education instructor shall be developed, in accordance with KRS 151B.402 [KRS 151B.127(1)(a)]. The local adult education program shall:

(1) Ensure that learning contract form KYSU-29 [DAEL-29], incorporated by reference, is fully completed and signed by the parties;

(2) Retain the original learning contract form for a period of three (3) years after the employee's completion of the program;

(3) No later than ten (10) days after the final signature is obtained on the learning contract, submit a copy to:

(a) The employee;

(b) The employer; and

(c) Kentucky Skills U [The Department for Adult Education and Literacy].

Section 2. Attendance Reports. A local Skills U [adult education] program official shall submit monthly attendance reports, using form KYSU-30 [DAEL-30], incorporated by reference, to the Office of Adult Education [Department for Adult Education and Literacy] and the employer, in compliance with KRS 151B.402 [KRS 151B.127(1)(b)]. The local Skills U [adult education] program shall:

(1) Use sign-in and sign-out sheets to verify the information reported on attendance reports;

(2) Retain copies of sign-in and sign-out sheets for three (3) years following the employee's completion of this program; and

(3) Provide copies of sign-in and sign-out sheets to Office of Adult Education [Department for Adult Education and Literacy] staff upon request.

Section 3. Final Report. (1) The local Skills U [adult education] program shall:

(a) Complete a final report, using form KYSU-31 [DAEL-31], incorporated by reference, in compliance with KRS 151B.402 [KRS

151B.127(1)(e)];

(b) Retain the original final report; and

(c) No later than ten (10) days after the final report is created, submit a copy of the final report to:

1. The employee;

2. The employer;

3. The Kentucky Revenue Cabinet; and

4. The Office of Adult Education [The Department for Adult Education and Literacy].

(2) The employee shall provide the final report to a public postsecondary institution when applying for a tuition discount as provided in KRS 151B.402 [KRS 151B.127(2)(b)].

(3) The employer shall provide the final report to the Kentucky Revenue Cabinet when applying for a tax credit as provided in KRS 151B.402 [KRS 151B.127(3)].

Section 4. Incorporation by Reference. (1) The following information is incorporated by reference:

(a) "GED-Incentive Program Learning Contract (KYSU-29 [DAEL-29])", 10/26/00 edition, Education and Workforce Development Cabinet [Cabinet for Workforce Development], Office of Adult Education [Department for Adult Education and Literacy];

(b) "GED-Incentive Program Attendance Record (KYSU-30 [DAEL-30])", 7/10/01 edition", Education and Workforce Development Cabinet [Cabinet for Workforce Development], Office of Adult Education [Department for Adult Education and Literacy]; and

(c) "GED-Incentive Program Final Report (KYSU-31 [DAEL-31])", 7/10/01 edition", Education and Workforce Development Cabinet [Cabinet for Workforce Development], Office of Adult Education [Department for Adult Education and Literacy].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Adult Education [Department for Adult Education and Literacy], [Capital Plaza Tower], Fifth [Third] Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN C. GREGORY, Executive Director

For JACQUELINE COLEMAN, Secretary

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 4:30 p.m.

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CONTACT PERSON: Natalie Cummins, GED® Administrator, Office of Adult Education (Kentucky Skills U), 500 Mero Street Mail Stop 5SC, Frankfort Kentucky 40601; phone 502-892-3021; email Natalie.Cummins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Natalie Cummins

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 151B.402 requires the Office of Adult Education, in conjunction with the Education & Workforce Development Cabinet, to promulgate administrative regulations for an incentive program provided to full-time employees (and their employers) who complete a GED® diploma within one (1) year.

(b) The necessity of this administrative regulation: This

administrative regulation prescribes the policies, activities, and procedures required for participants in this incentive program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation currently conforms to the content of the authorizing statutes. The amendment does not change the substance of the current regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment does not change the substance of the current 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: This amendment changes naming only.

(b) The necessity of the amendment to this administrative regulation: KYSU no longer resides within the Council on Postsecondary Education. Language changes are necessary to reflect inclusion in the EWDC.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation currently conforms to the content of the authorizing statutes. The amendment does not change the substance of the current regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment does not change the substance of the current regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Employees wishing to receive a tuition discount and employers wishing to obtain the relevant tax credit (number is currently zero); Kentucky Public Universities; Kentucky Community and Technical College System; Office of Adult Education (Kentucky Skills U).

(4) Provide an analysis of how the entities identified in question (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 affected entities currently comply with the administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employees will receive a variable tuition discount at a public postsecondary institution. Employers will receive a variable tax credit.

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

(a) Initially: This administrative regulation is already being administered as part of basic funding.

(b) On a continuing basis: This administrative regulation is already being administered as part of basic funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Adult Education receives Title II Workforce Innovation and Opportunity Act funding (through the Adult Education and Family Literacy Act) and funding through Senate Bill 1 (2000) from the Commonwealth of Kentucky.

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

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

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Kentucky public universities; Kentucky Community and Technical College System; Office of Adult Education (Kentucky Skills U).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.402

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

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 Office of Adult Education (Kentucky Skills U) (Amendment)

13 KAR 3:050. GED® eligibility requirements.

RELATES TO: KRS 158.135(1)(a), 158.143, 158.6455, 151B.403 [164.0064]

STATUTORY AUTHORITY: KRS 151B.403 [KRS 164.0064(1)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.0064(1) requires that the Kentucky Skills U Program [Kentucky Adult Education Program] within the Education and Workforce Development Cabinet [Council on Postsecondary Education] promulgate administrative regulations to establish programs that, upon successful completion, result in the award of a high school equivalency diploma. KRS 151B.403 [KRS 164.0064(2)] requires that at least one (1) of these programs shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education (OCTAE), which upon passing, shall entitle students to receive a high school equivalency diploma. 13 KAR 3:010 identifies the GED® test as the valid means of measuring educational achievement in an adult who is a non-high school graduate and of comparing the adult's competency to that of high school graduates. This administrative regulation establishes the eligibility requirements for taking the GED® test.

Section 1. Eligibility Requirements. The GED® test shall be administered to an applicant with a Kentucky address who:

(1) Has reached his or her 19th birthday;

(2)(a) Has reached his or her 18th birthday; and

(b)1. Except as established in Section 2 of this administrative regulation, has officially withdrawn from public or private school for at least ninety (90) days as certified by the local school district;

2. Is committed or placed in an adult correctional facility;

3. Is enrolled in the Jobs Corps Program of Instruction; or

4. Is enrolled in a National Guard Youth "ChalleNGe" program;

- (3)(a) Has reached his or her 17th birthday;
- (b) Is considered a state agency child, as defined by KRS 158.135(1)(a); and
- (c) Is approved for the GED® test by the local school superintendent.

Section 2. Superintendent Waiver. The local school superintendent or designee in the district where the applicant currently resides may waive the ninety (90) day school withdrawal provision of Section 1(2)(b)1. of this administrative regulation if necessary due to a deadline for postsecondary enrollment, condition of employment, medical reason, family crisis, or other extenuating circumstances.

Section 3. Test Readiness. An applicant shall successfully complete and pass an official readiness test with the same passing scores required to pass the GED® test prior to taking the GED® test.

JOHN C. GREGORY, Executive Director

For JACQUELINE COLEMAN, Secretary

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at October 26, 2021, 1:00 p.m. at 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 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: Natalie Cummins, GED® Administrator, Office of Adult Education (Kentucky Skills U), 500 Mero Street Mail Stop 5SC, Frankfort Kentucky 40601; phone 502-892-3021; email Natalie.Cummins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Natalie Cummins

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 151B.402 requires that the Kentucky Skills U Program within the Education & Workforce Development Cabinet promulgate administrative regulations to establish programs that, upon successful completion, result in the award of a high school equivalency diploma. KRS 151B.403 requires that at least one (1) of these programs shall include a test aligned with the College and Career Readiness Standards for Adult Education, or any other standards adopted by the federal Office of Career, Technical, and Adult Education (OCTAE), which upon passing, shall entitle students to receive a high school equivalency diploma. 13 KAR 3:010 identifies the GED® test as the valid means of measuring educational achievement in an adult who is a non-high school graduate and of comparing the adult's competency to that of high school graduates.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements for taking the GED® test.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation currently conforms to the content of the authorizing statutes. The amendment does not change the substance of the current regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment does not change the substance of the current 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: This amendment changes naming only.

(b) The necessity of the amendment to this administrative regulation: KYSU no longer resides within the Council on Postsecondary Education. Language changes are necessary to reflect inclusion in the EWDC.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation currently conforms to the content of the authorizing statutes. The amendment does not change the substance of the current regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment does not change the substance of the current regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School boards in all 120 counties; Office of Adult Education (Kentucky Skills U); Skills U programs in all 120 counties; any person seeking to take the GED® exam (317,000 without high school diploma or GED® diploma).

(4) Provide an analysis of how the entities identified in question (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 affected entities currently comply with the administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will benefit from taking the GED® exam.

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

(a) Initially: This administrative regulation is already being administered as part of basic funding.

(b) On a continuing basis: This administrative regulation is already being administered as part of basic funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Adult Education receives Title II Workforce Innovation and Opportunity Act funding (through the Adult Education and Family Literacy Act) and funding through Senate Bill 1 (2000) from the Commonwealth of Kentucky.

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

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

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School boards in all 120 Kentucky counties; Office of Adult Education (Kentucky Skills U); Skills U programs in 120 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.403; Workforce Innovation and Opportunity Act (Adult Education and Family Literacy Act).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

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

(c) How much will it cost to administer this program for the first year? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

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
Office of Adult Education (Kentucky Skills U)
(Amendment)**

13 KAR 3:060. High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College System institutions.

RELATES TO: KRS 151B.403 [~~KRS 164.0064~~], 151B.408 [~~164.0234~~]

STATUTORY AUTHORITY: KRS 151B.408 [~~KRS 164.0064(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.408 [~~KRS 164.0064(1)~~] requires that the Kentucky Skills U [~~Adult Education~~] Program within the Education and Workforce Development Cabinet [~~Council on Postsecondary Education~~] promulgate administrative regulations to establish programs aligned with the College and Career Readiness Standards for Adult Education, or any other similar standards adopted by the federal Office of Career, Technical, and Adult Education, which upon successful completion, shall result in the issuance of a High School Equivalency Diploma. This administrative regulation establishes the criteria and conditions for the issuance of a high school equivalency diploma upon successful completion of credit hours at Kentucky Community and Technical College institutions in certain content areas.

Section 1. Definitions. (1) "Credit for prior learning" means college credit for the college-level knowledge and skills gained from non-college instructional programs or life experiences, including but not limited to credit awarded pursuant to 13 KAR 2:025 and KRS 164.2951(2)(e), employment, military experience, civic activities, and volunteer service. Credit is evaluated through nationally standardized exams in specific disciplines, challenge exams for specific courses at individual institutions, evaluations of non-college training programs, and individualized assessments.

(2) "Eligible candidate" means an individual that:

(a) Has reached his or her 19th birthday;

(b) Has not obtained a high school diploma or its equivalent;

(c) Meets the admission and placement requirements of 13 KAR 2:020; and

(d) Maintains a Kentucky address.

(3) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13).

(4) "KYSU [KYAE]" means the Kentucky Skills U [~~Adult Education~~] program within the Education & Workforce Development Cabinet [~~Council on Postsecondary Education~~].

(5) "OCTAE" [OVAE] means the U.S. Department of Education Office of Career Technical [~~Vocational~~] and Adult

Education.

(6) "Successful completion" means:

(a) Passing with a course grade greater than or equal to "C" constituting a 2.0 on a 4.0 scale; or

(b) Being awarded credit for prior learning as indicated on an official KCTCS transcript.

Section 2. Course Requirements. (1) An eligible candidate shall qualify for a Commonwealth of Kentucky High School Equivalency Diploma upon successful completion of a minimum of three (3) credit hours in each of the following content areas as certified with an official KCTCS transcript:

(a) Written communication;

(b) Quantitative reasoning;

(c) Natural sciences; and

(d) Social and behavioral sciences.

(2) KCTCS and KYSU [KYAE] shall review the competencies gained in entry-level courses in these content areas. Those entry-level courses with competencies that meet or exceed the skills demonstrated through passing the GED® exam at college ready level shall be eligible for the program and published in a list on the KYSU [KYAE's Web site] Web site.

Section 3. Issuance of Commonwealth of Kentucky High School Equivalency Diploma. An eligible candidate shall provide the following to Kentucky Skills U [~~Adult Education~~] for the High School Equivalency Diploma to be issued:

(1) Legal name, date of birth, social security number, phone number, email address, home address, list of eligible courses, and signature;

(2) A twenty-five (25) dollar non-refundable application and processing fee; and

(3) An official KCTCS transcript documenting successful completion of the qualifying credit hours.

JOHN C. GREGORY, Executive Director

For JACQUELINE COLEMAN, Secretary

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at October 26, 2021, 1:00 p.m. at 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 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: Natalie Cummins, GED® Administrator, Office of Adult Education (Kentucky Skills U), 500 Mero Street Mail Stop 5SC, Frankfort Kentucky 40601; phone 502-892-3021; email Natalie.Cummins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Natalie Cummins

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 151B.403 requires that the Kentucky Skills U Program within the Education & Workforce Development Cabinet promulgate administrative regulations to establish programs aligned with the College and Career Readiness Standards for Adult Education, or any other similar standards adopted by the federal Office of Career, Technical, and Adult Education, which upon successful completion, shall result in the issuance of a High School Equivalency Diploma.

(b) The necessity of this administrative regulation: This

administrative regulation establishes the criteria and conditions for the issuance of a high school equivalency diploma upon successful completion of credit hours at Kentucky Community and Technical College institutions in certain content areas.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation currently conforms to the content of the authorizing statutes. The amendment does not change the substance of the current regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment does not change the substance of the current 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: This amendment changes naming only.

(b) The necessity of the amendment to this administrative regulation: KYSU no longer resides within the Council on Postsecondary Education. Language changes are necessary to reflect inclusion in the EWDC.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation currently conforms to the content of the authorizing statutes. The amendment does not change the substance of the current regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation currently assists in the effective administration of statutes. The amendment does not change the substance of the current regulation.

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

High School Equivalency-seekers enrolled in KCTCS; Kentucky Community and Technical College System; Office of Adult Education (Kentucky Skills U).

(4) Provide an analysis of how the entities identified in question (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 affected entities currently comply with the administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KCTCS students complying with this regulation will receive a high school equivalency diploma from the Commonwealth of Kentucky.

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

(a) Initially: This administrative regulation is already being administered as part of basic funding.

(b) On a continuing basis: This administrative regulation is already being administered as part of basic funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Adult Education receives Title II Workforce Innovation and Opportunity Act funding (through the Adult Education and Family Literacy Act) and funding through Senate Bill 1 (2000) from the Commonwealth of Kentucky. Additionally, this regulation allows for the collection of a processing fee for issuance of the diploma.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Community and Technical College System; Office of Adult Education (Kentucky Skills U).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 151B.403

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 generates negligible 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 generates negligible revenue.

(c) How much will it cost to administer this program for the first year? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administering this regulation. Costs are covered in the basic funding received by Skills U programs through OAE (KYSU).

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:

DEPARTMENT OF LAW

Department of Criminal Litigation

Office of Trafficking and Abuse Prevention and Prosecution (Amendment)

40 KAR 3:020. Protocol for operation of local multidisciplinary teams on child sexual abuse.

RELATES TO: KRS 431.600-431.660, 620.020-620.050

STATUTORY AUTHORITY: KRS 431.600(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 431.600 requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to develop and the Attorney General to promulgate administrative regulations for a model protocol. The model shall be used by local teams in defining the roles of members in the investigation of child sexual abuse when teams include members in addition to staff from the Department for Social Services and law enforcement.

Section 1. Model Protocol. The Kentucky Multidisciplinary Commission on Child Sexual Abuse shall:

(a) Review the Model Protocol for revision at least every six (6) years;

(b) Amend the Model Protocol as necessary;

(c) Distribute the Model Protocol to local multidisciplinary teams;

Section 2. Local Protocols. (1) KRS 431.600 requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to approve local protocols. In those instances in which the Commission rejects local protocols submitted by local multidisciplinary teams, the Commission shall provide the reasons for rejection and request revisions and resubmission.

(2) Local protocols shall be approved for no longer than a six year term.

(3) To seek the Commission's review and approval, a local multidisciplinary team shall submit its local protocols to the Kentucky Multidisciplinary Commission on Child Sexual Abuse at 1024 Capital Avenue, Frankfort, Kentucky 40601.

Section 3. Incorporation of Reference. (1) The "Model Protocol for [the Operation of] Local Multidisciplinary Teams on Child Sexual Abuse, July 2015 [September 1995] Edition", developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby incorporated by reference. (2) This document may be inspected, copied or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday. The material incorporated by reference is also available on the Attorney General's Web site at ag.ky.gov.

This is to certify that the Kentucky Multidisciplinary Commission on Child Sexual Abuse adopted the revised Model Protocol, which is incorporated by reference in this regulation, as required by KRS 431.600(1).

DANIEL CAMERON, Attorney General
CAROLINE RUSCHELL, Chair

APPROVED BY AGENCY: August 13, 2021

FILED WITH LRC: August 13, 2021 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2021, at 1:00 p.m. Eastern Time at 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 October 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: Theresa Gargan, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5436; email Theresa.gargan@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Theresa Gargan

(1) Provide a brief summary of:

(a) What this administrative regulation does: As required by KRS 431.600, this administrative regulation incorporates by reference the model protocol for local multi-disciplinary teams. This administrative regulation also sets forth the method by which local multidisciplinary teams may submit local protocols for review and approval by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to incorporate by reference the model protocol for local multi-disciplinary teams, as required by KRS 431.600. This administrative regulation also sets forth the method for local multidisciplinary teams to submit local protocols for review and approval by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. Although this administrative regulation incorporates by reference the 2015 revisions to the model protocol, the Kentucky Multidisciplinary Commission on Child Sexual Abuse is currently revising the model protocol and anticipates amending this administrative regulation to incorporate those revisions once finished.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 431.600(1) requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to develop the model protocol governing roles, responsibilities, and procedures for investigating reported or suspected sexual abuse of a child. The authorizing statute requires the Office of the Attorney General to

promulgate an administrative regulation that incorporates the model protocol.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 431.600(1) requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to develop the model protocol governing roles, responsibilities, and procedures for investigating reported or suspected sexual abuse of a child. The authorizing statute requires the Office of the Attorney General to promulgate an administrative regulation that incorporates the model protocol.

(2) If 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 incorporates by reference the most recent version of the model protocol. The Kentucky Multidisciplinary Commission on Child Sexual Abuse is currently revising the model protocol and anticipates amending this administrative regulation to incorporate those revisions once finished.

(b) The necessity of the amendment to this administrative regulation: KRS 431.600(1) requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to develop the model protocol governing roles, responsibilities, and procedures for investigating reported or suspected sexual abuse of a child. The amendment incorporates by reference the most recent version of the model protocol. The Kentucky Multidisciplinary Commission on Child Sexual Abuse is currently revising the model protocol and anticipates amending this administrative regulation to incorporate those revisions once finished.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 431.600(1) requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to develop the model protocol governing roles, responsibilities, and procedures for investigating reported or suspected sexual abuse of a child. The authorizing statute requires the Office of the Attorney General to promulgate an administrative regulation that incorporates the model protocol.

(d) How the amendment will assist in the effective administration of the statutes: The amendment incorporates by reference the most recent model protocol, which governs roles, responsibilities, and procedures for investigating reported or suspected sexual abuse of a child. The amendment also sets forth the method by which local multidisciplinary teams may submit local protocols for review and approval by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, as required by KRS 431.600(2).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Multidisciplinary Commission on Child Sexual Abuse, the Cabinet for Health and Family Services, and 120 local multidisciplinary teams. This administrative regulations also affects law enforcement involved in investigating reported or suspected sexual abuse of a child.

(4) Provide an analysis of how the entities identified in question (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 administrative regulations requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to review the model protocol on a regular basis. The administrative regulation also identifies how local multidisciplinary teams may submit local protocols for review.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Through regular reviews and revision of the model protocol, the Kentucky Multidisciplinary Commission on Child Sexual Abuse will ensure that it is meeting its statutory obligations.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

- (a) Initially: No increase in funding is anticipated.
- (b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Office of the Attorney General 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: No increase in fees or funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation because the requirements in this regulation apply only a limited set of state and local 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? This administrative regulation will impact the Kentucky Multidisciplinary Commission on Child Sexual Abuse and members of each local multidisciplinary team, including children's advocacy centers, law enforcement, prosecutors, and the Department for Community Based Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 431.600(1) requires the Kentucky Multidisciplinary Commission on Child Sexual Abuse to develop the model protocol governing roles, responsibilities, and procedures for investigating reported or suspected sexual abuse of a child. The authorizing statute requires the Office of the Attorney General to promulgate an administrative regulation that incorporates by reference the model protocol.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no significant additional costs for the Kentucky Multidisciplinary Commission on Child Sexual Abuse or the local multi-disciplinary teams.

(d) How much will it cost to administer this program for subsequent years? The costs for the amendment are not expected to increase costs for the Kentucky Multidisciplinary Commission on Child Sexual Abuse.

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. 40 KAR 3:020

DEPARTMENT OF LAW Department of Criminal Litigation (Amendment)

40 KAR 6:010. Kentucky Victim and Witness Protection Program.

RELATES TO: ~~KRS 15.247[1998 Ky. Acts ch. 606, sec. 50, ch. 616, Part 1, Operating Budget, A. Government Operations, 5. Attorney General]~~

STATUTORY AUTHORITY: KRS 15.247[1998 Ky. Acts ch. 606, sec. 50(1), (2), (6)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.247 [1998 Ky. Acts ch. 606, sec. 50] provides that the Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families. This administrative regulation establishes the Victim and Witness Protection Program.

Section 1. Definitions. (1) "Council" means the Prosecutors Advisory Council established by KRS 15.705.

(2) "Law enforcement agency" means a lawfully organized police unit or police force of county, city, or metropolitan government, employing law enforcement officers as that term is defined in KRS 15.310.

~~(a) The Kentucky State Police;~~

~~(b) A sheriff's office;~~

~~(c) A county police department; or~~

~~(d) A city police department.]~~

(3) "Program" means the Kentucky Victim and Witness Protection Program.

(4) "Prosecutor" means a:

(a) Commonwealth's attorney or his or her authorized assistant; or

(b) County attorney or his or her authorized assistant.

(5) "Protective services" is defined by KRS 15.247 [1998 Ky. Acts ch. 606, sec. 50].

(6) "Victim or witness at risk of harm" means a person who is:

(a) 1. A crime victim as defined in KRS 421.500(1); or

2. A crime witness expected to testify before a grand jury, at a trial, or other judicial proceeding; or

3. A member of the immediate family of a crime victim or crime witness; and

(b) Cooperating with the law enforcement agency providing the protective services and performing the investigation, and the prosecutor of a criminal case; and

(c) At substantial risk of imminent serious physical injury; and

(d) Unable to provide protective services to himself.

Section 2. Eligible Costs. (1) Excluding distributions of advances pursuant to Section 5 of this administrative regulation, program funding shall be limited to the reimbursement of the costs of protective services provided to a victim or witness at risk of harm.

(2) Reimbursement shall be limited to the costs of protective services provided by a law enforcement agency to a victim or witness at risk of harm for a maximum of 180 days in each criminal case. Each day during which protective services are provided shall count as one (1) day.

(3) Reimbursement shall be limited to the costs for protective services that:

(a) Were paid by the law enforcement agency with the funds of:

1. The law enforcement agency; or

2. A fiscal court; or

3. A city government; or

4. Other fund sources available to the law enforcement agency; and

(b) Meet the requirements established by the provisions of this administrative regulation; and

(c) Are not funded by appropriations or other funds allocated to the law enforcement agency that provided the protective services.

(4) Reimbursement shall be limited to the costs of protective

services that were necessary and reasonable for the protection of a victim or witness at risk of harm.

(5) The following costs of protective services shall be deemed reasonable:

(a) The regular hourly wage and benefit rate, or the regular overtime hourly wage and benefit rate when applicable, of the employee of a law enforcement agency that provided protective services to a victim or witness at risk of harm.

(b) Cost of lodging that:

1. Is the most economical lodging, at government rates if available; and

2. Has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

(c) Cost of meals shall be reimbursed at the rates provided in 200 KAR 2:006. [Meals, as follows:

1. ~~Areas designated as nonhigh rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of six (6) dollars, per person, for breakfast; seven (7) dollars, per person, for lunch; and fourteen (14) dollars, per person, for supper; and~~

2. ~~Areas designated as high rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of seven (7) dollars, per person, for breakfast; eight (8) dollars, per person, for lunch; and eighteen (18) dollars, per person, for supper.]~~

(d) Cost of the most economical personal hygiene products.

(e) Cost of emergency long distance phone calls to family members or employers.

(f) Cost of clothing items that have been determined by the law enforcement agency to be required for the protection of the victim or witness at risk of harm.

(g) Cost of child care, at the most economical rate, that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm. (h) Cost of the temporary emergency use of a cellular phone.

(i) Actual mileage at the rate designated on the Office of the Controller's Web site listed in Section 1(6) in 200 KAR 2:006 [at twenty-seven (27) cents per mile].

(j) Cost of a rental vehicle at the most economical rate available.

(k) Cost of cab, bus, train, or air fare at the most economical rate available that has been determined by the law enforcement agency to be appropriate transportation for the protection of the victim or witness at risk of harm.

(l) Cost of temporary storage of a vehicle at the most economical rate available that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

(m) Cost of the installation, rekeying, repair, or replacement of locks at a locksmith's regular rate for government work.

(n) Cost of the installation of a temporary alarm at an installer's regular rate for government work.

(6) The Attorney General shall approve the reimbursement of the costs of protective services that are not specified in subsection (5) of this section, if he has determined that under the circumstances the costs were necessary and reasonable for the protection of a victim or witness at risk of harm.

(7) Reimbursement shall be limited to the most economical costs, at government rates if applicable, of protective services that met the needs of the protective services.

(8) Reimbursement of the cost of protective equipment shall be limited to the portion of its value allocated to use in the protective services, if the equipment is retained by the victim or witness at risk of harm.

(9) A law enforcement agency providing protective services shall utilize an available existing government service, if it determines that the service is appropriate for the protection of the victim or witness at risk of harm.

(10) A law enforcement agency shall comply with applicable state or local procurement requirements.

Section 3. Law Enforcement Agency's Application for

Reimbursement. (1) A law enforcement agency seeking reimbursement of the costs of protective services provided to a victim or witness at risk of harm shall submit an application for reimbursement to a prosecutor who has jurisdiction over the crime.

(2) An application for reimbursement shall be made on the "Kentucky Victim and Witness Protection Program Application for Reimbursement" form. [

(3) ~~An application for reimbursement shall include:~~

(a) ~~The name of the law enforcement agency.~~

(b) ~~The criminal case name and number or defendant's name, if known.~~

(c) ~~The name of the person receiving the protective services.~~

(d) ~~A signed statement by a law enforcement officer that the person receiving the protective services is a victim or witness at risk of harm.~~

(e) ~~A complete description of the protective services provided, including:~~

1. ~~The type of protective services provided;~~

2. ~~The name of person who received the services;~~

3. ~~The dates the services were provided;~~

4. ~~The cost of the protective services;~~

5. ~~A statement whether the law enforcement agency expects to submit additional applications for reimbursement for the criminal case; and~~

6. ~~A statement whether the costs of protective services were paid with an advance of program funds specified in Section 5 of this administrative regulation.~~

(f) ~~Excluding the receipts for meals to be reimbursed pursuant to Section 2(5)(c) of this administrative regulation, the receipts for the protective services provided.~~

(g) ~~A statement signed by the head of the law enforcement agency or his authorized agent that the:~~

1. ~~Law enforcement agency requests reimbursement of the costs of the protective services provided;~~

2. ~~Costs of the protective services meet the requirements established by the provisions of this administrative regulation; and~~

3. ~~Costs of the protective services are not funded by appropriations or other funds allocated to the law enforcement agency.~~

(4) ~~The completed application for reimbursement shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.]~~

Section 4. Prosecutor's Application for Reimbursement. (1) A prosecutor shall review an application for reimbursement submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

(2) If the prosecutor determines to submit the application for reimbursement to the Attorney General, he shall sign a statement that he recommends reimbursement of all or part of the costs of the protective services.

(3) An application for reimbursement submitted from a prosecutor to the Attorney General shall be transmitted by the Attorney General to the council for review and recommendations.

(4) The council shall review and consider an application for reimbursement at a regular meeting, or at a special meeting called for the purpose of reviewing applications for reimbursement.

(5) The council shall consider applications in the order received.

(6) The council shall recommend that:

(a) All or part of an application for reimbursement be approved; or

(b) An application for reimbursement be denied.

(7) The council shall base its recommendation on the requirements established by the provisions of this administrative regulation.

(8) The council shall submit its recommendation to the Attorney General.

(9) The Attorney General shall review the recommendation of the council and determine whether to:

(a) Approve all or part of an application for reimbursement; or

(b) Deny an application for reimbursement.

(10) If the Attorney General approves all or part of an

application for reimbursement, the law enforcement agency that provided the protective services shall be reimbursed from program funds in the amount approved by the Attorney General.

(11) An application for reimbursement of the costs of protective services may be submitted at any time, after the protective services were provided, during the state fiscal year in which the services were provided.

Section 5. Application for Advance of Funds. (1) A law enforcement agency requesting an advance of program funds shall submit an application for an advance of program funds to a prosecutor who has jurisdiction over the crime.

(2) An advance of program funds shall be limited to a maximum of \$500 for each application for an advance of program funds.

(3) An advance of program funds shall be limited to the payment of the costs of protective services that:

(a) Have been provided by the law enforcement agency to a victim or witness at risk of harm; and

(b) Cannot be paid with other funds available to the law enforcement agency.

(4) An application for an advance of Program funds shall be made on a "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds" form.

(5) ~~[An application shall include a statement signed by the head of the law enforcement agency or his authorized agent that:~~

~~(a) It has incurred or will incur costs of protective services that must be paid before the law enforcement agency can arrange for payment of the costs;~~

~~(b) It requests an advance of program funds;~~

~~(c) It intends to submit an application for reimbursement of the costs of the protective services pursuant to Section 3 of this administrative regulation;~~

~~(d) It will use the advance of program funds for the provision of protective services pursuant to the provisions of this administrative regulation; and~~

~~(e) The costs of the protective services for which the advance is requested cannot be paid with other funds available to the law enforcement agency.~~

~~(6) The application shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.~~

(7) The prosecutor shall review an application for an advance of program funds submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

~~(8)(9)~~ If the prosecutor determines to submit the application for an advance of program funds to the Attorney General, he shall:

(a) Sign a statement that he recommends all or part of the advance; and

(b) Submit the application for an advance of program funds to the Attorney General.

~~(7)(9)~~ The Attorney General shall distribute an advance of program funds to a law enforcement agency if he determines that an application complies with the provisions of this section.

~~(10) The distribution of an advance of program funds shall be made during the Office of the Attorney General's regular business hours, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays.~~

~~(8)(11)~~ The advance of program funds shall be limited to the amount recommended by the prosecutor.

~~(9) [(12)]~~ The advance of program funds shall be made payable to the:

(a) Law enforcement agency;

(b) Head of the law enforcement agency; or

(c) Authorized agent of the head of the law enforcement agency.

~~(10) [(13)]~~ The law enforcement agency shall report an expenditure of an advance of program funds on its application for reimbursement specified in Section 3 of this administrative regulation.

~~(11) [(14)]~~ The law enforcement agency shall:

(a) Report an unexpended advance of program funds on its application for reimbursement to the prosecutor; and

(b) Return the unexpended advance of program funds with its application for reimbursement to the prosecutor.

~~(12)(15)~~ The law enforcement agency shall repay the Attorney General the amount of an advance of program funds that it has expended, if the application for reimbursement of the costs of protective services for which the advance was made is denied.

~~(13)(16)~~ A law enforcement agency shall not submit an application for an advance of program funds for the costs of protective services for a victim or witness at risk of harm if it has:

(a) Submitted an application for an advance of program funds for the costs of protective services for that victim or witness at risk of harm;

(b) Received an advance of Program funds; and

(c) Not submitted an application for reimbursement of the costs of the protective services provided with the advance of the program funds.

Section 6. Notice of Estimated Costs. (1) If a law enforcement agency begins providing protective services for which it intends to submit an application for reimbursement to a prosecutor, it shall notify the prosecutor and Attorney General, within three (3) business days, on a "Kentucky Victim and Witness Protection Program Notice of Estimated Costs" form, of the estimated costs and time period of the protective services it expects to include on the application.

(2) If a law enforcement agency determines that the cost of the protective services it expects to include on an application for reimbursement will be greater than the estimated costs previously reported, it shall immediately submit an updated notice of estimated costs to the prosecutor and Attorney General.

(3) If the Attorney General determines that the total of the estimated costs received by the Attorney General pursuant to subsection (1) of this section exceeds the available program funding, he shall notify the law enforcement agencies that have submitted a notice of estimated costs, and law enforcement agencies that submit a notice of estimated costs thereafter, that program funding may become obligated before the review of all law enforcement agency applications for reimbursement are completed.

~~(4) If the Attorney General determines that all program funding has been obligated for the remainder of a fiscal year, he shall notify all prosecutors and law enforcement agencies that:~~

~~(a) Funding has been obligated; and~~

~~(b) If additional funding for the program becomes available, applicants:~~

~~1. Will be notified; and~~

~~2. May resubmit applications for funding.]~~

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Victim and Witness Protection Program Application for Reimbursement OAG Form VWPP-03 [VWPP04] (08/21 [10/98])";

(b) "Kentucky Victim and Witness Protection Program Notice of Estimated Costs OAG Form VWPP-02 (08/21 [10/98])"; and

(c) "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds OAG Form VWPP-03 (08/21 [10/98])".

(2) This material may be inspected, copied, or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DANIEL CAMERON, Attorney General

APPROVED BY AGENCY: August 13, 2021

FILED WITH LRC: August 13, 2021 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 1:00 p.m. Eastern Time at 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 October 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: Theresa Gargan, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5436; fax 502-573-1009; email Theresa.gargan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Theresa Gargan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the program for the protection of crime victims and witnesses and their immediate families required by KRS 15.247.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the program for the protection of crime victims and witnesses and their immediate families required by KRS 15.247.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 15.247, because it establishes the program for the protection of crime victims and witnesses and their immediate families.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 15.247 by defining the terms and forms used to administer the program for the protection of crime victims and witnesses and their immediate families.

(2) If 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 aligns reimbursement for meals and mileage with the rates for state employees as established by the Finance and Administration Cabinet.

(b) The necessity of the amendment to this administrative regulation: This amendment aligns reimbursement for meals and mileage with the rates for state employees as established by the Finance and Administration Cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.247 authorizes the Attorney General to develop and administer a program for the protection of crime victims and witnesses and their immediate families.

(d) How the amendment will assist in the effective administration of the statutes: This amendment aligns reimbursement for meals and mileage with the rates for state employees as established by the Finance and Administration Cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects all agencies providing protective services for which they will seek reimbursement under the program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An agency seeking reimbursement for protective services must comply with this regulation and submit the required forms, which are incorporated by reference.

(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 this administrative

regulation or amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An agency that complies with the administrative regulation and submits the required forms will be eligible for reimbursement for the provisions of protective services.

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

(a) Initially: There is no additional cost, as a result of the amendment, to administer this administrative regulation initially. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate.

(b) On a continuing basis: There is no additional cost, as a result of the amendment, to administer this administrative regulation on a continuing basis. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The witness protection program is funded by proceeds from the Master Tobacco Settlement Agreement. The current balance in the fund is roughly \$11,500.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. During the last five fiscal years, the witness protection program has expended roughly \$400 per year. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate. Currently, there is no need to increase funding to implement this amendment to the administrative regulation; however, additional funding may be necessary to implement this administrative regulation in the future.

(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 is not appropriate 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? This administrative regulation will affect the Office of the Attorney General, prosecutors, and law enforcement agencies that provide protective services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.247 requires and authorizes the action taken by this administrative regulation.

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

(a) How much 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 additional revenue for state or local governments during the first year 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? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? To administer the program under the amendments to the

regulation will not substantially increase costs during the first year. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate.

(d) How much will it cost to administer this program for subsequent years? To administer the program under the amendments to the regulation will not substantially increase costs during subsequent years. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate.

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 (+/-): During the last five fiscal years, the witness protection program has expended roughly \$400 per year. At this rate, and assuming there is no increased need in subsequent years, the program is sufficiently funded. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program. Currently, there is no need to increase funding to implement this amendment to the administrative regulation.

Other Explanation: Not applicable.

DEPARTMENT OF LAW
Department of Criminal Litigation
Office of Trafficking and Abuse Prevention and Prosecution
(Amendment)

40 KAR 6:020. Funding assistance from the child victims' trust fund [for child sexual abuse medical examinations].

RELATES TO: KRS 15.900, 15.920, 15.935[(4)(b)], 41.400

STATUTORY AUTHORITY: KRS 15.180, 15.935

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.935(1) authorizes the Child Sexual Abuse and Exploitation Prevention Board to disburse available money from the child victims' trust fund, upon legislative appropriations, for the purposes, listed in the order of preference, stated in KRS 15.935(1)(a) through (g). This administrative regulation establishes standards and criteria governing the Board's disbursement of money from the fund[KRS 15.935(1)(b) authorizes the Child Sexual Abuse and Exploitation Prevention Board to fund, from the Child Victims' Trust Fund created pursuant to KRS 41.400, the cost of child sexual abuse medical examinations to the extent the fee for an examination is a service not eligible to be paid for by Medicaid or private insurance. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance for the case management aspects of child sexual abuse medical examinations in accordance with KRS 15.935].

Section 1. Definitions. (1) ["Applicant" means an eligible provider applying for child sexual abuse medical examination funding assistance.

(2) "Case management" means the administrative aspects of the child sexual abuse medical examination and includes the following:

- (a) Transcription of records;
- (b) Scheduling appointments;
- (c) Coordination of services;
- (d) Making referrals for services; and
- (e) Consultation with multidisciplinary teams, court personnel, officers of the court, parents or guardians, social workers, law enforcement and any other party involved in the treatment or protection of the child.

(3) "Child" is defined by KRS 15.900(1).

(2)[(4)] "Child sexual abuse medical examination" means a complete physical examination of a child with a special focus on the anal or genital area or oral cavity, and the case management

associated with the physical examination.

(3)[(5)] "Eligible provider" means a private, nonprofit agency, designated as a Children's Advocacy Center by the Cabinet for Health and Family Services under KRS 620.045, whose primary purpose is to provide, either directly or through contract, prevention, intervention, and treatment services to sexually abused children and their families, employing a child-focused multidisciplinary team approach.

(4) "Office" is the Office of Trafficking and Abuse Prevention and Prosecution.

(5) "[State board]Board" is defined by KRS 15.900(4).

Section 2. Funding Criteria. (1) Disbursement of available money from the child victims' trust fund shall be at the discretion of the Board for the purposes of and subject to the order of preference for expenditure stated in KRS 15.935.

(2) The Board shall only disburse available money from the child victims' trust fund to applicants that are private nonprofits or public organizations and that have completed the application that is incorporated by reference in this administrative regulation.

(3) An applicant:

(a) Shall complete and submit the appropriate application that is incorporated by reference in this administrative regulation no later than February 28 preceding the beginning of the fiscal year in which disbursement of available money is sought. The Board may grant an extension of time for good cause shown. Applications shall be submitted by:

1. Mail to 1024 Capital Center Drive, Frankfort, Kentucky 40601; or

2. Email to ICareAboutKids@ky.gov.

(b) Seeking funding to:

1. Develop or operate a prevention program under KRS 15.935(1)(a) shall demonstrate ability to comply with the requirements of KRS 15.935(1)(a) 1., 2., and 3.;

2. Develop or operate a statewide public education and awareness campaign on child sexual abuse under KRS 15.935(1)(e) shall demonstrate ability to comply with the requirements of KRS 15.935(1)(a) 2. and 3.;

3. Fund, under KRS 15.935(1)(b), the cost of medical examinations of victims of suspected child sexual abuse to the extent the fee for an examination is a service not eligible to be paid for by Medicaid or private insurance shall also comply with Section 3 of this administrative regulation.

(c) Shall demonstrate need for financial assistance;

(d) To whom funds are disbursed, agrees to:

1. Provide program models and consultation to organizations and communities regarding program development and maintenance;

2. Execute a memorandum of agreement with the office.

(4) Disbursement of money from the child victims' trust fund shall occur during the state fiscal year following the approval of funding by the board.

Section 3. Disbursement of money for child sexual abuse medical examinations. (1) Disbursement of money from the child victims' trust fund for child sexual abuse medical examinations shall be on a reimbursement basis.

(2) Reimbursement for child sexual abuse medical examinations shall not exceed \$150 per case.

(3) An applicant for child sexual abuse medical examination funding shall certify that:

(a) Funds granted will:

1. Be used solely for the purpose of reimbursing the cost of child sexual abuse medical examinations on a per-exam basis;

2. Supplement and not replace existing funds received by the applicant from other sources for child sexual abuse medical examinations;

3. Not be used to reimburse services to the extent those services are covered by private health insurance or Medicaid, or if a third party has a legal obligation to pay; and

(b) Every person performing a child sexual abuse medical examination service will comply with applicable state and federal licensing or certification requirements;

~~(c) the Applicant has ability to provide access to child sexual abuse medical examinations in the geographic region served by the applicant; and~~

~~(d) The applicant is an eligible provider as defined in Section 1 of this administrative regulation.[Child Sexual Abuse Medical Examination Funding Assistance. (1) An eligible provider may apply annually for funding assistance from the Child Victims' Trust Fund Funding shall be used to pay for the case-management aspects of a child sexual abuse medical examination. The term of the financial assistance shall be the state fiscal year.~~

~~(2) Application for child sexual abuse medical examination funding assistance shall be made by submission of a completed:~~

~~(a) "Application for Child Sexual Abuse Medical Examination Funding Assistance" form; or~~

~~(b) Electronic application, if the applicant has that capability.~~

~~Section 3. Funding Requirements. (1) The total funds awarded annually by the state board to each applicant shall be limited by:~~

~~(a) Availability of funds; and~~

~~(b) Board approval.~~

~~(2) Reimbursement for the case management aspects of an examination shall not exceed \$150 per case.~~

~~(3) An applicant shall provide assurances to the state board that:~~

~~(a) Funds granted will:~~

~~1. Be used solely for the purpose of reimbursing the case management aspects of child sexual abuse medical examinations;~~

~~2. Supplement and not replace existing funds received by the applicant from other sources for child sexual abuse medical examinations; and~~

~~3. Not be used to reimburse services for which there is private health insurance coverage, or if a third party has a legal obligation to pay; and~~

~~(b) Every person performing a child sexual abuse medical examination service will comply with applicable state and federal licensing or certification requirements.~~

~~Section 4. Funding Criteria. Allocation of funding assistance for child sexual abuse medical examinations shall be based on funds available in the Child Victims' Trust Fund and whether the applicant:~~

~~(1) Is currently providing, or plans to provide, child sexual abuse medical examinations:~~

~~(a) Directly; or~~

~~(b) By contract with medical providers;~~

~~(2) Demonstrates a need for financial assistance to be used to provide medical examinations in the geographic area served by the applicant; and~~

~~(3) Has demonstrated the ability to provide access to child sexual abuse medical examinations in the geographic region served by the applicant.~~

~~Section 5. Reporting Requirements. Within ninety (90) days from the end of the state fiscal year, an applicant receiving financial assistance under this administrative regulation shall submit a final report to the state board containing the following information:~~

~~(1) The applicant's total child sexual abuse medical examination budget for the period funded, including:~~

~~(a) The amount and sources of revenue for the examinations; and~~

~~(b) The total amount expended on the examinations; and~~

~~(2) The number of child sexual abuse medical examinations conducted for the period funded.~~

~~Section 6. Appeals. An applicant denied available funding under this administrative regulation shall have a right to appeal pursuant to KRS Chapter 13B.]~~

~~Section 4.[Section 7.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "[Application for] Child Sexual Abuse Medical Examination Funding Application [Assistance], August 2021[December 2000]"[;~~

~~is incorporated by reference.]; and~~

~~(b) "Child Victims' Trust Fund Prevention and Public Education and Awareness Program Funding Application, August 2021".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Trafficking and Abuse Prevention and Prosecution[Victims Advocacy Division], Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available at icareaboutkids.ky.gov.~~

DANIEL CAMERON, Attorney General

APPROVED BY AGENCY: August 13, 2021

FILED WITH LRC: August 13, 2021 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at the hour of 9:30 am Eastern Time at 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 October 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: Theresa Gargan, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5436; fax 502-573-1009; email Theresa.gargan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Theresa Gargan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures for funding child sexual abuse medical exams, regional prevention programs, and statewide public education and awareness campaigns on child sexual abuse from the Child Victims' Trust Fund.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for funding child sexual abuse medical exams, regional prevention programs, and statewide public education and awareness campaigns on child sexual abuse in accordance with KRS 15.935.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes because it establishes the policies and procedures for funding child sexual abuse medical exams, regional prevention programs, and statewide public education and awareness campaigns on child sexual abuse from the Child Victims' Trust Fund.

(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 authorizing statutes by establishing the policies and procedures for funding child sexual abuse medical exams, regional prevention programs, and statewide public education and awareness campaigns on child sexual abuse from the Child Victims' Trust 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 updates the Child Sexual Abuse Medical Examination Funding Application and clarifies the procedures for application. The amendment also formalizes the procedure, already in place, to fund regional prevention programs

and statewide public education and awareness campaigns on child sexual abuse. The amendment incorporates the Prevention and Public Education and Awareness Program Funding Application.

(b) The necessity of the amendment to this administrative regulation: This amendment updates the Application for Child Sexual Abuse Medical Examination Funding Assistance and clarifies how and when to submit the application. The amendment also formalizes the procedure, already in place, to fund regional prevention programs and statewide public education and awareness campaigns on child sexual abuse. The amendment incorporates the Prevention and Public Education and Awareness Program Funding Application.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute permits the Child Sexual Abuse and Exploitation Prevention Board to fund child sexual abuse medical exams, as well as, prevention programs and statewide public education and awareness campaigns on child sexual abuse.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the Application for Child Sexual Abuse Medical Examination Funding Assistance and clarifies how and when to submit the application. The amendment also formalizes the procedure, already in place, to fund regional prevention programs and statewide public education and awareness campaigns on child sexual abuse. The amendment incorporates the Prevention and Public Education and Awareness Program Funding Application.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Currently, there are fifteen child advocacy centers performing child sexual abuse medical exams that will be affected by this administrative regulation. These child advocacy centers received funding for 1066 exams in fiscal years 2020 and 2021. In fiscal years 2020 and 2021, \$297,502.90 was funded for 9 statewide and regional programs, all of which matched at least that amount.

(4) Provide an analysis of how the entities identified in question (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 receive funding from the Child Victims' Trust Fund, an applicant must comply with the 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): No agencies will incur additional costs as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): To receive funding from the Child Victims' Trust Fund, an applicant must comply with the requirements of this administrative regulation.

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

(a) Initially: No increase in funding is anticipated.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Child Victims' Trust 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. Neither an increase in fees nor funding is anticipated 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 is not appropriate because the administrative regulation applies equally to all entities that would seek funding from the Child Victims' Trust Fund.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the Office of the Attorney General and quasigovernmental agencies, including child advocacy centers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.180, 15.900, 15.920, 15.935, and 41.400.

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

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

(c) How much will it cost to administer this program for the first year? The Office of the Attorney General does not anticipate any significant additional costs to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Office of the Attorney General does not anticipate any significant additional costs 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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505-16.652, 61.505[40]-61.705, 78.510-78.852, 344.030, 29 C.F.R. Part 1630, 42 U.S.C. 12111(9)
STATUTORY AUTHORITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f)[61.645(9)(g)] authorizes the Kentucky Public Pensions Authority[Board of Trustees of Kentucky Retirement Systems] to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with necessary or proper in order to carry out the provisions of KRS 61.510[61.545] to 61.705, 16.505[16.540] to 16.652, and 78.510[78.520] to 78.852. KRS 16.582, 78.5524, 61.600, 78.5522, [and] 61.665, and 78.545 establish[provide for] a process for applying for disability retirement benefits to members of the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employees Retirement System[retirement systems] and a process for administrative appeal of a denial of an application or reapplication for disability retirement benefits. This administrative regulation establishes the procedure for filing an application or reapplication for disability retirement benefits and the procedures for filing an administrative appeal of a denial of an application for disability retirement benefits.

Section 1. Definitions.

(1) Definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this regulation, unless otherwise defined herein.

(2) Prior to April 1, 2021, "the Agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "the Agency" means the Kentucky Public Pension Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "Applicant" means a member or retired member of the State Police Retirement System, the Kentucky Employees Retirement System, or the County Employees Retirement System (or a member or retired member of multiple Systems) who has applied or is applying for disability retirement benefits in accordance with KRS 16.582, 78.5524, 61.600, 78.5522, 61.665, and 78.545.

(4) Prior to April 1, 2021, "DAC" means the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems. Effective April 1, 2021, "DAC" means the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545.

(5) "File" means the following methods for delivering or submitting a form or other documents to the retirement office, unless otherwise stated: mail, fax, in-person delivery, secure email, and upload via Self Service on the Web site maintained by the Agency (if available). A form or other document shall not be deemed filed until it has been received at the retirement office.

(6) "Participating employers" means employers participating in the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(7) "Provide," when used in reference to a form, means the following methods for the Agency to make a form available to a member, retired member, or beneficiary: mail, fax, secure email, and upload via Self Service on the Web site maintained by the Agency (if available).

(8) For the purposes of this regulation only, "recipient" means a retired member of the State Police Retirement System, the Kentucky Employees Retirement System, or the County Employees Retirement System (or a retired member of multiple Systems) who is receiving disability retirement benefits in accordance with KRS 16.582, 78.5524, 61.600, 78.5522, 61.665, and 78.545.

(9) "The Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(10) "Valid," when used in reference to a form, means that all required sections on a form are completed and all required signatures on a form are executed.

(11) "Invalid," when used in reference to a form, means that the form is deficient and shall not be accepted or processed by the Agency. (1) An application or reapplication for disability retirement benefits shall be made on "Form 6000, Notification of Retirement".

(2)(a) The application or reapplication shall be filed at the retirement systems within twenty-four (24) months, which is 730 calendar days, of the applicant's last day of paid employment in a regular full-time position.

(b) The time period for filing an application or reapplication for disability retirement benefits shall begin on the day after the applicant's last day of paid employment in the regular full-time position and shall end at close of business on the following 730th day. (c) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(d) The applicant's employer shall certify the applicant's last day of paid employment.

(e) An application or reapplication may be submitted prior to

the applicant's last day of paid employment.]

Section 2. Use of Third-party Vendors.

(1) The Agency may contract with third-party vendors to act on its behalf throughout the disability retirement application and review process. The Agency may also contract with third-party vendors to act on its behalf throughout the periodic review, reinstatement review, and employment review processes.

(2) The Agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may also provide additional persons to fulfill non-physician roles throughout the disability retirement application process.

(3) For purposes of this regulation, third-party vendors may act on behalf of the Agency and the Systems with all the rights and responsibilities therein.]

(1) If the applicant is eligible to begin drawing early retirement benefits, the applicant shall be notified of the right to receive a retirement allowance while the disability application is being processed.

(2) Election of early retirement by the applicant shall not affect the application for disability retirement.]

Section 3. Filing an Application or Reapplication for Disability Retirement Benefits.

(1) An application for disability retirement benefits or a reapplication for disability retirement benefits shall be made on the Form 6000, "Notification of Retirement."

(2) (a) 1. A reapplication for disability retirement benefits based on the same claim of incapacity shall be accompanied by new objective medical evidence not previously considered with prior applications.

2. An applicant shall have one hundred eighty (180) days from the date the reapplication for disability retirement benefits based on the same claim of incapacity is on file at the retirement office in which to file new objective medical evidence not previously considered with prior applications.

3. If the last day of the period described in subparagraph 2. of this paragraph is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the required forms, certification, information, and/or request are on file at the retirement office by the close of the next business day.

4. A reapplication for disability retirement benefits based on the same claim of incapacity that is accompanied by new objective medical evidence shall be reviewed in conjunction with the objective medical evidence, forms, and information filed with all previous applications.

(b) A reapplication for disability retirement benefits based on the same claim of incapacity that is unaccompanied by new objective medical evidence that was not considered with previous applications within one hundred eighty (180) days of filing of the reapplication shall be invalid and shall not be accepted or considered by the Agency.

(3) A reapplication for disability retirement benefits that is filed subsequent to a prior application for disability retirement benefits and is based on an entirely different claim of incapacity will be treated in the same manner as a reapplication for disability retirement benefits based on the same claim of incapacity under subsection (2) of this Section.

(4)(a) Pursuant to KRS 16.582, 78.5524, 61.600, and 78.5522, the twenty-four (24) month period after the applicant's last day of paid employment during which the applicant must have a valid application on file at the retirement office shall consist of seven hundred thirty (730) calendar days.

(b) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application shall be timely if filed at the retirement office by the close of the next business day.

(c) If a valid application or reapplication for disability retirement benefits is not on file at the retirement office at the close of

business on the 730th day, then the application or reapplication is not timely and the applicant is not qualified to retire on disability.

(d)1. The applicant's last day of paid employment shall either be certified by the applicant's employer or filed by the applicant and corroborated by the reporting information received by the Agency from the applicant's employer.

2. In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the Agency's records.

(5) An application or reapplication may be filed prior to the applicant's last day of paid employment but no earlier than six (6) months prior to the applicant's last day of paid employment.

Section 4. Forms Required with Disability Retirement Application or Reapplication.

(1) In addition to a valid application or reapplication for disability retirement benefits in accordance with Section 3, the applicant shall be required to file the following forms and information with the retirement office prior to review by the medical examiners under KRS 61.665 and 78.545:

(a) A valid Form 8035, "Employee Job Description;"

(b) A valid Form 8040, "Prescription and Nonprescription Medications;"

(c) Supporting medical information; and

(d) Once all supporting medical information has been submitted, a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information."

(2) The applicant's employer shall complete and submit to the retirement office a Form 8030, "Employer Job Description," for all initial applications for disability retirement benefits.

(3) Both the applicant and the employer shall file information regarding the applicant's request for reasonable accommodations as required by KRS 61.665(2)(a), 61.665(2)(b), and 78.545.

(4) The applicant and the applicant's employer shall file or submit additional information regarding the applicant's job duties and reasonable accommodations upon request by the Agency or a third-party vendor on its behalf.

(5) For a reapplication for disability retirement benefits, the applicant's employer shall be required to complete and submit to the retirement office an updated Form 8030, "Employer Job Description," and additional information on reasonable accommodations as described in subsection (3) of this Section only if the applicant's job duties or the reasonable accommodation information have changed since the prior application.

(6) The Agency or its contracted third-party vendor shall provide to the medical examiners the application or reapplication for disability retirement benefits and all forms and information listed in subsections (1) and (5) of this Section upon submission of a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information."

(7)(a) The one hundred eighty (180) day period to file all necessary forms, certifications, and information under KRS 61.665(2)(a) and 78.545 and this Section shall begin on the day the applicant's valid Form 6000, "Notification of Retirement," that complies with Section 3 is on file at the retirement office and shall end at close of business on the last day of the prescribed time period.

(b) Pursuant to KRS 61.665(2)(f), 61.665(2)(h), 61.665(3)(a), and 78.545, the one hundred eighty (180) day period to appeal the recommended denial of disability retirement benefits by two (2) or more of the three (3) medical examiners reviewing the objective medical evidence shall begin on the day the notification of the recommendation of the medical examiners is mailed by the Agency, or a third-party vendor on its behalf, and shall end at close of business on the last day of the prescribed time period.

(c) If the last day of the period described in paragraphs (a) or (b) of this subsection is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the forms, certification, information, appeals, and/or requests required by KRS 61.665 and 78.545 and this Section are on file at the retirement office by the close of the next business day.

Section 5. Effect of Subsequent Disability Retirement Reapplication While a Prior Application or Reapplication is Still Pending.

(1) If a subsequent valid reapplication for disability retirement benefits that complies with Section 3 is filed at the retirement office while a prior application or reapplication is pending review by the medical examiners under KRS 61.665 and 78.545, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545. The subsequent reapplication shall not be submitted for review by the medical examiners.

(2)(a) If a subsequent valid reapplication for disability retirement benefits that complies with Section 3 is filed at the retirement office after an applicant has requested an administrative hearing to appeal the denial of an earlier application or reapplication for disability retirement benefits, but prior to a Final Order of DAC regarding the earlier application or reapplication, then the subsequently filed reapplication shall be deemed a notice of intent to dismiss the request for administrative hearing unless the applicant simultaneously files a written statement that the subsequently filed reapplication has been filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

(b) A subsequently filed reapplication as described in paragraph (a) of this subsection shall not be processed by the Agency until thirty-one (31) days after the entry of a Final Order of DAC dismissing the previously requested administrative appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall be effective immediately.

(c) All evidentiary filings made during an administrative hearing process to appeal the denial of an earlier application or reapplication for disability retirement benefits shall be included in the information provided to the medical examiners for review of the subsequently filed reapplication.

(3)(a)1. If a subsequent valid reapplication for disability retirement benefits is filed at the retirement office after DAC has issued a Final Order denying a prior application or reapplication for disability retirement benefits and during the statutory time for appeal of the Final Order or after an appeal of the Final Order has been made, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

2. The subsequent reapplication as described in subparagraph 1. of this paragraph shall not be submitted for review by the medical examiners, unless the applicant simultaneously files a written statement that the applicant will not appeal the Final Order of DAC or has withdrawn any pending appeal of a Final Order of DAC.

(b) If a subsequent valid reapplication for disability retirement benefits is filed at the retirement office after DAC has issued a Final Order denying an application or reapplication for disability retirement benefits, all applicable statutory time for appeals of the Final Order have lapsed, and the reapplication complies with KRS 16.582, 78.5524, 61.600, 78.5522, and Section 3 of this regulation, then the subsequently filed reapplication for disability retirement benefits shall be valid.

Section 6. Eligibility for Early or Normal Retirement Benefits at the Time of Application for Disability Retirement Benefits.

(1)(a) If the applicant is eligible to receive early or normal retirement benefits at the time a valid Form 6000, "Notification of Retirement," for disability retirement benefits that complies with Section 3 is filed at the retirement office, the Agency shall treat a valid Form 6000, "Notification of Retirement," as also being an application for early or normal retirement benefits.

(b) If the applicant becomes eligible to receive early or normal retirement benefits while the application for disability retirement benefits is pending or an appeal of the denial of disability retirement benefits is pending, the Agency shall treat a valid Form 6000, "Notification of Retirement," of the applicant that complies with Section 3 as also being an application for early or normal

retirement benefits upon written request by the applicant filed at the retirement office.

(2) If the applicant has terminated employment from all participating employers and the applicant's Form 6000, "Notification of Retirement," is also an effective application for early or normal retirement benefits pursuant to subsection (1) of this Section, the Agency shall provide a Form 6010, "Estimated Retirement Allowance," for early or normal retirement benefits to the applicant.

(3)(a) An application for disability retirement benefits on the Form 6000, "Notification of Retirement," that is also an effective application for early retirement benefits pursuant to subsection (1) of this Section shall not be affected if the applicant fails to have a valid Form 6010, "Estimated Retirement Allowance," for early retirement benefits on file at the retirement office within six (6) months following termination from all employment with participating employers in accordance with KRS 61.590(5)(b) and 78.545, so long as the application for disability retirement benefits is still pending medical examiner review, administrative action, or judicial review.

(b) If the applicant has been provided with a Form 6010, "Estimated Retirement Allowance," for early retirement benefits in accordance with subsection (2) of this Section and the applicant does not have a valid Form 6010, "Estimated Retirement Allowance," for early retirement benefits on file at the retirement office within six (6) months following termination from all employment with participating employers, then in order to receive early retirement benefits the applicant shall be required to file a new Form 6000, "Notification of Retirement," solely for early retirement benefits in accordance with KRS 61.590(5)(b) and 78.545.

(c) If the applicant is required to file a new valid Form 6000, "Notification of Retirement," specifically for early retirement benefits as described in paragraph (b) of this subsection and designates a different beneficiary than designated on the original Form 6000, "Notification of Retirement," for disability retirement benefits, then the beneficiary designation on the later Form 6000, "Notification of Retirement," specifically for early retirement benefits shall supersede any prior beneficiary designation pursuant to KRS 61.542 and 78.545.

Section 7. Requests for Additional Objective Medical Evidence by the Medical Examiners.

(1) A medical examiner reviewing an application or reapplication for disability retirement benefits pursuant to KRS 61.665 and 78.545 may place their recommendation on hold and request additional objective medical evidence.

(2) If two (2) or more of the three (3) medical examiners reviewing an application or reapplication for disability retirement benefits place their recommendation on hold and request additional objective medical evidence, then the Agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence along with a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," to the retirement office.

(3) If there is no majority recommendation by the three (3) medical examiners reviewing an application or reapplication for disability retirement benefits because one (1) medical examiner recommends approval, one (1) medical examiner recommends denial, and one (1) medical examiner requests additional objective medical evidence, then the Agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence along with a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," to the retirement office.

(4)(a) Upon receipt of the requested additional objective medical evidence with a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," the Agency, or a third-party vendor, shall resubmit the

matter, including any additional objective medical evidence submitted in response to the medical examiner's request, to all three (3) medical examiners and the medical examiners shall issue new recommendations.

(b) Upon the expiration of sixty (60) days from the date of the notification, if no additional objective medical evidence with a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," is on file at the retirement office, the Agency, or a third-party vendor, shall resubmit the matter to only the medical examiner(s) that placed their recommendation on hold and the medical examiner(s) shall issue a new recommendation.

Section 8. Medical or Psychological Examination Required at the Expense of the Agency.

(1) The applicant shall complete and submit to the retirement systems a "Form 8035, Employee's Job Description". The applicant's employer shall complete and submit to the retirement systems a "Form 8030, Employer's Job Description". Both the applicant and the employer shall provide information regarding applicant's request for reasonable accommodations and the reasonable accommodations available to applicant, whether or not the applicant actually accepted the reasonable accommodations.

(2) The retirement systems may require additional details from the applicant and the applicant's employer regarding the applicant's job duties, if necessary.

Section 4.-

(1) If the Agency[retirement systems] requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(j) and 78.545 or KRS 61.665(3)(c) and 78.545, the Agency[retirement systems] shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems]. The applicant shall be reimbursed for the most direct[and usually traveled] routes.

(2)(a)[Mileage shall be based on the MapQuest website, Google Maps website, the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas."] The applicant shall complete and file[submit] a Form 8846, "Independent Examination Travel Voucher," indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems]. The applicant shall also indicate any actual parking costs and any actual bridge or highway toll charges on the most direct route on the Form 8846, "Independent Examination Travel Voucher." [The applicant shall use the most direct and usually traveled routes.]

(b) The applicant shall file the Form 8846, "Independent Examination Travel Voucher" and all necessary receipts at the retirement office within fifteen (15) days of the examination or evaluation in order to be reimbursed for mileage, actual parking costs, and any actual bridge or highway toll charges as described in subsections (3) through (6) of this Section.

(3)(a) Mileage shall be based on the MapQuest Web site, Google Maps Web site, the "Kentucky Official Highway Map," or the most recent edition of the "Rand McNally Road Atlas."

(b) The mileage certified by the applicant on the Form 8846, "Independent Examination Travel Voucher," shall not be greater than the mileage indicated by the MapQuest Web site, Google Maps Web site, the "Kentucky Official Highway Map," [", mileage software,] or the most recent edition of the "Rand McNally Road Atlas" for the most direct[and usually traveled] route from applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems].

(c) If the mileage certified by the applicant on the Form 8846, "Independent Examination Travel Voucher," is greater than the mileage indicated by the MapQuest Web site, Google Maps Web site, the "Kentucky Official Highway Map," [", mileage software,] or

the most recent edition of the "Rand McNally Road Atlas" for the most direct route, the Agency[retirement systems] shall pay the applicant the mileage indicated by the MapQuest Web site, Google Maps Web site, the "Kentucky Official Highway Map,"[²], mileage software,] or the most recent edition of the "Rand McNally Road Atlas"[²] for the most direct route.

(4) Reimbursement for use of a privately owned vehicle shall be made at the Internal Revenue Service[IRS] established standard mileage rate applicable at the time of travel[which changes periodically; and shall not exceed the cost of commercial coach fare].

(5) Actual costs for parking shall be reimbursed upon submission of receipts.[The applicant shall submit the originals of the parking receipts along with a written request for reimbursement].

(6) Actual[Actually] bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct[and usually traveled] route.[The applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) The applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.

Section 5. The applicant shall provide to the retirement system information concerning his continuing status with regard to receipt of Workers' Compensation and Social Security disability benefits.

Section 6. (1) The applicant shall complete and submit a "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information." The applicant shall attach all medical information, forms, and other information for review by the medical examiners to the "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information."

(2) The retirement systems shall submit the completed "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information" and all the attached information to the medical examiners upon receipt by the retirement systems.

(3) The time periods prescribed in KRS 61.600 and 61.665 shall begin on the day the notification of the recommendation of the medical examiners is mailed by the retirement systems and shall end at close of business on the last day of the prescribed time period.

(4) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(5) An applicant's request for a formal hearing shall be made in writing.

(6) Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results.

Section 7. The medical examiner may contact the applicant or the applicant's physicians to request additional medical evidence as necessary.]

Section 9. Social Security and Workers' Compensation Benefits.

(1) The applicant shall notify the Agency of his or her intent to apply for Workers' Compensation or disability benefits from the Social Security Administration.

(2) The applicant shall file information concerning his or her status with regard to receipt of Workers' Compensation and Social Security disability benefits at the retirement office.

(3) Upon receipt of approval for Workers' Compensation or disability benefits from the Social Security Administration, the applicant shall file at the retirement office a copy of the approval notice containing the amount of the award or payments. For Workers' Compensation settlements, the applicant shall file a copy of the settlement signed by the Administrative Law Judge.

(4) To determine the maximum benefit under KRS 61.607 and

78.5530, the following shall be added together:

(a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 and 78.5522 or 16.582 and 78.5522, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 and 78.545 or 16.576, converted to an annual amount.

(b) The applicant's total gross monthly benefit from Workers' Compensation excluding spouse or dependent benefits and allowances. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit shall be determined as follows:

1. The gross amount of any lump sum payment shall be divided by the applicant's life expectancy, expressed in years, from the applicant's effective date of retirement.

2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's life expectancy, expressed in years, from the applicant's effective date of retirement.

3. The total determined in subparagraphs 1 and 2 of this paragraph shall be combined and added to the total gross annual amount of the applicant's lifetime benefit, if any.

(c) The applicant's gross monthly disability benefit from the Social Security Administration, excluding spouse or dependent benefits converted to an annual amount.

(5) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the systems operated by the Agency shall be reduced as follows:

(a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 and 78.5522 or 16.582 and 78.5522, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 and 78.545 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 and 78.545 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective dates of the individual benefits.

(6) The disability retirement allowance payable shall not be reduced below an amount that would result from a computation of retirement allowance under early retirement or the disability retirement allowance from the systems operated by the Agency using the applicant's actual total service, whichever is greater.

(7)(a) Failure to respond to requests from the Agency for information concerning a recipient's status with regard to receipt of Workers' Compensation and Social Security disability benefits may result in the Agency putting the recipient's monthly benefit on hold.

(b) Monthly benefits held for failure to respond to a request for information concerning a recipient's status with regard to receipt of Workers' Compensation and Social Security disability benefits will be paid to the recipient once the recipient files the requested information at the retirement office.

Section 10. Administrative Hearings Concerning the Denial of Disability Retirement Benefits.

(1)(a) A request by the applicant for an administrative hearing to appeal the denial of disability retirement benefits under KRS 61.665 and 78.545 shall be made in writing and contain a short statement of the issues being appealed.

(b) An applicant's written request for an administrative hearing to appeal the denial of disability retirement benefits shall be filed at the retirement office. Email requests shall not be accepted.

(2)[

Section 8. (1) The hearing officer presiding over an administrative hearing may allow the applicant to introduce, among other evidence, the determination of other state and federal agencies, including, but not limited to the Kentucky Department of

Workers' Claims and the [Workers' Compensation or] Social Security Administration, approving the applicant for [awarding disability] benefits [to the applicant] if accompanied by underlying objective medical evidence.

(3)[(2)] The hearing officer presiding over an administrative hearing shall consider only objective medical evidence records contained within the determination and shall not consider or be bound by vocational factors or [be bound by] factual or legal findings of other state or federal agencies.

(4) Statements by physicians within the administrative record of the application or reapplication for disability retirement benefits shall not be considered by themselves to be objective medical evidence unless accompanied by documented medical records or test results.

Section 11[9]. Provisions Applicable to Applicants with Hazardous and Nonhazardous Service.

(1) [The provisions of this section shall only apply to a member who began participating on or before July 31, 2004.

(2) If an application for disability is approved, the applicant's disability benefit shall be paid retroactive to the month following the month of the applicant's last day of paid employment.

(3) The service added for determining the disability retirement allowance shall be determined under KRS 16.582 and 78.5524 if the applicant's last day of paid employment was in a hazardous position, or under KRS 61.605 and 78.5522 if the applicant's last day of paid employment was in a nonhazardous position.

(2)[(4)] If the applicant has both hazardous and nonhazardous service in the same system, the added service shall be prorated between hazardous and nonhazardous service based on the proportion of service in each position to the whole, except that all of the added service shall be applied toward the nonhazardous retirement allowance if:

(a) The applicant is disabled from a hazardous position as a result of an act in line of duty; and

(b) Twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service.

(3)[(5)] If the applicant has service in more than one (1) system administered by the Kentucky Retirement Systems or the County Employees Retirement System, the added service shall be prorated between the systems based on the proportion of service in each system to the whole, except if the applicant is disabled from a hazardous position in one (1) system as a result of an act in line of duty and twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service:

(a) All of the added service shall be applied toward the nonhazardous retirement system if the applicant is vested for disability retirement benefits from the nonhazardous system.

(b) All of the added service shall be applied toward the hazardous retirement system if the applicant is not vested for disability retirement benefits from the nonhazardous system.

Section 12[40]. Back Payment of Enhanced Disability Retirement Allowance.

(1) If the applicant [who] is awarded disability retirement benefits and did not receive early or normal retirement benefits, [upon the applicant's selection of a payment option,] the Agency [retirement systems] shall pay the applicant the total monthly retirement allowances payable retroactive to the month following the month of the applicant's last day of paid employment [from the effective date of disability retirement].

(2)(a) If the applicant received early or normal retirement benefits, the Agency [retirement systems] shall calculate and pay to the applicant the difference between the early or normal retirement benefit which was paid to the applicant and the disability retirement benefit.

(b) The applicant shall not change the beneficiary named or [his] the payment option selected upon early or normal retirement except as provided in KRS 61.542(5)(a), 61.542(5)(b), and 78.545. [(3) If benefits are payable to dependent children, as defined in KRS 16.505(17), the parent or guardian shall provide:

(a) A completed Form 6456, Designation of Dependent Child;
(b) A verification of full-time student status of a child age eighteen (18) or over;

(c) A copy of the birth certificate of each dependent child;

(d) If a dependent child is a minor, a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the minor child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator; and

(e) Notice of the death or marriage of a dependent child, or if the dependent child ceases to be a full-time student.

(f) A copy of the dependent child's verification of full-time student status shall be filed with the retirement system for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester.

(4) An increase provided to recipients under KRS 61.691 shall be applied to the applicant's disability benefit and payments to dependent children in determining the total retroactive payments owed to the applicant and dependent children.

Section 11. (1) The applicant shall notify the retirement systems of his intent to apply for workers' compensation or benefits from the Social Security Administration. Upon receipt of approval for workers' compensation or benefits from the Social Security Administration, the applicant shall file at the retirement systems a copy of the approval notice containing the amount of the award.

(2) To determine the maximum benefit under KRS 61.607, the following shall be added together:

(a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576, converted to an annual amount.

(b) The applicant's total gross annual benefit from workers' compensation. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit shall be determined as follows:

1. The gross amount of any lump sum payment shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.

2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.

3. The total determined in subparagraphs 1 and 2 of this paragraph shall be combined and added to the total gross annual amount of the applicant's lifetime benefit, if any.

(c) The applicant's gross monthly disability benefit from the Social Security Administration, excluding spouse or dependent benefits converted to an annual amount.

(3) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the retirement system shall be reduced as follows:

(a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective dates of the individual benefits.

(4) The disability retirement allowance payable shall not be reduced below an amount which would result from a computation of retirement allowance under early retirement or the disability retirement allowance from the retirement system using the disabled

employee's actual total service, whichever is greater.]

Section 13[42]. Direct Deposit or Payment by Check.

(1) A recipient shall complete a Form 6130, "Authorization for Deposit of Retirement Payment," and file it at the retirement office, include direct deposit information on the Form 6000, "Notification of Retirement," or authorize direct deposit via Self-Service on the Web site maintained by the Agency to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall file[provide] the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new valid Form 6130, "Authorization for Deposit of Retirement Payment," and filing the form at the retirement office[systems], or by changing their direct deposit information via Self-Service on the Web site maintained by the Agency.

(b) The latter of the designation on a valid Form 6000, "Notification of Retirement," the last valid Form 6130, "Authorization for Deposit of Retirement Payment," after the Form 6000 is on file at the retirement office[systems], or the direct deposit information submitted via Self-Service on the Web site maintained by the Agency shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a Form 6135, "Request for Payment by Check," and file it at the retirement office if the recipient does not currently have an account with a financial institution or the member's financial institution does not participate in the electronic funds transfer program.

(5) The Agency[retirement systems] shall not process the retirement allowance until the recipient has filed a valid Form 6000, "Notification of Retirement," that complies with Section 3 at the retirement office[a completed Form 6130, Authorization for Deposit of Retirement Payment or filed a completed Form 6135, Request for Payment by Check].

Section 14. Death During Disability Retirement Application Process.

(1)(a) If an applicant has a valid Form 6000, "Notification of Retirement," for disability retirement benefits that complies with Section 3 on file at the retirement office, is not receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 in order to continue with the applicant's application or reapplication for disability retirement benefits:

1. A Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member."

2. Any outstanding forms required by Section 4 that have not yet been filed by the applicant, and

3. Any additional relevant objective medical evidence and a valid Form 8002, "Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information."

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, "Notification of Retirement," as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member."

(d) If the beneficiary named on the Form 6000, "Notification of Retirement," as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the Form 6000 shall be invalid and the disability application or

reapplication shall not be processed by the Agency.

(2)(a) If an applicant has a valid Form 6000, "Notification of Retirement," for disability retirement benefits that complies with Section 3 on file at the retirement office, is receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, and no monthly or lump-sum benefits are payable to the beneficiary listed on the Form 6000, then the executor, administrator, or other representative of the applicant's estate shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 in order to continue with the applicant's application or reapplication for disability retirement benefits:

1. An order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court.

2. A written statement that the application or reapplication for disability retirement benefits should continue.

3. Any outstanding forms required by Section 4 that have not yet been filed by the applicant, and

4. Any additional relevant objective medical evidence and a valid Form 8002, "Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information."

(b) If none of the deadlines in KRS 61.665 and 78.545 apply, within sixty (60) days of their appointment, the executor, administrator, or other representative of the applicant's estate as described in paragraph (a) of this subsection shall file the following at the retirement office in order to continue with the applicant's application or reapplication for disability retirement benefits:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court, and

2. A written statement that the application or reapplication for disability retirement benefits should continue.

(c) An executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file the following at the retirement office:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court, and

2. A written statement that the application or reapplication for disability retirement benefits is withdrawn.

(d) If the executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the application or reapplication for disability retirement benefits shall be invalid and shall not be processed by the Agency.

(3)(a) If an applicant has a valid Form 6000, "Notification of Retirement," for disability retirement benefits that complies with Section 3 on file at the retirement office, is receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, and lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 in order to continue with the applicant's application or reapplication for disability retirement benefits:

1. A Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member."

2. Any outstanding forms required by Section 4 that have not yet been filed by the applicant, and

3. Any additional relevant objective medical evidence and a valid Form 8002, "Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information."

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000,

"Notification of Retirement," as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member."

(d) If the beneficiary named on the Form 6000, "Notification of Retirement," as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the disability retirement application or reapplication shall be invalid and shall not be processed by the Agency.

Section 15[43]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement," [r] April 2021[July 2004];

(b) Form 8030, "Employer[s] Job Description," [r] April 2021[July 2004];

(c) Form 8035, "Employee[s] Job Description," [r] April 2021[July 2004];

(d) Form 8040, "Prescription and Nonprescription Medications," October 2005[Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", May 2003];

(e) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," April 2021[Form 6456, "Designation of Dependent Child," July 2004];

(f) Form 6010, "Estimated Retirement Allowance," April 2021;

(g) Form 8846, "Travel Voucher for Independent Examination," May 2008;

(h) Form 6130, "Authorization for Deposit of Retirement Payment," [r] April 2021[May 2008];

(i)[(g)] Form 6135, "Request for Payment by Check," [r] May 2015[February 2002];

(j) Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," April 2021; and

(k) Form 8002, "Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information," April 2021.

(h) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information", May 2008; and

(i) Form 8846, "Independent Examination Travel Voucher", May 2008.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Retirement Systems], [Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: July 29, 2021

FILED WITH LRC: July 29, 2021 at 11:17 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 21, 2021 at 11:00 a.m. Eastern Standard Time at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A 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 October 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: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Board

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for applying or reapplying for disability retirement benefits and for administratively appealing a denial of an application or reapplication for disability retirement benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for applying or reapplying for disability retirement benefits and for administratively appealing a denial of an application or reapplication for disability retirement benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the procedures and requirements for applying or reapplying for disability retirement benefits and for administratively appealing a denial of an application or reapplication for disability retirement benefits in accordance with KRS 16.582, 78.5524, 61.600, 78.5522, 61.665, and 78.545.

(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 the procedures and requirements for applying or reapplying for disability retirement benefits and for administratively appealing a denial of an application or reapplication for disability retirement benefits in accordance with KRS 16.582, 78.5524, 61.600, 78.5522, 61.665, and 78.545.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the regulation to reflect the changes enacted by the General Assembly in House Bill 484 (2020) and House Bill 9 (2021) as well as the Kentucky Public Pensions Authority's use of a third-party vendor to provide medical examiner reviews in accordance with KRS 61.665 and 78.545. The amendment also clarifies the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to reflect the changes enacted by the General Assembly in House Bill 484 (2020) and House Bill 9 (2021) as well as the Kentucky Public Pensions Authority's use of a third-party vendor to provide medical examiner reviews in accordance with KRS 61.665 and 78.545. The amendment also clarifies the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, in accordance with KRS 61.505(1)(f).

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the procedures and forms necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, particularly the disability retirement application and reapplication process as well as the process for administratively appealing the denial of disability retirement applications and reapplications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System, and the members of the Kentucky Retirement Systems and the County Employees Retirement System. Number of individuals is unknown. Number of businesses, organizations, or state and local governments affected is three (3): the Kentucky

Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment should not substantially alter the actions that the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System will have to take to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation should not cost any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment allows the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System to conform with KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, particularly the disability retirement application and reapplication process as well as the process for administratively appealing the denial of disability retirement applications and reapplications.

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be negligible.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All members are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(f).

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

negligible.

(d) How much will it cost to administer this program for subsequent years? The cost to Kentucky Public Pensions Authority should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

105 KAR 1:310. Fred Capps Memorial Act.

RELATES TO: KRS 16.505-16.652, 61.505[40]-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.505(1)(f)-[61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.621, The Fred Capps Memorial Act, establishes duty-related disability or death benefits for[enables an] nonhazardous employees[~~of a state-administered retirement system~~] who are[is] killed or totally and permanently disabled from a duty-related injury[~~to receive death or disability benefits equal to those received by hazardous employees under KRS 16.582~~]. This administrative regulation establishes the procedure for filing an application or reapplication for duty-related death or disability benefits and the appeal procedure for duty-related death or disability[injury] benefits for nonhazardous employees.

Section 1. Definitions.

(1) Definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this regulation, unless otherwise defined herein.

(2) Prior to April 1, 2021, "the Agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "the Agency" means the Kentucky Public Pension Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "Applicant" means a member or retired member of the Kentucky Employees Retirement System, the County Employees Retirement System, or both who has applied or is applying for duty-related disability benefits in accordance with KRS 61.621, 61.665, and 78.545.

(4) Prior to April 1, 2021, "DAC" means the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems. Effective April 1, 2021, "DAC" means the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545.

(5) "File" means the following methods for delivering or submitting a form or other documents to the retirement office, unless otherwise stated: mail, fax, in-person delivery, secure email, and upload via Self Service on the Web site maintained by the Agency (if available). A form or other document shall not be deemed filed until it has been received at the retirement office.

(6) "Participating employer" means an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System.

(7) For the purposes of this regulation only, "recipient" means a retired member of the Kentucky Employees Retirement System, the County Employees Retirement System, or both who is receiving duty-related disability benefits in accordance with KRS 61.621, 61.665, and 78.545.

(8) "Valid," when used in reference to a form, means that all

required sections on a form are completed and all required signatures on a form are executed.

(9) "Invalid," when used in reference to a form, means that the form is deficient and shall not be accepted or processed by the Agency.

Section 2. Use of Third-party Vendors.

(1) The Agency may contract with third-party vendors to act on its behalf throughout the duty-related disability and duty-related death benefit application and review process. The Agency may also contract with third-party vendors to act on its behalf throughout the periodic review, reinstatement review, and employment review processes.

(2) The Agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may also provide additional persons to fulfill non-physician roles throughout the duty-related disability and duty-related death benefit application process.

(3) For purposes of this regulation, third-party vendors may act on behalf of the Agency and the Systems with all the rights and responsibilities therein.

Section 3. Application for Duty-Related[—Injury] Death Benefits.

(1)(a) A written request for duty-related[—injury] death benefits pursuant to KRS 61.621 and 78.545 shall[may] be filed[made] by the surviving spouse,[—or] dependent child, or parent or guardian of dependent child at the retirement[~~Frankfort~~] office[—of the Kentucky Retirement Systems].

(b) The Agency may notify the surviving spouse, dependent child, or parent or guardian of the dependent child of their ability to file a written request for duty-related death benefits if the Agency becomes aware of a nonhazardous employee potentially killed as a result of a duty-related injury.

(c) A claim for duty-related[—injury] death benefits shall be verified by the deceased employee's immediate supervisor and agency head on the ["]Form 6800, "Application for Death Benefits Duty Related/In Line of Duty,"[—]

(2)(a) The participating employer, surviving spouse, [or] dependent child, or parent or guardian of dependent child shall submit the following documents:

1. A copy of the death certificate;
2. The employer death investigation report; and
3. An employee job description provided by the participating employer.

(b) The Agency[retirement system] may request additional information:[—or] medical records, including hospital, emergency room, autopsy, or other related records;[—] documentation relating to Workers' Compensation claims; and police or other crime reports, if necessary, from the participating employer, surviving spouse, [or—] dependent child, or parent or guardian of dependent child.

(3) The application for duty-related[—injury] death benefits and accompanying documentation as listed in subsection (2) of this Section shall be reviewed by the Agency's[board's] medical examiners, or the Agency's third-party vendor, and administered in the same manner as provided in KRS 16.582, 78.5524,[—and] 61.665, and 78.545.

Section 4[2]. Application for Duty-Related[—Injury] Disability Benefits.

(1)(a) A claim for duty-related[—injury] disability benefits pursuant to KRS 61.621 and 78.545 shall be filed by the applicant[employee] at the retirement[~~Frankfort~~] office[—of the Kentucky Retirement Systems].

(b) An application for duty-related[—injury] disability benefits shall be made by the applicant[employee] on the ["]Form 6000, "Notification of Retirement,"[—]

(2) The applicant shall be required to file the following forms and information to the retirement office along with a valid application for duty-related disability benefits in accordance with subsection (1) of this Section:

(a) A Workers' Compensation incident report, where one exists;

(b) A valid Form 8035, "Employee Job Description;"

(c) A valid Form 8040, "Prescription and Nonprescription Medications;"

(d) Supporting medical information; and

(e) Once all supporting medical information has been submitted, a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information."

(3) The applicant's participating employer shall complete and submit to the retirement office a Form 8030, "Employer Job Description."

(4) The applicant and the applicant's employer shall file or submit additional information regarding the applicant's job duties and reasonable accommodations upon request by the Agency or a third-party vendor on its behalf.

(5) The application for duty-related[—injury] disability benefits and accompanying documentation as listed in subsections (2), (3), and (4) of this section shall be reviewed by the Agency's[board's] medical examiners, or the Agency's third-party vendor, and administered in the same manner as provided in KRS 16.582, 78.5524,[—and] 61.665, and 78.545.

Section 5. Joint Application for Duty-Related Disability Benefits and Disability Retirement Benefits.

(1) If qualified to retire on disability pursuant to KRS 61.600 and 78.5522, an applicant may apply for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same valid Form 6000, "Notification of Retirement."

(2)(a) If an applicant qualified to retire on disability applies for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same Form 6000, "Notification of Retirement," and is approved only for disability retirement benefits by a majority or greater of the reviewing medical examiners pursuant to KRS 61.665 and 78.545, the applicant may solely appeal the denial of duty-related disability benefits in the same manner provided for disability retirement benefits in KRS 61.665(2)(f), 61.665(2)(h), and 78.545.

(b) A request for an administrative hearing to solely appeal the denial of duty-related disability benefits shall not affect the disability retirement benefits of an applicant who has been approved for disability retirement benefits under KRS 61.600 and 78.5522, except as provided in KRS 61.685 and 78.545.

(3) If an applicant qualified to retire on disability applies for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same Form 6000, "Notification of Retirement," and is denied for both by a majority or greater of the reviewing medical examiners pursuant to KRS 61.665 and 78.545, the applicant may appeal both the denial of duty-related disability and disability retirement benefits as provided by KRS 61.665(2)(f), 61.665(2)(h), and 78.545.

(4) A request for an administrative hearing to solely appeal the denial of duty-related disability benefits or to appeal denials of both duty-related disability benefits and disability retirement benefits must conform with Section 10.

Section 6[3]. Time Period for Filing.

(1)(a) The application or reapplication for duty-related[—injury] death or duty-related [—injury] disability benefits shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

(b) The filing period shall begin on the day after the last day of paid employment in a regular full-time position and shall end at close of business on the [following] 730th calendar day.

(c) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the public office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application shall be timely if filed at the retirement office by the close of the next business day.

(d) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application or reapplication is not timely and the employee, surviving spouse, dependent child, or parent or guardian of dependent child is not qualified for duty-related death or duty-related disability benefits.

(e)1. The applicant's last day of paid employment shall either be certified by the applicant's employer or filed by the applicant and corroborated by the reporting information received by the Agency from the applicant's employer.

2. In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the Agency's records. [If the last day of the filing period is a Saturday, Sunday, or a state or federal holiday, then the application shall be timely filed if received in the retirement office by the close of the next business day following the weekend or holiday.]

(2) If rejected, an employee's reapplication for duty-related [injury] disability benefits based on the same claim of incapacity shall be reconsidered for disability if accompanied by new objective medical evidence or new evidence concerning the duty-related injury that was not considered with previous applications. The reapplication shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

Section 7. Effect of Application or Reapplication for Duty-Related Disability Benefits While Prior Application or Reapplication is Pending.

(1) If a subsequent valid reapplication for duty-related disability benefits that complies with Sections 4 and 6 is filed at the retirement office while a prior application or reapplication is pending review by the medical examiners under KRS 61.665 and 78.545, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545. The subsequent reapplication shall not be submitted for review by the medical examiners.

(2)(a) If a subsequent valid reapplication for duty-related disability benefits that complies with Sections 4 and 6 is filed at the retirement office after an applicant has requested an administrative hearing to appeal the denial of an earlier application or reapplication for duty-related disability benefits, but prior to a Final Order of DAC regarding the earlier application or reapplication, then the subsequently filed reapplication shall be deemed a notice of intent to dismiss the request for administrative hearing unless the applicant simultaneously files a written statement that the subsequently filed reapplication has been filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

(b) A subsequently filed reapplication as described in paragraph (a) of this subsection shall not be processed by the Agency until thirty-one (31) days after the entry of a Final Order of DAC dismissing the previously requested administrative appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall be effective immediately.

(c) All evidentiary filings made during an administrative hearing process to appeal the denial of an earlier application or reapplication for duty-related disability benefits shall be included in the information provided to the medical examiners for review of the subsequently filed reapplication.

(3)(a)1. If a subsequent valid reapplication for duty-related disability benefits is filed at the retirement office after DAC has issued a Final Order denying a prior application or reapplication for duty-related disability benefits and during the statutory time for appeal of the Final Order or after an appeal of the Final Order has been made, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

2. The subsequent reapplication shall not be submitted for review by the medical examiners, unless the applicant files a written statement that the applicant will not appeal the Final Order

of DAC or has withdrawn any pending appeal of a Final Order of DAC.

(b) If a subsequent valid reapplication for duty-related disability benefits is filed at the retirement office after DAC has issued a Final Order denying an application or reapplication for duty-related disability benefits, all applicable statutory time for appeals of the Final Order have lapsed, and the reapplication complies with KRS 61.621, 78.545 and Sections 4 and 6 of this administrative regulation, then the subsequently filed reapplication for duty-related disability benefits shall be valid.

Section 8. Medical or Psychological Examination Required at the Expense of the Agency.

(1) If the Agency requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(i) and 78.545 or KRS 61.665(3)(c) and 78.545, the Agency shall reimburse the applicant for expenses associated with the medical or psychological examination in the same manner as 105 KAR 1:210 Section 8.

(2) The applicant shall file the Form 8846, "Independent Examination Travel Voucher" and all necessary receipts at the retirement office within fifteen (15) days of the examination or evaluation in order to be reimbursed for mileage, actual parking costs, and any actual bridge or highway toll charges as described in subsection (1) of this section and 105 KAR 1:210, Section 8.

Section 9. Requests for Additional Objective Medical Evidence by the Medical Examiners.

(1) A medical examiner reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits may place their recommendation on hold and request additional objective medical evidence.

(2) If two (2) or more of the three (3) medical examiners reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits place their recommendation on hold and request additional objective medical evidence, then the Agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence to the retirement office.

(3) If there is no majority recommendation by the three (3) medical examiners reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits because one (1) medical examiner recommends approval, one (1) medical examiner recommends denial, and one (1) medical examiner requests additional objective medical evidence, then the Agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence to the retirement office.

(4)(a) Upon receipt of the requested additional objective medical evidence with a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," the Agency, or a third-party vendor, shall resubmit the matter, including any additional objective medical evidence submitted in response to the medical examiner's request, to all three (3) medical examiners and the medical examiners shall issue new recommendations.

(b) Upon the expiration of sixty (60) days from the date of the notification, if no additional objective medical evidence with a valid Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," is on file at the retirement office, the Agency, or a third-party vendor, shall resubmit the matter to only the medical examiner(s) that placed their recommendation on hold and the medical examiner(s) shall issue a new recommendation.

Section 10. Administrative hearings concerning the denial of duty-related disability or duty-related death benefits.

(1)(a) A request by an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child for an

administrative hearing to appeal the denial of duty-related disability or duty-related death benefits under KRS 61.621, 61.665, and 78.545 shall be made in writing and contain a short statement of the issues being appealed.

(b) The written request for an administrative hearing to appeal the denial of duty-related disability or duty-related death benefits by an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child shall be filed at the retirement office. Email requests shall not be accepted.

(2) The hearing officer presiding over an administrative hearing may allow an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child to introduce, among other evidence, the determination of other state and federal agencies, including, but not limited to the Kentucky Department of Workers' Claims and the Social Security Administration, approving the applicant for benefits if accompanied by underlying objective medical evidence or vocational evidence.

(3) The hearing officer presiding over an administrative hearing shall consider only objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.

(4) The hearing officer presiding over an administrative hearing shall not consider or be bound by factual or legal findings of other state or federal agencies.

(5) Statements by physicians within the administrative record of the application or reapplication for duty-related disability or duty-related death benefits shall not be considered by themselves to be objective medical evidence unless accompanied by documented medical records or test results.

Section 11. Employment and Medical Reviews. If, upon review in accordance with KRS 61.610, 61.615, 78.5528, or other applicable statute, the medical examiner, or third-party vendor, determines that a retired member receiving duty-related disability benefits no longer meets eligibility requirements, then the medical examiner, or third-party vendor, shall determine if the retired member is qualified and remains eligible for disability retirement benefits in accordance with KRS 61.600 and 78.5522.

Section 4. (1) If the retirement systems requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(j) or (3)(c), the retirement systems shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas." The applicant shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall use the most direct and usually traveled routes.

(3) The mileage certified by the applicant shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. If the mileage certified by the applicant is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the applicant the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas."

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial

coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. The applicant shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actual bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. The applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) The applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.

Section 12[5]. Benefit Payment Procedures for Duty-Related Disability.

(1) If the employee's application for duty-related [injury] disability benefits is approved, the employee's duty-related disability benefit shall be paid retroactive to the month following the month of the employee's last day of paid employment in a regular full-time position.

(2) If the employee did not receive early or normal retirement benefits or disability retirement benefits under KRS 61.600 and 78.5522, upon the employee's selection of a payment option, the Agency[retirement office] shall pay the employee the total monthly retirement allowances owed.

(3)(a) If the employee did receive early or normal retirement benefits or disability retirement benefits under KRS 61.600 and 78.5522, the Agency[retirement office] shall calculate and pay to the employee the difference between the early or normal retirement benefit or disability retirement benefit which was paid to the employee and the duty-related disability benefit.

(b) The employee shall not change the beneficiary named or the [his] payment option selected upon early, normal, or disability retirement except as provided in KRS 61.542(5)(a), 61.542(5)(b), and 78.545.

(4) If benefits are payable to a dependent child as defined in KRS 16.505, the dependent child or the child's parent or guardian shall file[submit] the following documents at the retirement office:

(a) A ["]Form 6448[56], "Designation of Dependent Child for Qualifying Total and Permanent Disability";

(b) If the child is age eighteen (18) or over and a full-time student, verification of full-time student status, if applicable;

(c) If the child is eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability, file a copy of the most recent statement issued by the Social Security Administration for such dependent children[(b) If the child is age eighteen (18) or over, verification of full-time student status];

(d)[(e)] A copy of the birth certificate of each dependent child; and

(e)[(d)] If a dependent child is a minor, a ["]Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor,"[.] If the minor has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor," the guardian or conservator shall file[submit] a copy of the court order appointing the guardian or conservator.[.]

(5)(a)[(e)] The dependent child or the parent or guardian of the dependent child shall also:

1. Notify the Agency[retirement system] of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student, if applicable; and

2. File[Submit] a copy of the dependent child's verification of full-time student status with the Agency[retirement system] for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester, if applicable.

(b) The dependent child or the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the

information required by paragraph (a) of this subsection.

~~(6)(5)~~ Any increases provided ~~[to recipients]~~ under KRS 61.691 and 78.5518 shall be applied to the employee's duty-related disability benefit and payments to a dependent child in determining the total retroactive payments owed to the employee and dependent child.

~~(7)(a)(6)~~ If upon review in accordance with KRS 61.610 or other applicable statute, the board determines that an employee receiving duty-related injury disability benefits no longer meets eligibility requirements, then the board shall determine if the employee is eligible for disability benefits under KRS 61.600.

~~Section 6. (1)~~ A recipient shall complete a Form 6130, "Authorization for Deposit of Retirement Payment," and file it at the retirement office, include direct deposit information on the Form 6000, "Notification of Retirement," or authorize direct deposit via Self-Service on the Web site maintained by the Agency to have the monthly retirement allowance deposited to an account in a financial institution.

~~(b)~~ A dependent child or parent or guardian of a dependent child shall file a valid Form 6130, "Authorization for Deposit of Retirement Payment," at the retirement office in order to have the monthly benefit deposited to an account in a financial institution.

~~(c)(2)~~ The recipient, dependent child, or parent or guardian of a dependent child and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

~~(8)(3)(a)~~ At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new valid ~~["]~~Form 6130, "Authorization for Deposit of Retirement Payment," ~~[;]~~ and filing the form at the retirement office, or by changing their direct deposit information via Self-Service on the Web site maintained by the Agency ~~[in Frankfort]~~.

~~(b)~~ The ~~latter~~ of the designation on a valid Form 6000, "Notification of Retirement," the last valid Form 6130, "Authorization for Deposit of Retirement Payment," after the Form 6000 is on file at the retirement office, or the direct deposit information submitted via Self-Service on the Web site maintained by the Agency shall control the electronic transfer of the recipient's retirement allowance.

~~(c)~~ At any time while receiving a monthly benefit, the dependent child or parent or guardian of a dependent child may change the designated institution by filing a new valid Form 6130, "Authorization for Deposit of Retirement Payment," at the retirement office or by submitting new direct deposit information via Self-Service on the Web site maintained by the Agency.

~~(d)~~ The last valid Form 6130, "Authorization for Deposit of Retirement Payment," or the last direct deposit information submitted via Self-Service on the Web site maintained by the Agency shall control the electronic transfer of the dependent child's monthly benefit.

~~(9)(4)~~ ~~A~~ ~~The~~ recipient, dependent child, or parent or guardian of a dependent child may complete a valid ~~["]~~Form 6135, "Request for Payment by Check," ~~[;]~~ and file it at the retirement office if the recipient, dependent child, or parent or guardian of a dependent child does not currently have an account with a financial institution or the financial institution does not participate in the electronic funds transfer program.

~~(10)(5)~~ The Agency ~~[retirement office]~~ shall not process the retirement allowance or monthly benefit until the recipient, dependent child, or parent or guardian of a dependent child has filed a valid ~~[completed "]~~Form 6130, "Authorization for Deposit of Retirement Payment," included direct deposit information on a valid "Form 6000, Notification of Retirement," ~~[;—or]~~ filed a valid ~~[completed "]~~Form 6135, "Request for Payment by Check," or authorized direct deposit via Self-Service on the Web site maintained by the Agency.

Section 13. Benefit Payment Procedures for Duty-Related Deaths.

~~(1)~~ If the application for duty-related death benefits is approved, the duty-related death benefit shall be paid retroactive to

the month following the month of the employee's date of death.

~~(2)~~ If the surviving spouse did not receive survivor benefits under KRS 61.640 and 78.5532, upon the surviving spouse's selection of a payment option, the Agency shall pay the surviving spouse the total monthly retirement allowances owed.

~~(3)(a)~~ If the beneficiary was a surviving spouse who began receiving survivor benefits KRS 61.640 and 78.5532, the Agency shall calculate the difference between the survivor benefit paid to the surviving spouse beneficiary and the duty-related death benefit. The Agency shall pay the surviving spouse any additional funds due.

~~(b)~~ If the surviving spouse was paid more than the amount due under KRS 61.621 or KRS 78.545, the Agency shall deduct the difference from the \$10,000 lump sum payment and from the monthly retirement allowance payments until the amount owed to the Agency has been recovered.

~~(4)~~ If benefits are payable to a dependent child as defined in KRS 16.505, the dependent child or the child's parent or guardian shall file the following documents at the retirement office:

~~(a)~~ A Form 6458, "Designation of Dependent Child for In Line of Duty/Duty-Related;

~~(b)~~ If the child is age eighteen (18) or over and a full-time student, verification of full-time student status, if applicable;

~~(c)~~ If the child is eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability, file a copy of the most recent statement issued by the Social Security Administration for such dependent children;

~~(d)~~ A copy of the birth certificate of each dependent child; and

~~(e)~~ If a dependent child is a minor, a Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor." If the minor has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor," the guardian or conservator shall file a copy of the court order appointing the guardian or conservator.

~~(5)(a)~~ The dependent child or the parent or guardian of the dependent child shall also:

1. Notify the Agency of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student, if applicable; and

2. File a copy of the dependent child's verification of full-time student status with the Agency for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester, if applicable.

~~(b)~~ The dependent child or the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the information required by paragraph (a) of this subsection.

~~(6)~~ Any increases provided under KRS 61.691 and 78.5518 shall be applied to the surviving spouse's duty-related death benefit and payments to a dependent child in determining the total retroactive payments owed to the surviving spouse and dependent child.

~~(7)(a)~~ A surviving spouse, dependent child, or parent or guardian of a dependent child shall complete a Form 6130, "Authorization for Deposit of Retirement Payment," and file it at the retirement office in order to have the monthly benefit deposited to an account in a financial institution.

~~(b)~~ The surviving spouse, dependent child, or parent or guardian of a dependent child and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

~~(8)(a)~~ At any time while receiving a monthly benefit, the surviving spouse, dependent child, or parent or guardian of a dependent child may change the designated institution by filing a new valid Form 6130, "Authorization for Deposit of Retirement Payment," at the retirement office or by submitting new direct deposit information via Self-Service on the Web site maintained by the Agency, if available.

~~(b)~~ The last valid Form 6130, "Authorization for Deposit of

Retirement Payment," or the last direct deposit information submitted via Self-Service on the Web Site maintained by the Agency shall control the electronic transfer of the surviving spouse's or dependent child's monthly benefit.

(9) A surviving spouse, dependent child, or parent or guardian of a dependent child may file a valid Form 6135, "Request for Payment by Check," at the retirement office if the surviving spouse, dependent child, or parent or guardian of a dependent child does not currently have an account with a financial institution or the financial institution does not participate in the electronic funds transfer program.

(10) The Agency shall not process the retirement allowance or monthly benefit until the surviving spouse, dependent child, or parent or guardian of a dependent child has filed a valid Form 6130, "Authorization for Deposit of Retirement Payment," filed a valid Form 6135, "Request for Payment by Check," or authorized direct deposit via Self-Service on the website maintained by the Agency.

Section 14. One-Time Window for Surviving Spouse to Apply for Duty-Related Death Benefits. A surviving spouse of an employee who died prior to retirement and prior to April 13, 2018 who is currently receiving monthly benefits from the Agency and who did not seek benefits for an employee's death resulting from a duty-related injury pursuant to KRS 61.621 and 78.545 may apply for duty-related death benefits so long as the application for duty-related death benefits is on file at the retirement office on or before January 1, 2021.

Section 15. Death During Duty-Related Disability Benefits Application Process.

(1)(a) If an applicant has a valid Form 6000, "Notification of Retirement," for duty-related disability benefits on file at the retirement office that complies with Sections 4 and 6, is not receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 in order to continue with the applicant's application or reapplication for duty-related disability benefits:

1. A Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member."

2. Any outstanding forms required by Section 4 that have not yet been filed by the applicant, and

3. Any additional relevant objective medical evidence and a valid Form 8002, "Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information."

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, "Notification of Retirement," as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member."

(d) If the beneficiary named on the Form 6000, "Notification of Retirement," as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the Form 6000 shall be invalid and the duty-related disability application or reapplication shall not be processed by the Agency.

(2)(a) If an applicant has a valid Form 6000, "Notification of Retirement," for duty-related disability benefits that complies with Sections 4 and 6 on file at the retirement office, is receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, and no monthly or lump-sum benefits are payable to the

beneficiary listed on the Form 6000, then the executor, administrator, or other representative of the applicant's estate shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 in order to continue with the applicant's application or reapplication for duty-related disability benefits:

1. An order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court,

2. A written statement that the application or reapplication for duty-related disability benefits should continue,

3. Any outstanding forms required by Section 4 that have not yet been filed by the applicant, and

4. Any additional relevant objective medical evidence and a valid Form 8002, "Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information."

(b) If none of the deadlines in KRS 61.665 and 78.545 apply, within sixty (60) days of their appointment, the executor, administrator, or other representative of the applicant's estate as described in paragraph (a) of this subsection shall file the following at the retirement office in order to continue with the applicant's application or reapplication for duty-related disability benefits:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court, and

2. A written statement that the application or reapplication for duty-related disability benefits should continue.

(c) An executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file the following at the retirement office:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court, and

2. A written statement that the application or reapplication for duty-related disability benefits is withdrawn.

(d) If the executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the application or reapplication for duty-related disability benefits shall be invalid and shall not be processed by the Agency.

(3)(a) If an applicant has a valid Form 6000, "Notification of Retirement," for duty-related disability benefits that complies with Sections 4 and 6 on file at the retirement office, is receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, and lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 in order to continue with the applicant's application or reapplication for duty-related disability benefits:

1. A Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member."

2. Any outstanding forms required by Section 4 that have not yet been filed by the applicant, and

3. Any additional relevant objective medical evidence and a valid Form 8002, "Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information."

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, "Notification of Retirement," as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's

application or reapplication may file at the retirement office a Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member."

(d) If the beneficiary named on the Form 6000, "Notification of Retirement," as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the duty-related disability application or reapplication shall be invalid and shall not be processed by the Agency.

Section 16[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6800, "Application for Death Benefits Duty Related/In Line of Duty," [] April 2021[April 2003];

(b) Form 6000, "Notification of Retirement," [] April 2021[July 2004];

(c) Form 8035, "Employee Job Description," April 2021;

(d) Form 8040, "Prescription and Nonprescription Medications," April 2021;

(e) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," April 2021;

(f) Form 8030, "Employer Job Description," April 2021;

(g) Form 8846, "Travel Voucher for Independent Examination," May 2008;

(h) Form 6448, "Designation of a Dependent Child for Qualifying Total and Permanent Disability," June 2021;

(i)[(e)] Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor," [] April 2021[May 2003];

(j)[(d)] Form 6456, "Designation of Dependent Child," July 2004;

(e)] Form 6130, "Authorization for Deposit of Retirement Payment," April 2021[May 2008];[and]

(k)[(f)] Form 6135, "Request for Payment by Check," [] May 2015;[February 2002.]

(l) Form 6458, "Designation of Dependent Child for In Line of Duty/Duty-Related," April 2021;

(m) Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," April 2021; and

(n) Form 8002, "Certification of Application for Disability Retirement and Supporting Medical Information," April 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Retirement Systems], [Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: July 29, 2021

FILED WITH LRC: July 29, 2021 at 11:17 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 21, 2021 at 2:00 p.m. Eastern Standard Time at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A 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 October 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: Michael Board, Executive Director Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Board

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for applying or reapplying for duty-related disability and death benefits and for administratively appealing a denial of an application or reapplication for duty-related benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for applying or reapplying for duty-related disability and death benefits and for administratively appealing a denial of an application or reapplication for duty-related benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the procedures and requirements for applying or reapplying for duty-related disability and death benefits and for administratively appealing a denial of an application or reapplication for duty-related benefits in accordance with KRS 61.621 and 78.545.

(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 the procedures and requirements for applying or reapplying for duty-related disability and death benefits and for administratively appealing a denial of an application or reapplication for duty-related benefits in accordance with KRS 61.621 and 78.545.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the regulation to reflect the changes enacted by the General Assembly in House Bill 484 (2020) and House Bill 9 (2021) as well as the Kentucky Public Pensions Authority's use of a third-party vendor to provide medical examiner reviews in accordance with KRS 61.665 and 78.545. The amendment also clarifies the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to reflect the changes enacted by the General Assembly in House Bill 484 (2020) and House Bill 9 (2021) as well as the Kentucky Public Pensions Authority's use of a third-party vendor to provide medical examiner reviews in accordance with KRS 61.665 and 78.545. The amendment also clarifies the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, in accordance with KRS 61.505(1)(f).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the procedures and requirements for applying or reapplying for duty-related disability and death benefits and for administratively appealing a denial of an application or reapplication for duty-related benefits in accordance with KRS 61.621 and 78.545.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System, and the members of the Kentucky Retirement Systems and the County Employees Retirement System. Number of individuals is unknown. Number of businesses, organizations, or state and local governments affected is three (3): the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: This amendment should not substantially alter the actions that the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System will have to take to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation should not cost any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment allows the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System to conform with KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, particularly the duty-related disability and death benefit application and reapplication process as well as the process for administratively appealing the denial of duty-related disability applications and reapplications.

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be negligible.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All members are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(f).

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

(d) How much will it cost to administer this program for subsequent years? The cost to Kentucky Public Pensions Authority should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

105 KAR 1:330. Purchase of service credit.

RELATES TO: KRS 16.545, 16.645[(20), (26), (29), (31)], 61.505, 61.543, 61.552, [-61.5525, -61.555,] 61.592, 78.5520, 61.685, 78.545[(6), (31), (35), (43)], 78.610, 26 U.S.C. 415

STATUTORY AUTHORITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)] authorizes the Kentucky Public Pensions Authority requires the Board of Trustees of Kentucky Retirement Systems to promulgate [all] administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with [necessary or proper to carry out the provisions of] KRS 16.505[40] to 16.652, 61.510[45] to 61.705, and 78.510[20] to 78.852. KRS 16.545, 16.645[(20), (26), (29), (31)], 61.543, 61.552, [61.555,] 61.592, 78.5520, 61.685, [and] 78.545[(6), (31), (35), and (43)], and 78.610 provide for purchasing service credit. 26 U.S.C. 415 establishes federal requirements regarding purchases of service credit. This administrative regulation establishes the documentation required from the employee or person as proof of eligibility for purchasing service credit, the filing deadlines on which the cost calculation will be made, and the procedures for purchase of service credit.

Section 1. Definitions.

(1) Definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this regulation, unless otherwise defined herein.

(2) Prior to April 1, 2021, "the Agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "the Agency" means the Kentucky Public Pension Authority, which is authorized carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "File" means the following methods for delivering or submitting a form to the retirement office: mail, fax, secure email, in-person delivery, and upload via Self Service on the Web site maintained by the Agency (if available). A form shall not be deemed filed until it has been received at the retirement office.

(4) "Provide," when used in reference to a form or other document, means the following methods for the Agency to make a form or document available to a member, retired member, or person: mail, fax, secure email, and upload via Self Service on the Web site maintained by the Agency (if available).

(5) "The Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(6) "Valid," when used in reference to a form, means that all required sections on a form are completed and all required signatures on a form are executed.

Section 2. Cost Calculation Date for Determining the Cost of the Service Purchase.

(1) The cost calculation date for determining the cost of the service to be purchased shall be the later of:

(a) The last day of the month in which the request for the cost of the service is filed[received] at the retirement office;

(b) The last day of the month the employee or person designates as the intended purchase date;

(c) The last day of the month in which documentation of the service is filed at the retirement office;

(d) The last day of the month in which the employee[member] attains sufficient service credit to be eligible to make the purchase; or

(e) The last day of the month in which the employee[member] terminates employment if the employee[member] files a completed Form 4172, Notice of Intent to Transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan, at the retirement office indicating that the employee[member] intends to defer the employee's[member's] lump sum payment for accrued compensatory and annual leave to be paid to the employee[member] at termination to the Kentucky Public Employees Deferred Compensation Authority or other qualified employer sponsored plan. The employee[member] shall then rollover the funds from the Kentucky Public Employees Deferred Compensation Authority or other qualified employer sponsored plan to the Agency[Kentucky Retirement Systems] as payment, in whole or in part, for the employee's[member's] service purchase.

(2)(a) The purchase deadline date shall be the later of the cost calculation date or thirty (30) days from the date the purchase cost is provided[mailed] to the employee, unless day thirty (30) is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the public office is actually and legally closed, [weekend] or any other federal or state holiday that disrupts mail service, then the purchase deadline date shall be the next business day.

(b) Upon discovery of a delay in providing the purchase cost to the employee or person, the Agency may extend the purchase deadline date in paragraph (a).

(3) An employee or person may not make a new request for cost calculation for purchase of service previously requested until the purchase deadline date has passed.

(4) Payment[Except as provided in KRS 61.552(16), payment] for purchase of service credit shall be filed at the retirement office while the employee is participating in an eligible retirement system and prior to the employee's termination date, except in the following circumstances:

(a) The purchase of service credit is made under KRS 61.552(2);

(b) If the employee files a Form 4170, "Direct Transfer/Rollover Authorization Form," at the retirement office while the employee is participating in an eligible retirement system and prior to the employee's termination date, so long as the financial institution completes the transfer or rollover within sixty (60) days of the payment due date, the payment for purchase of service credit by transfer or rollover may occur when the employee is no longer participating in an eligible retirement system and after the employee's termination date; or

(c) If the Agency discovers an error or omission in the service purchase cost, then the Agency may provide corrected costs to the employee, person, member, or retired member and, in order to have the service purchase credited to his or her account, the employee, person, member, or retired member shall pay any additional amount due for the corrected costs.

(5) If the employee[member] elects to purchase only a portion of the service for which he or she has requested a cost calculation, the employee[member] shall be required to obtain a new cost calculation for the remaining service unless the remaining service is service under KRS 61.552(2)[(1)] or (3)[(23)].

Section 3[2]. General Requirements to Purchase Service.

(1) The employee or person shall file at the retirement office[provide] all documentation necessary for the Agency[retirement system] to determine that the service meets the eligibility requirements for purchase of service.[The documentation may be in the form of:

(a) A statement or letter signed by the reporting official, personnel director or agency head, or if the service is with the university, federal government or military a statement or letter signed by an authorized employee of the university, federal government or military, except that no employee shall certify his own service. The retirement system may require that the statement be made under oath; or

(b) Copies of personnel and wage records supplied by the agency.]

(2) The Agency may require that any statement, letter, form, or other document required in this regulation be notarized, made under oath as defined in KRS 523.010, or both.

(3) No employee or person shall certify his or her own service on any of the statements, letters, forms, or other documents required by this regulation.

(4)(a) The Agency shall determine how much service is eligible for purchase by statute and shall notify the employee or person in writing of the cost of the service that qualifies for purchase.

(b) If the Agency determines that the service is not eligible for purchase, the Agency shall notify the employee or person in writing of the reasons.

Section 4. Purchase of Omitted Service.

(1)(a) To purchase omitted service pursuant to KRS 61.552(2) and 78.545, the employee or person shall file at the retirement office a valid Form 4225, "Verification of Past Employment."

(b) If the employee or person is seeking to purchase omitted service based on employment with the Executive Branch, copies of personnel and wage records provided by the employer shall be filed at the retirement office instead of the Form 4225, "Verification of Past Employment."

(2) If the Agency[retirement system] determines that the employer[agency] records submitted on the Form 4225, "Verification of Past Employment," or the personnel and wage records from the Executive Branch employer are not sufficient, the Agency[retirement system] may require the employee or person to supplement the employer[agency] records with copies of check stubs, W-2 forms, personnel action forms, or payroll records in the employee's or person's possession.

(3) If the employee or person does not have additional documentation of the service, the employee or person may file at the retirement office[submit] a report of detailed earnings from the Social Security Administration for the period of service, along with two (2) Form 4160s, "Affidavit and Certification for Documentation of Service" [affidavits] completed by persons[individuals] who earned, or were eligible for, service for the same period in a state administered retirement system with the same employer. Each affiant shall detail the employee's or person's employment status and length of service.

Section 5. Purchase of School Board Service.

(4) The retirement office shall determine if all or part of the service is eligible for purchase and shall notify the employee in writing of its determination.

Section 3. (1) For service with a public agency, other than a school board, participating in one (1) of the systems administered by the Kentucky Retirement Systems or with a nonparticipating agency whose service is authorized by statute, the employee shall submit the following documentation and may be required by the system to provide additional information, if necessary for determination:

(a) The beginning and ending dates of the service and any breaks which may have occurred during the service, listed by fiscal year;

(b) The number of calendar months worked;

(c) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary or interim; and

(d) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.

(2) For service with a school board, the employee shall file at the retirement office a valid Form 4225, "Verification of Past Employment." [provide the following documentation and may be required by the system to provide additional information, if necessary for determination:

(a) The beginning and ending dates of the service and any breaks which may have occurred during the service, listed by fiscal year;

(b) The number of calendar months worked;

(c) The number of days in the employee's employment contract and the actual number of days worked;

- (d) The hours worked per day;
- (e) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary or interim; and
- (f) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.]

Section 6. Vested Service Purchases.

(1)(a) In order to purchase service credit for ~~(3) For~~ active duty service in the Armed Forces of the United States pursuant to KRS 61.552(5)(d) and 78.545, the employee shall file at the retirement office ~~provide~~ a copy of the federal form DD-214 or other official military documents clearly indicating:

- 1. ~~(a)~~ The date of entry into active duty service;
- 2. ~~(b)~~ The date of discharge from active duty service; and
- 3. ~~(c)~~ The type of discharge.

(b) In order to purchase service credit for ~~(4) For~~ service in the National Guard or the military reserve forces pursuant to KRS 61.552(5)(e) and 78.545, including periods of active duty training, or for service in the National Guard, the employee shall file at the retirement office ~~provide~~ copies of official military documents clearly indicating the date of entry and current participation or date of discharge.

(c) The documents required in paragraphs (a) or (b) of this subsection shall be verified by a statement or letter signed by an authorized employee of the military.

(d) The Agency shall verify with the employer the beginning and ending dates of the period of leave associated with active duty service in the Armed Forces of the United States, service in the National Guard, or service in the military reserve forces.]

(5) For service with the federal government, the employee shall provide the following documentation:

- (a) The name of the federal agency where the employee worked;
- (b) The beginning and ending dates of the service and any breaks which may have occurred during the service;
- (c) The job title;
- (d) If the individual worked an average of 100 or more hours per month and if the position was temporary, seasonal or regular full time; and
- (e) If the employee participated in a retirement plan and if the employee has taken a refund of contributions to the plan.]

(2)(a) To purchase service for ~~(6) For~~ a period when the employee ~~member~~ was on ~~leave, including~~ educational, maternity, or ~~and~~ sick leave without pay pursuant to KRS 61.552(5)(i) and 78.545, the employee ~~member~~ shall file at the retirement office a statement or letter from the reporting official, personnel director, or agency head certifying ~~submit~~ documentation of the beginning and ending dates of the period of leave and the type of leave designated by the employer.

(b) The Agency shall verify with the employer the beginning and ending dates of the period of educational, maternity, or sick leave without pay.

(3) To purchase state university service pursuant to KRS 61.552(5)(b) and 78.545, the employee shall file at the retirement office a valid Form 4120, "Verification of Employment with a State University."

(4) To purchase federal service pursuant to KRS 61.552(5)(f) and 78.545, the employee shall file at the retirement office a valid Form 4115, "Federal Verification."

(5)(a) To purchase past seasonal, emergency, interim, probationary, temporary, or part-time employment that averages the required hours of work per month pursuant to KRS 61.552(5)(g) and 78.545, the employee shall file at the retirement office a valid Form 4225, "Verification of Past Employment."

(b) If the employee is seeking to purchase service based on past seasonal, emergency, interim, probationary, temporary, or part-time employment with the Executive Branch, copies of personnel and wage records provided by the employer shall be filed at the retirement office instead of the Form 4225, "Verification of Past Employment."

(6) To purchase service with a non-participating agency whose service is authorized pursuant to KRS 61.552(5)(i) and 78.545, the

employee shall file at the retirement office the following documentation and may be required to file additional information, if necessary for determination:

(a) The beginning and ending dates of the service and any breaks that may have occurred during the service, listed by fiscal year;

(b) The number of calendar months worked;

(c) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary, or interim; and

(d) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.

(7) To purchase urban-county government service pursuant to KRS 61.552(5)(k) and 78.545, the employee shall file at the retirement office a valid Form 4131, "Verification of Urban-County Government Service."

(8)(a) To purchase service credit for out-of-state public service pursuant to KRS 61.552(5)(c) and 78.545, the employee shall file at the retirement office a valid Form 4140, "Verification of Out-of-State Service."

(b) To purchase out-of-state service credit for a hazardous duty position, the employee shall also file at the retirement office a copy of the description of the duties of the out-of-state position from his or her former out-of-state employer.]

(7) For service with one (1) of the state universities in Kentucky, the employee shall provide the following documentation:

- (a) The name of the university where the employee worked;
- (b) The beginning and ending dates of the service and any breaks which may have occurred during the service;
- (c) The job title;
- (d) If the individual worked an average of 100 or more hours per month and if the position was temporary, seasonal or regular full time; and
- (e) If the employee participated in a benefit plan during the period of employment.

(8) An employee wishing to purchase service credit for out-of-state public service under KRS 61.552(17) and (18) shall request a copy of the "Form 4140, Certification of Out-of-State Service".

(a) The employee shall mail the "Form 4140, Certification of Out-of-State Service", to his former employer and retirement plan for completion, and if the employee wishes to purchase hazardous service in KERS, CERS, or SPRS, he shall also obtain a copy of the description of his duties in the out-of-state position from his former employer.]

(c) Out-of-state service ~~Service~~ credit shall be eligible for purchase as hazardous duty if the position is the same as or substantially similar to positions for which hazardous duty credit has been approved under KRS 61.592 or 78.5522.];

(b) The employee shall be responsible for obtaining the information requested regarding the period of out-of-state service, and the completed "Form 4140, Certification of Out-of-State Service", and job description shall be submitted to the retirement office;]

(c) The retirement system shall determine how much service is eligible for purchase under the statute and shall notify the employee of the full actuarial cost of the service which qualifies for purchase; and

(d) If the retirement system determines that the service is not eligible for purchase, the retirement system shall notify the employee of the reasons.]

Section 7[4]. Service purchase calculations based on actuarial cost. For a purchase based on the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545[61.5525], the higher of the current rate of pay, final rate of pay, or final compensation times the actuarial age factor shall be determined as follows, except that for an employee of a local school board paid under an employment contract, the current rate of pay shall be equal to the final compensation as of the cost calculation date:

(1) Except for a classified employee of a local school board, current rate of pay shall be determined as follows:

(a) For an hourly employee paid on a seven and one-half (7 1/2) hour day, the hourly rate times 1,950;

(b) For an hourly employee paid on an eight (8) hour day, the hourly rate times 2,080;

(c) For an employee paid by the day, the daily rate times 260;

(d) For an employee paid by the week, the weekly rate times fifty-two (52);

(e) For an employee paid by the month, the monthly rate times twelve (12);

(f) For a part-time employee who averages 100 or more hours per month, the hourly rate times hours per day times 260. If the number of hours worked per day is not fixed by the employer, seven and one-half (7 1/2) hours shall be used;

(g) For an employee who receives a fixed amount in addition to an hourly, daily, weekly, monthly, or annual rate, the current rate shall include all fixed amounts, averaged into the same period;

(h) For an employee simultaneously employed in more than one (1) ~~of the Systems~~retirement system administered by the Kentucky Retirement Systems, the higher of the combined current rate of pay, combined final rate of pay, or combined final compensation shall be used as of the cost calculation date.

(2) Final compensation shall be determined as of the cost calculation date, except that the final compensation of nonhazardous members of the County Employees Retirement System or Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be based on the three (3) fiscal years with the highest average monthly earnings if the sum of the employee's service when added to his age would equal at least seventy-five (75), assuming the employee's service includes:

(a) All service remaining on an active installment purchase agreement;

(b) All service which the employee is eligible to purchase under KRS 61.552(2), 61.552(3), and 78.545~~(4) and (23)(a) and (b)~~; and

(c) All service the employee would accrue if employment continued through December 31, 2008.

(3) The employee's age rounded to the nearest year as of the cost calculation date shall be used.

(4) The benefit factor used to determine the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545~~(61.5525)~~, shall be the benefit factor to which the employee is entitled on the first day of the month following the cost calculation date, except that the benefit factor for nonhazardous employees of the County Employees Retirement System and the Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be the highest benefit factor to which the employee would be entitled, assuming total:

~~(a) An effective retirement date no later than January 1, 2009; and~~

~~(b) Total~~ service as determined in subsection (2) of this section.

Section 8[5]. Correction upon discovery of error or omission in service purchase costs.

(1) After the employee, member, or retired member has purchased service, the Agency~~retirement system~~ may recalculate the cost of the service if, upon audit, the Agency~~retirement system~~ determines that any of the information utilized to calculate the cost of the service was incorrect.

(2) If the recalculation results in an increase in the cost of \$100 or more, the employee or person, member, or retired member shall have thirty (30) days to pay the additional amount.

(3) If the employee, member, retired member, or the employer, fails to pay the additional amount, the employee's, member's, or retired member's service shall be reduced to the next lower increment or number of months for which the employee, member, or retired member is eligible based on the original payment, and the difference shall be refunded to the employee, member, or retired member.

Section 9[6]. Special considerations for purchase of refunded or past service.

(1) The verified wages associated with service purchased under the provisions of KRS 61.552 and 78.545 that~~(4) to (5)(a)~~

~~and (24), which~~ would have qualified as creditable compensation~~;~~ shall be added to the employee's account and shall be used in determining the employee's final compensation.

(2) An employee purchasing service under the preceding subsection~~paragraph~~ by increments or by installment purchase agreement shall have the service credited in chronological order beginning with the earliest service.

Section 10[7]. Incorporation by Reference.

(1) The following material is incorporated by reference:[]

~~(a) Form 4140, "Verification of Out-of-State Service", July 2000;~~

~~(a)[]~~~~(b)~~ Form 4172, "Notice of Intent to Transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan,"~~;~~ April 2021~~[May 2008]~~~~;~~~~and~~

~~(b)[]~~~~(e)~~ Form 4170, "Direct Transfer/Rollover Authorization Form"~~;~~ April 2021~~;~~~~2002.~~

~~(c) Form 4225, "Verification of Past Employment," April 2021;~~

~~(d) Form 4160, "Affidavit and Certification for Documentation of Service," September 2010;~~

~~(e) Form 4120, "Verification of Employment with a State University," April 2021;~~

~~(f) Form 4115, "Federal Verification," April 2021;~~

~~(g) Form 4131, "Verification of Urban-County Government Service," April 2021; and~~

~~(h) Form 4140, "Verification of Out-of-State Service," April 2021.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority~~Kentucky Retirement Systems, Perimeter Park West~~, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: July 29, 2021

FILED WITH LRC: July 29, 2021 at 11:17 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 21, 2021 at 9:00 a.m. Eastern Standard Time at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A 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 October 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: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Board

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for purchases of service credit with the Kentucky Public Pensions Authority in accordance with KRS 16.545, 16.645, 61.505, 61.543, 61.552, 61.592, 78.5520, 61.685, 78.545, 78.610, and 26 U.S.C. 415.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for purchases of service credit with the Kentucky Public Pensions Authority in accordance with KRS 16.545, 16.645,

61.505, 61.543, 61.552, 61.592, 78.5520, 61.685, 78.545, 78.610, and 26 U.S.C. 415.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the procedures and requirements for purchases of service credit with the Kentucky Public Pensions Authority in accordance with KRS 16.545, 16.645, 61.505, 61.543, 61.552, 61.592, 78.5520, 61.685, 78.545, 78.610, and 26 U.S.C. 415.

(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 the procedures and requirements for purchases of service credit with the Kentucky Public Pensions Authority in accordance with KRS 16.545, 16.645, 61.505, 61.543, 61.552, 61.592, 78.5520, 61.685, 78.545, 78.610, and 26 U.S.C. 415.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the regulation to reflect the changes enacted by the General Assembly in House Bill 484 (2020) and House Bill 9 (2021). The amendment also clarifies the existing regulation and incorporates by reference multiple newer forms in use by the Kentucky Public Pensions Authority for service purchases.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to reflect the changes enacted by the General Assembly in House Bill 484 (2020) and House Bill 9 (2021), clarify the existing regulation, and incorporate by reference multiple newer forms in use by the Kentucky Public Pensions Authority for service purchases.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 16.545, 16.645, 61.505, 61.543, 61.552, 61.592, 78.5520, 61.685, 78.545, 78.610, and 26 U.S.C. 415.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the procedures and requirements for purchases of service credit with the Kentucky Public Pensions Authority in accordance with KRS 16.545, 16.645, 61.505, 61.543, 61.552, 61.592, 78.5520, 61.685, 78.545, 78.610, and 26 U.S.C. 415.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System, and the members of the Kentucky Retirement Systems and the County Employees Retirement System. Number of individuals is unknown. Number of businesses, organizations, or state and local governments affected is three (3): the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment should not substantially alter the actions that the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System will have to take to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation should not cost any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment allows the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System to conform with KRS 16.545, 16.645, 61.505, 61.543, 61.552, 61.592, 78.5520, 61.685, 78.545, 78.610, and 26 U.S.C. 415.

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

administrative regulation:

(a) Initially: The costs associated with the implementation of this administrative regulation should be negligible.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All members are subject to the same processes and procedures.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(f).

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

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

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

(c) How much will it cost to administer this program for the first year? The cost to Kentucky Public Pensions Authority should be negligible.

(d) How much will it cost to administer this program for subsequent years? The cost to Kentucky Public Pensions Authority should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS Kentucky Board of Pharmacy (Amendment)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.191, 315.402

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.191(1)(i), 315.402(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates, and the issuance and renewal of licenses and permits:

- (1) Application for a licensee for pharmacist examination - \$150;
- (2) Application and initial license for a pharmacist license by license transfer - \$250;
- (3) Annual renewal of a pharmacist license - ninety-five [seventy] (95[70]) dollars;
- (4) Delinquent renewal penalty for a pharmacist license - ninety-five [seventy] (95[70]) dollars;
- (5) Annual renewal of an inactive pharmacist license - ten (10) dollars;
- (6) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;
- (7) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;
- (8) Application for a permit to operate a pharmacy - \$125;
- (9) Renewal of a permit to operate a pharmacy - \$125;
- (10) Delinquent renewal penalty for a permit to operate a pharmacy - \$100 dollars;
- (11) Change of location or change of ownership of a pharmacy or manufacturer permit - seventy-five (75) dollars;
- (12) Application for a permit to operate as a manufacturer - \$125;
- (13) Renewal of a permit to operate as a manufacturer - \$125;
- (14) Delinquent renewal penalty for a permit to operate as a manufacturer - \$125;
- (15) Change of location or change of ownership of a wholesale distributor license - seventy-five (75) dollars;
- (16) Application for a license to operate as a wholesale distributor - \$125;
- (17) Renewal of a license to operate as a wholesale distributor - \$125;
- (18) Delinquent renewal penalty for a license to operate as a wholesale distributor - \$125; and
- (19) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services - twenty-five (25) dollars.

LARRY HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: August 3, 2021

FILED WITH LRC: August 4, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021 at 9:00 a.m. Eastern Time via zoom teleconference with the physical address of the meeting being at 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601. A link to the public hearing shall be provided on the Board's website no fewer than (5) days before the hearing. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is received. 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 October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the fees associated with Board of Pharmacy licensure.

(b) The necessity of this administrative regulation: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is reasonable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation amendment will increase fees for the renewal of pharmacist licenses and the delinquent renewal penalty for the renewal of pharmacist licenses by twenty-five (\$25) annually per authority in KRS 315.191.

(2) If 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 amendment increases the fee for pharmacist renewal licenses and the delinquent pharmacist license renewal by twenty-five (\$25) annually per authority in KRS 315.035(4); 315.036(1); 315.110(1).

(b) The necessity of the amendment to this administrative regulation: This administrative regulation amendment will allow the Board of Pharmacy to be able to be fully and adequately staffed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible. How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by reasonable fees for the board to perform all the functions for which it is responsible.

(d) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacists will be affected minimally by this regulation amendment.

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

(4) 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:

(a) Pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a twenty-five dollar fee increase for pharmacists when they renew their license. If a pharmacist does not do this in a timely manner, there will be another delinquent fee of twenty-five dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists will be better served by the Board of Pharmacy with more resources and more timely notice with the disciplinary process.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: There will be a twenty-five (\$25) increase to all pharmacist license renewals and delinquent renewal penalties. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There will be a twenty-five (\$25) increase to all pharmacist license renewals and to the delinquent renewal penalty if a pharmacist renews their license late.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacist and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(i); 315.035(4); 315.036(1); 315.110(1).

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

(a) How much 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 estimated that this regulation will provide an annual \$275,000 increase in 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 estimated that this regulation will provide an annual \$275,000 increase in revenue.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): Regulation will provide an annual \$275,000 increase in revenue.

Expenditures (+/-): 0

Other Explanation:

BOARDS AND COMMISSIONS

Board of Pharmacy (Amendment)

201 KAR 2:076. Compounding.

RELATES TO: KRS 217.055(2), 217.065(7), 315.020(1), 315.035(6), 315.035(1), 315.191(1)(a), (g)

STATUTORY AUTHORITY: KRS 315.020(1), 315.035(6), 315.035(1), 315.191(1)(a), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020(1) requires the owner of a pharmacy who is not a pharmacist to place a pharmacist in charge of the owner's pharmacy. KRS 315.035(6) authorizes the board to promulgate administrative regulations to assure minimum standards of practice of compounding by pharmacies and pharmacists, and to assure the safety of all products provided to the citizens of the Commonwealth. KRS 315.191(1) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. This administrative regulation establishes the requirements for compounding non-sterile and sterile preparations.

Section 1. (1) A policy and procedure manual for non-sterile and sterile compounding shall be readily available at a pharmacy for inspection purposes.

(2) A copy of the manual shall be made available to the board upon request.

(3) The manual shall be reviewed and revised on an annual basis.

Section 2. (1) ~~[Effective January 1, 2018,]~~ All[all] non-sterile compounded preparations shall be compounded pursuant to United States Pharmacopeia (USP) 795, unless specified portions submitted by a pharmacist have been waived by the board. Notwithstanding any USP guidance to the contrary, the addition of flavoring to a drug shall not be considered non-sterile compounding, when such additive:

(a) Is inert, nonallergenic, and produces no effect other than the instillation or modification of flavor; and

(b) Is not greater than five (5) percent of the drug product's total volume.

(2) ~~[Effective January 1, 2018,]~~ All[all] sterile compounded preparations shall be compounded pursuant to USP 797, unless specified portions submitted by a pharmacist have been waived by the board.

(3) All preparation, compounding, dispensing and repackaging of radiopharmaceuticals shall be pursuant to United States Pharmacopeia (USP) 825, unless specified portions submitted by a pharmacist have been waived by the board.

(4) ~~[After January 1, 2018,]~~ All[all] written waiver requests submitted by a pharmacist shall be considered by the Board at its next regularly scheduled meeting.

~~(5)~~[(4)] The board, upon a showing of good cause and in balancing the best interest of the public health, safety and welfare, may waive the requirement of any specified portion of USP 795, ~~or~~ 797 or 825.

Section 3. (1) A facility that compounds non-sterile or sterile preparations shall be managed by a pharmacist-in-charge (PIC) licensed to practice pharmacy in the Commonwealth and who is knowledgeable in the specialized functions of preparing and dispensing compounded non-sterile and sterile preparations, including the principles of aseptic technique and quality assurance.

(2) The PIC shall be responsible for the: purchasing, storage, compounding, repackaging, dispensing, distribution of all drugs and preparations, development and continuing review of all policies and procedures, training manuals, quality assurance programs, and participation in those aspects of the facility's patient care evaluation program relating to pharmaceutical material utilization and effectiveness.

(3) The PIC may be assisted by additional pharmacy personnel adequately trained, to the satisfaction of the PIC, in this area of practice and for each product they will be compounding.

Section 4. (1) The pharmacist shall receive a written, electronic, facsimile, or verbal prescription, or medical order from a prescriber before dispensing any compounded, non-sterile or sterile preparation. These prescriptions or medical orders shall contain the following:

- (a) Patient's name, and species if not human;
- (b) Patient's address on controlled substances prescriptions or location (room number);
- (c) Drug name and strength;
- (d) Directions for use;
- (e) Date;
- (f) Authorized prescriber's name;
- (g) Prescriber's address and DEA number, if applicable;
- (h) Refill or end date instructions, if applicable; and
- (i) Dispensing quantity, if applicable.

(2) A pharmacy generated patient profile shall be maintained separate from the prescription file. The patient profile shall be maintained under the control of the PIC for a period of two (2) years following the last dispensing activity. In addition, a medication administration record (MAR) as part of the institutional

record shall be retained for a period of five (5) years from date of the patient's discharge from the facility, or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer. Supplemental records may also be employed as necessary. The patient profile shall contain:

- (a) Patient's name;
- (b) Name of compounded preparation dispensed;
- (c) Date dispensed;
- (d) Drug content and quantity; and
- (e) Patient's directions.

(3) Each compounded preparation dispensed to patients shall be labeled with the following information:

- (a) Name, address, and telephone number of the licensed pharmacy, if product will leave the premises;
- (b) Date;
- (c) Identifying number;
- (d) Patient's full name;
- (e) Name of each drug, strength, and amount;
- (f) Directions for use, including infusion rate;
- (g) Required controlled substances transfer warnings, where applicable;
- (h) Beyond use date;
- (i) Identity of dispensing pharmacist;
- (j) Storage requirements, when applicable; and
- (k) Auxiliary labels, when applicable.

(4) The PIC shall maintain access to and submit, as appropriate, such records and reports as are required to ensure the patient's health, safety, and welfare. Records shall be readily available, maintained for two (2) years at a facility not computerized, but for five (5) years at a facility utilizing computerized recordkeeping, and subject to inspection by the Board of Pharmacy or its agents. These shall include the following:

- (a) Patient profile;
- (b) Purchase records;
- (c) Biennial controlled substances inventories;
- (d) Policy and procedures manual;
- (e) Policies and procedures for hazardous wastes, if applicable;
- (f) Quality assurance records; and
- (g) Such other records and reports as may be required by law and rules and administrative regulations of the Kentucky Board of Pharmacy.

(5) Information regarding individual patients shall be maintained in a manner to assure confidentiality of the patient's records. Release of this information shall be in accordance with federal and state laws.

(6) The PIC shall be responsible for the environmental control of all products shipped. Any compounded product that is frozen or requires refrigeration shall be shipped or delivered to a patient in appropriate temperature controlled delivery containers, if the product leaves the premises.

(7) The PIC shall be responsible for assuring that there is a system for the disposal of hazardous waste in a manner that does not endanger the public health.

Section 5. Hazardous Drugs. (1) ~~[Effective January 1, 2018,]~~ All [all] non-sterile preparations that contain hazardous substances shall be compounded pursuant to USP 795.

(2) ~~[Effective January 1, 2018,]~~ All [all] sterile compounded preparations that contain hazardous substances shall be compounded pursuant to USP 797.

Section 6. Violation of any provision of this administrative regulation shall constitute unethical or unprofessional conduct in accordance with KRS 315.121.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) USP 795, Revision Bulletin, Official January 1, 2014; ~~[and]~~
- (b) USP 797, Revision Bulletin, Official June 1, 2008; ~~[;]~~ and
- (c) USP 825, Revision Bulletin, Official, Official December 1, 2020.

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, ~~[Suite 300, 125 Holmes Street,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/statutesandregulations/Pages/default.aspx>

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: August 10, 2021

FILED WITH LRC: August 10, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for compounding non-sterile and sterile preparations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the requirements for compounding non-sterile and sterile preparations to promote public health, safety, and welfare.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 315.035(6) and KRS 315.191(1), establishes the requirements for compounding non-sterile and sterile preparations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 315.035(6) authorizes the Board of Pharmacy to promulgate administrative regulations to assure minimum standards of practice of compounding by pharmacies and pharmacists, and to assure the safety of all products provided to the citizens of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow adding a flavor to a drug without such addition being considered non-sterile compounding so long as the additive is inert, nonallergenic, produces no effect other than the instillation or modification of flavor, is not greater than five (5) percent of the drug product's total and volume. This amendment also implements USP 825 for radiopharmaceutical governance in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to set forth the requirements for compounding non-sterile and sterile preparations to promote public health, safety and welfare.

(c) How the amendment conforms to the content of the

authorizing statutes: This amendment to the administrative regulation, authorized by KRS 315.035(6) and KRS 315.191(1), establishes the requirements for compounding non-sterile and sterile preparations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 315.035(6) authorizes the Board of Pharmacy to promulgate administrative regulations to assure minimum standards of practice of compounding by pharmacies and pharmacists, and to assure the safety of all products provided to the citizens in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The board anticipates licensees, permit holders and registrants will be minimally impacted by this new 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: Licensees, permit holders and registrants will have to familiarize themselves with this new regulation. This regulation provides the requirements for compounding non-sterile and sterile preparations. The board will help educate identified entities of this new regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This new regulation will provide licensees, permit holders and registrants with information applicable to the requirements for compounding non-sterile and sterile preparations.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new regulation is applicable to all licensees, permit holders and registrants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.035(6), KRS 315.191(1).

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

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

Board in the first year.

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

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:082. Transportation and holding of live exotic wildlife.

RELATES TO: KRS 150.010, 150.015, 150.186, ~~[150.305-]~~ 150.320, 150.330, 150.990, 150.183, 150.195, 150.235, 285.065, 285.085

STATUTORY AUTHORITY: KRS 65.877, 150.025(1), 150.090, 150.105, 150.180(6), 150.280, 50 C.F.R. 17, 50 C.F.R. 21[29], 18 U.S.C. 42-43, 16 U.S.C. 3371-3378

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the department and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint conservation officers charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180(6) authorizes the department to regulate the transportation[importation] of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. 50 C.F.R. 21 establishes the federal standards for holding migratory birds, including raptors. 50 C.F.R. 17 establishes the federal standards for endangered and threatened wildlife. This administrative regulation establishes the procedures for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety.

Section 1. Definition. "Exotic wildlife" means wildlife species that [which] have never naturally existed in the wild in Kentucky, including ~~[introduced]~~ species introduced by man that have become naturalized.

Section 2. Transportation Permits and Certificates of Veterinary Inspection. (1) A [Pursuant to 301 KAR 2:081, a] person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of exotic wildlife, unless otherwise exempted by this or another administrative regulation, prior to:

(a) Receiving a shipment of wildlife from outside of Kentucky; or

(b) Transporting[Importing] exotic wildlife into Kentucky; or

~~(c) Transporting exotic wildlife into and through the state to a destination outside Kentucky.]~~

(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of wildlife into ~~[and through]~~ Kentucky.

(3) An individual transportation permit shall be valid for one (1) shipment of wildlife.

(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.

(5) All shipments ~~[Any shipment]~~ of wildlife, except for amphibians and reptiles, shall be accompanied by a:

(a) Certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or

(b) Federal ~~[A federal]~~ quarantine certificate.

Section 3. Applying for Permits. (1) A person shall apply for a transportation permit by completing the online application process when available at fw.ky.gov, or by submitting the necessary forms, as identified below, found on the department's website at fw.ky.gov. [; in accordance with 301 KAR 2:081].

(a) For an individual transportation permit, an applicant must submit a completed "Individual Transportation Permit Application" form; or

(b) For an annual transportation permit, an applicant must submit a completed "Annual Transportation Permit Application" form.

(2) An applicant for a transportation permit shall only obtain wildlife from a legal source.

(3) A permit holder must be at least eighteen (18) years of age.

(4) An applicant shall submit a completed application and remit the correct fee, as established in 301 KAR 3:022 or 301 KAR 3:061.

(2) The department shall deny a permit to an applicant that:

(a) Is less than eighteen (18) years of age;

(b) Has been convicted within the last year of a violation of:

1. This administrative regulation; or

2. 301 KAR 2:081;

(c) Does not submit a completed application; or

(d) Does not remit the correct fee pursuant to 301 KAR 3:022.

(3) Failure to provide accurate, factual, and complete information on the application form shall result in:

(a) Immediate withdrawal or revocation of the permit; and

(b) Confiscation of the wildlife imported under the permit.]

(5) [(4)] An annual transportation permit holder shall [notify the department of any amendments to the original application at least forty-eight (48) hours prior to any wildlife shipment by] submit a revised annual transportation permit application to the department via mail to the address listed on the annual transportation permit application or via email at FWpermits@ky.gov for any amendments to the original application and shall not ship wildlife unless the amendments are approved and a revised permit issued by the department. [calling the department by telephone at 800-858-1549; Monday through Friday, between 8 a.m. and 4:30 p.m., Eastern time.]

(6) [(5)] A person transporting [importing] or possessing exotic wildlife shall be responsible for following all applicable federal and state laws and local ordinances [and rules] regarding [captive] wildlife.

(7) A person with a valid falconry permit, as established in 301 KAR 2:195, shall not be required to possess a transportation permit for those raptors held under the falconry permit.

(8) An applicant possessing or transporting into Kentucky from outside the state federally protected migratory bird species, shall possess, and provide to the department, a valid United States Fish and Wildlife Service permit, except for persons or entities that meet the conditions listed in 50 C.F.R. 21.12 (a) and (b), 50 C.F.R. 21.13, and 50 C.F.R. 21.14.

(9) Federally endangered exotic species shall not be possessed or transported into Kentucky from outside the state, except the Department of Fish and Wildlife Resources may allow transportation or possession of any exotic endangered species of wildlife pursuant to KRS 150.183 and 301 KAR 3:061.

Section 4. Prohibited Species. (1) Except as specified in Section 5 of this administrative regulation, a person shall not

possess or transport into Kentucky from outside the state, [import, possess, or transport through Kentucky] the following exotic wildlife [species] that are considered potentially injurious to native ecosystems:

(a) Baya weaver (Ploceus philippinus);

(b) Blackbirds (Genus Agelaius), except native species;

(c) Cape sparrow (Passer melanurus);

(d) Cowbirds (Genus Molothrus), except native species;

(e) Cuckoo (Family Cuculidae), except native species;

(f) Dioch or red-billed quelea (Quelea quelea);

(g) European blackbird (Turdus merula);

(h) Fieldfare (Turdus pilaris);

(i) Flying fox or fruit bat (Genus Pteropus);

(j) Fox (Genus Cerdocyon, Genus Lycalopex, Genus Otocyon, Genus Urocyon and Genus Vulpes);

(k) [(j)] Gambian giant pouched rat (Cricetomys gambianus);

(l) [(k)] Giant, marine, or cane toad (Bufo marinus);

(m) [(l)] Hawaiian rice bird or spotted munia (Lonchura punctulata);

(n) Jack rabbit (Genus Lepus);

(o) Java sparrow (Padda oryzivora);

(p) Madagascar weaver (Foudia madagascariensis);

(q) Mistle thrush (Turdus viscivorus);

(r) Monk or Quaker parakeet (Myiopsitta monachus);

(s) Multimammate rat (Genus Mastomys);

(t) Mute swan (Cygnus olor);

(u) Nutria (Myocastor coypus);

(v) Prairie dog (Cynomys spp.);

(w) Raccoon dog (Nyctereutes procyonoides);

(x) San Juan rabbit (Oryctolagus cuniculus);

(y) [(x)] Sky lark (Alauda arvensis);

(z) [(y)] Song thrush (Turdus philomelos);

(aa) [(z)] Starling (Family Sturnidae) including pink starlings or rosy pastors (Sturnus roseus), except for Indian Hill mynahs (Gracula religiosa);

(ab) [(aa)] Suricate or slender-tailed meerkat (Genus Suricata);

(ac) [(ab)] Tongueless or African clawed frog (Xenopus laevis);

(ad) [(ac)] Weaver finch (Genus Passer), except Passer domesticus;

(ae) [(ad)] White eyes (Genus Zosterops);

(af) Wild European rabbit (also called the San Juan Rabbit) not distinguishable morphologically from native wild rabbits;

(ag) Wild rabbits, hares, and pikas (Order Lagomorpha);

(ah) [(ag)] Yellowhammer (Emberiza citrinella); or

(ai) [(ah)] A member of the following families:

1. Suidae (pigs or hogs), except for domestic swine;

2. Viverridae [civets [civits], genets, lingsangs, mongooses and fossas]; or

3. Tayassuidae (peccaries and javelinas).

(2) Except as specified in Section 5 and 6 of this administrative regulation, a person shall not [import or] possess or transport into Kentucky from outside the state the following inherently dangerous exotic [species of inherently dangerous] wildlife:

(a) Alligators or caimans (Family Alligatoridae);

(b) African buffalo (Syncerus caffer);

(c) Bears (Family Ursidae);

(d) Cheetah (Acinonyx jubatus);

(e) Clouded leopard (Neofelis nebulosa);

(f) Crocodiles (Family Crocodylidae);

(g) Elephants (Family Elephantidae);

(h) Gavials (Family Gavialidae);

(i) Gila monsters or beaded lizards (Family Helodermatidae);

(j) Hippopotamus (Hippopotamus amphibius);

(k) Honey badger or ratel (Mellivora capensis);

(l) Hyenas (Family Hyaenidae), all species except aardwolves (Proteles cristatus);

(m) Komodo dragon (Varanus komodoensis);

(n) [(m)] Lions, jaguars, leopards or tigers (Genus Panthera);

(o) Lynx (Genus Lynx);

(p) [(n)] Old world badger (Meles meles);

(q) [(o)] Primates, nonhuman (Order Primates);

(r) [(p)] Rhinoceroses (Family Rhinocerotidae);

(s) [(q)] Snow leopard (Uncia uncia);

(t)(f) Venomous exotic snakes of the families Viperidae, Attractaspididae, Elapidae, Hydrophidae, and Colubridae, except for hognose snakes (Genus Heterodon);

(u) [(s)] Wolverine (Gulo gulo); or

(v) [(t)] Hybrids of all species contained in this list.

Section 5. Exemptions. (1) A facility that is accredited by the Association of Zoos and Aquariums shall:

(a) Not be required to obtain a transportation permit for exotic wildlife;

(b) Be allowed to possess and transport into Kentucky from outside the state federally endangered species and the prohibited exotic species listed in Section 4 of this administrative regulation for official zoo activities; and

(c) Maintain prohibited exotic species in an enclosure sufficient to prevent escape and direct contact with the public.

(2) Commissioner's exemption.

(a) Upon written request, the commissioner may grant a written exemption for the possession or transportation into Kentucky of the prohibited species listed in Section 4.

(b) Only the following entities shall be eligible for an exemption by the commissioner:

1. A facility that is designated as the official zoo of a municipality;

2. A college or university conducting research or education that fulfills a classroom requirement;

3. A lawfully operated circus only possessing or transporting species into Kentucky that are not federally endangered, as listed in the current Endangered Species Act list;

4. A facility previously granted an exemption by the commissioner for the purpose of housing confiscated wildlife and serving as an animal holding facility as a service to the Department.

5. A facility previously granted a commissioner's exemption, as a licensed or accredited institute of education or research, that houses prohibited species at a permanent wildlife facility for educational or research purposes.

Section 6. Prohibited Species Requirements.

(1) Prohibited exotic species possessed or transported into Kentucky shall be maintained within an enclosure sufficient to prevent:

(a) Escape; and

(b) Direct contact with the public.

(2) A person may apply for a transportation permit to temporarily transport into and through the state to a destination outside of Kentucky a prohibited animal listed in Section 4(2) of this administrative regulation and shall not:

(a) Remain in the state in excess of forty-eight (48) hours;

(b) Stop in Kentucky for exhibition purposes; or

(c) Sell, trade, gift, barter, offer for sale, trade, gift, barter, or profit in any way from a prohibited animal while in Kentucky.

(3) Except for Lynx, a person who legally possessed wildlife listed in Section 4(2) of this administrative regulation prior to July 13, 2005, may continue to possess the animal through the life of the animal and shall maintain:

(a) Veterinary records;

(b) Acquisition papers for the animal; or

(c) Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(4) Lynx legally held in Kentucky prior to December 1, 2021, may be allowed to remain in possession of the owner through the life of the animal.

(a) The owner shall maintain:

1. Veterinary records;

2. Acquisition papers for the animal; or

3. Any other evidence that establishes that the person legally possessed the animal in Kentucky prior to December 1, 2021.

(5) A person who legally possesses wildlife pursuant to subsection (3) or (4) of this section shall not, without an exemption pursuant to Section 5:

(a) Replace the wildlife after its death;

(b) Allow the wildlife to reproduce; or

(c) Transfer wildlife to other persons, except if the owner predeceases the animal, the animal may be transferred to another person with the approval of the Department's Wildlife Division Director.

(6) If exotic wildlife listed in Section 4 of this administrative regulation escapes, the owner shall immediately contact local emergency services and the department at 800-252-5378 to report the escape.

(7) All bites, as established in KRS 258.065, or contact with applicable exotic animals that results in possible exposure to disease or zoonotic infection, shall be reported to the local county health department within twelve (12) hours.

(8) If an exotic mammal bites a person, or a mammal shows symptoms of a rabies infection, the owner of the animal must arrange for the animal to be killed in a manner as to preserve the brain intact and the animal's head shall be submitted for testing immediately to a laboratory approved by the Secretary for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070 Section 5 and KRS 258.085(1)(c).]

Section 5. Exemptions. (1) A facility that is accredited by the American Zoo and Aquarium Association shall:

(a) Not be required to obtain a transportation permit for exotic wildlife; and

(b) Be allowed to import, transport, and possess the prohibited exotic species listed in Section 4(1) and (2) of this administrative regulation.

(2) Upon written request, the department shall consider an exemption for the importation of prohibited exotic species for the following entities:

(a) A facility that is designated as the official zoo of a municipality;

(b) A government agency;

(c) A college or university;

(d) A licensed or accredited institution of:

1. Research; or

2. Education;

(e) A lawfully operated circus; or

(f) An exhibitor sponsored or contracted by a lawfully operated state or county fair.

(3) Wildlife possessed or imported into Kentucky per subsection (2) or (4) of this section shall be maintained within an enclosure sufficient to prevent:

(a) Escape; and

(b) Direct contact with the public, except local governments may allow direct contact between the public and Asian elephants (Elephas maximus) if:

1. An established local ordinance exists that allows the contact; and

2. That ordinance provides regulatory standards in the areas of:

a. The safety record of the animal or animals;

b. Proper public safeguards;

c. Experience of the handlers;

d. Protective barriers; and

e. Third party liability insurance coverage from death or injury in an amount equal to or greater than \$3,000,000.

(4) A person may apply for a transportation permit to temporarily transport into and through the state to a destination outside of Kentucky a prohibited animal listed in Section 4(2) of this administrative regulation and shall not:

(a) Remain in the state in excess of forty-eight (48) hours;

(b) Stop in Kentucky for exhibition purposes; or

(c) Sell, trade, barter, or offer for sale, trade, or barter a prohibited animal while in Kentucky.

(5) A person who legally possessed wildlife listed in Section 4(2) of this administrative regulation prior to July 13, 2005, may continue to possess the animal and shall maintain:

(a) Veterinary records;

(b) Acquisition papers for the animal; or

(c) Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(6) A person who legally possesses wildlife pursuant to

subsection (5) of this section shall not, without an exemption pursuant to subsections (2) and (3) of this section:

- (a) Replace the wildlife; or
- (b) Allow the wildlife to reproduce.

(7) If exotic wildlife listed in Section 4(1) and (2) of this administrative regulation escapes, the owner shall immediately contact local emergency services and the department at 800-252-5378 to report the escape or release.]

Section 7[6]. Permit-exempt Animals. The following exotic animals shall not require permits from the department for[importation, transportation, or] possession or transportation into Kentucky:

- (1) Alpaca (*Vicugna pacos*);
- (2) American bison (*Bison bison*);
- (3) Breeds and varieties of goats derived from the wild goat or bezoar (*Capra hircus*);
- (4) Camel (*Camelus bactrianus* and *Camelus dromedarius*);
- (5) Canary (*Serinus canaria*)
- (6)[(5)] Chinchilla (*Chinchilla laniger*);
- (7)[(6)] Cockatoo and cockatiel (family *Cacatuidae*);
- (8)[(7)] Domesticated races of ducks and geese (family *Anatidae*) morphologically distinguishable from wild ducks or geese;
- (9)[(8)] Domesticated races of the European rabbit (*Oryctolagus cuniculus*) morphologically distinguishable from wild rabbits;
- (10)[(9)] Domesticated races of mink (*Mustela vison*), if:
 - (a) Adults are heavier than 1.15 kilograms; or
 - (b) The fur color can be distinguished from wild mink;
- (11)[(10)] Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);
- (12)[(11)] Domesticated races of turkeys (*Meleagris gallopavo*) recognized by the American Poultry Association and the U.S. Department of Agriculture, but shall not include captive held or bred wild turkeys;
- (13)[(12)] Domestic yak (*Bos grunniens*);
- (14)[(13)] Gerbil (*Meriones unguiculatus*);
- (15)[(14)] Guinea fowl (*Numida meleagris*);
- (16)[(15)] Guinea pig (*Cavia porcellus*);
- (17)[(16)] Hamster (*Mesocricetus* spp.);
- (18)[(17)] Indian Hill mynah (*Gracula religiosa*);
- (19)[(18)] Llama (*Lama glama*);
- (20)[(19)] Parrot, lovebird, [cockatiel, budgerigar, macaw, parakeet (except monk parakeet, [(*M. monachus*)] families *Psittacidae*, *Psittaculidae*, *Psittichasiidae*], and macaw (family *Psittacidae*);
- (21)[(20)] Peafowl (*Pavo cristatus*);
- (22)[(21)] Pigeon (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;
- (23)[(22)] Ratite, as defined by KRS 247.870; and
- (24)[(23)] Toucan (family *Rhamphastidae*).]

Section 7. Inspections and Permit Revocation. (1) A person holding exotic wildlife shall allow a conservation officer to inspect the holding facilities at any reasonable time.

(2) Captive wildlife may be confiscated and the permit revoked if the permit holder violates any provision of this administrative regulation.]

Section 8. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 9. Inspections and Access. (1) A person in possession of exotic wildlife, pursuant to a transportation permit or commissioner's exemption, shall allow a conservation officer to inspect the holding facilities and the property on which the holding facilities are located at any reasonable time to carry out the purposes of this regulation.

(2) A transportation permit or commissioner's exemption holder shall allow any department approved representative, accompanied by a conservation officer, to access the holding facilities and the property on which the holding facilities are located at any

reasonable time to carry out the purposes of this regulation.

Section 10. Permit Denial and Revocation.

(1) Denial.

(a) The department shall deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and may confiscate wildlife from a person who:

1. Is convicted of a violation of any provisions of:

a. KRS Chapter 150;

b. Any department regulation; or

c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, or records;

3. Acquires wildlife prior to receiving a transportation permit, commissioner's exemption, or certificate of veterinary inspection, except as established in Section 2(5), Section 3(7), and Section 5(1) and Section 7;

4. Fails to comply with any provision of this regulation, 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, or 301 KAR 2:251, 301 KAR 3:061, 302 KAR 20:020, 302 KAR 20:040, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42-43, or 16 U.S.C. 3371-3378.

(2) Revocations.

(a) The department shall revoke a transportation permit or commissioner's exemption, and may confiscate wildlife, of a person who:

1. Is convicted of a violation of any provisions of:

a. KRS Chapter 150;

b. Any department regulation; or

c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports or records;

3. Acquires wildlife prior to receiving a transportation permit or commissioner's exemption, except as established in Sections 3(7) and Section 5(1);

4. Fails to comply with any provision of this regulation, 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, 301 KAR 2:251, 301 KAR 3:061, 302 KAR 20:020, 302 KAR 20:040, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42-43, or 16 U.S.C. 3371-3378.

(b) A fee shall not be refunded for a permit that is revoked.

(3) Denial period.

(a) An applicant for a transportation permit whose permit has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications denied for the period established below:

1. The initial denial period shall be one (1) year;

2. A second denial period shall be three (3) years;

3. A third or subsequent denial period shall be five (5) years;

(4) Commissioner's exemption.

(a) A commissioner's exemption shall be revoked and future exemptions may be denied for:

1. Failure to maintain wildlife in an enclosure sufficient to prevent escape and direct contact with the public;

2. Failure to abide by the provisions set forth in an exemption letter or this regulation; or

3. Any other reason for which the Commissioner deems appropriate.

(b) If an exemption is terminated, all prohibited species shall be immediately placed in an enclosure sufficient to prevent escape and direct contact with the public and removed from the state within forty-eight (48) hours.

(5) Confiscated Wildlife.

(a) All captive wildlife may be confiscated if a transportation permit or commissioner's exemption is revoked or denied, or a person possesses or transports wildlife into Kentucky without a valid transportation permit, commissioner's exemption, or

certificate of veterinary inspection, except as established in Section 2 (5), Section 3 (7), Section 5 (1), and Section 7.

(b) Wildlife that is confiscated, as established in this section, shall not be returned to the person, entity, or facility from which they were confiscated, and shall be transferred or euthanized with the approval of the Wildlife Division Director.

Section 11. Administrative Hearings.

(a) An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(b) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(c) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(d) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Annual Transportation Permit Application", 2021 edition;

(b) "Individual Transportation Permit Application", 2021 edition; and

(c) "Captive Wildlife Prohibited Species report form, 2021 edition;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

MIKE BERRY, Secretary

APPROVED BY AGENCY: August 3, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for importation, transportation, and possession of exotic wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a defined process for the holding and transportation of live exotic wildlife. These processes are necessary to provide for the protection of our native ecosystem, health and welfare of native wildlife from disease, and the safety of Kentucky citizens.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the department and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint conservation officers charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180(6) authorizes the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for applying for and receiving transportation permits and commissioner's exemptions to possess, import, and transport through Kentucky from outside the state live exotic wildlife.

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

(a) How the amendment will change this existing administrative regulation: These amendments will develop an online permitting system, expand the department's ability to deny or revoke a permit, prohibit the importation and possession of wild rabbits, hares, pikas and lynx species, improve protections from rabies meeting statutory requirements, update the prohibited species exemption section, and provide grandfathering for previously held legal prohibited wildlife species.

(b) The necessity of the amendment to this administrative regulation: Amendments are necessary to protect native rabbit species from disease, which could impact populations, protect the public from potential exposure to rabies, provide better customer service in the form of an online system, and meet statutory requirements pertaining to endangered species. Additionally, these amendments improve health and human safety in regards to the possession of live exotic wildlife.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: These amendments will make it easier and more straightforward to apply for a transportation permit. Additionally, these amendments will help protect our citizenry and our wildlife populations from disease and other dangers posed by captive exotic wildlife. These regulations may impact those people who wish to be in possession of live exotic wildlife and those organizations requesting a commissioner's exemption to use or exhibit prohibited species of live exotic wildlife. These amendments are necessary for the health and safety of people and wildlife populations.

(4) Provide an analysis of how the entities identified in question (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: These amendments will allow for a more efficient permitting process for those species of live exotic wildlife that are legal to import, transport, and possess. Additionally, those persons in possession of a newly prohibited species will be allowed to hold that animal until the end of its life.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A minor cost will be incurred to have grandfathered prohibited species microchipped.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those persons holding prohibited native wildlife will be allowed to maintain the animal for the

remainder of its life.

(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 administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all permit holders are treated the equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the department and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint conservation officers charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180(6) authorizes the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

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

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

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:142. Spring wild turkey hunting.

RELATES TO: KRS 150.175(7), (8), (15), (17), (18), 150.305, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.390(1) prohibits a person from taking, pursuing, or molesting a wild turkey in any manner contrary to the provisions of Chapter 150 or its administrative regulations. This administrative regulation establishes season dates, shooting hours, and other requirements for spring turkey hunting.

Section 1. Definitions. (1) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(2) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Youth Turkey Season. There shall be a statewide youth-only turkey hunting season for two (2) consecutive days beginning on the first Saturday in April.

Section 3. Statewide Turkey Season. There shall be a statewide turkey hunting season for twenty-three (23) consecutive days beginning on the Saturday closest to April 15.

Section 4. Turkey Hunting Requirements. (1) A person shall not take more than:

(a) One (1) male turkey per day;

(b) One (1) turkey with a visible beard per day;

(c) Two (2) male turkeys per season; or

(d) Two (2) turkeys with visible beards per season.

(2) A person shall not take a turkey using any device except the following equipment authorized by 301 KAR 2:140:

(a) A firearm;

(b) Archery equipment; or

(c) A crossbow.

(3) A person shall only hunt turkeys from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(4) A person who is assisting or calling a turkey for a legal hunter shall not be required to possess a hunting license or turkey permit.

Section 5. Wildlife Management Area Requirements. (1) Unless otherwise specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to Wildlife Management Areas.

(2) Barren River WMA. On the Peninsula Unit, including Narrows, Goose Island, and Grass Island, a person shall not use a breech-loading firearm to take a turkey.

(3) Higginson-Henry WMA. A person shall not use a firearm to take a turkey.

(4) Livingston County WMA. Statewide spring turkey season is open to youth only.

(5) Pioneer Weapons WMA. A person shall not use the following to take a turkey:

(a) A breech-loading firearm; or

(b) A scope or optical enhancement.

(6) Robinson Forest WMA. A person shall not hunt turkeys on the main block of the WMA.

(7) West Kentucky WMA. Tracts marked with the letter "A" shall be closed for the statewide turkey season established in Section 3 of this administrative regulation.

Section 6. Special Area Requirements. (1) Unless otherwise specified in this section, all the requirements of this administrative regulation shall apply.

(2) A person shall comply with all federal requirements when hunting on the following federal areas:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell;
- (c) Fort Knox;
- (d) Land Between the Lakes; and
- (e) Reelfoot National Wildlife Refuge.

(3) A spring turkey season, not to exceed twenty-three (23) days, shall be allowed between the last Saturday in March and the second Sunday in May on the following areas:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell;
- (c) Fort Knox;
- (d) Land Between the Lakes;
- (e) Reelfoot National Wildlife Refuge; and
- (f) Wendell H. Ford Regional Training Center.

(4) A turkey taken on the following areas shall be considered a bonus bird and shall not count toward the hunter's season bag limits:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell; and
- (c) Fort Knox.

(5) A person shall not take more than one (1) turkey on the following areas:

- (a) Land Between the Lakes; and
- (b) Reelfoot National Wildlife Refuge.

(6) Otter Creek Outdoor Recreation Area. All statewide season requirements shall apply, except that shooting hours shall be from one-half (1/2) hour before sunrise to noon each day.

RICH STORM, Commissioner

MIKE BERRY, Secretary

APPROVED BY AGENCY: August 3, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes season dates, shooting hours, and other requirements for spring turkey hunting.

(b) The necessity of the administrative regulation: This regulation establishes hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.390(1) prohibits a person from taking, pursuing, or molesting a wild turkey in any manner contrary to the provisions of Chapter 150 or its administrative regulations. This administrative regulation is necessary to effectively manage

wildlife populations in Kentucky.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150.

(d) How 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 the spring turkey season.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation in regards to spring turkey season requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals hunting turkey.

(4) Provide an analysis of how the entities identified in question (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: Compliance with the spring turkey season requirements and bag limits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

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

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The funding source is the KDFWR state fish and game 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. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 150.025(1), 150.390(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 revenue will be generated for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 2:224. Waterfowl hunting zones.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 59 C.F.R. 20

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 C.F.R. 20

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to make administrative regulations which apply to a limited area or to the entire state. This administrative regulation establishes waterfowl hunting zones.

Section 1. Goose Hunting Zones. (1) The Western Goose Zone includes Henderson County and the portion of Kentucky west of:

- (a) US 60 from the Henderson-Union County line to US 641;
- (b) US 641 to Interstate 24;
- (c) Interstate 24 to the Purchase Parkway; and
- (d) The Purchase Parkway.

(2) The Ballard Zone includes the portion of Ballard County north or west of:

- (a) The Ballard-McCracken County line to State Road 358;
- (b) State Road 358 to US 60;
- (c) US 60 to the city limits of Wickliffe;
- (d) The city limits of Wickliffe to the center of the Mississippi River.

(3) ~~The~~ [Counties-associated-with-the] Ballard Reporting Area includes:

(a) The portion of Ballard County not included in the Ballard Zone;

(b) Carlisle and McCracken Counties; and

(c) The portions of Fulton, Graves, Hickman and Marshall Counties in the Western Goose Zone.

(4) The Henderson-Union Zone includes Henderson County and the portion of Union County in the Western Goose Zone.

(5) Counties associated with the Henderson-Union Zone include those portions of Crittenden, Livingston and Lyon Counties in the Western Goose Zone.

(6) The Pennyroyal-Coalfield Goose Zone includes the area from the Western Goose Zone to and including Simpson, Warren, Butler, Ohio, and Daviess Counties.

(7) The Eastern Goose Zone includes the portions of Kentucky not included in the Western or Pennyroyal-Coalfield Goose Zones.

(8) The West-Central Special Hunt Zone includes:

(a) Muhlenberg County;

(b) Ohio County south of Rough River;

(c) Butler County west of Highway 79 and north of Highway 70;

(d) Hopkins County:

1. East of Highways 814 and 109;

2. South of US 41A between Highways 814 and Madisonville; and

3. South of Highway 85 east of Madisonville.

(9) The Northeast Special Hunt Zone includes Bath, Menifee, Morgan and Rowan Counties, except Paintsville Lake and its shoreline in Morgan County.

Section 2. Duck, Coot, and Merganser Hunting Zones. (1) The Western Duck Zone includes the portion of Kentucky in the Western and Pennyroyal-Coalfield Goose Zones.

(2) The Eastern Duck Zone includes the portion of Kentucky not in the Western Duck Zone.

RICH STORM, Commissioner

MIKE BERRY, Secretary

APPROVED BY AGENCY: August 3, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl hunting zones.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to effectively manage waterfowl populations in Kentucky, while complying with the United States Fish and Wildlife Service federal frameworks.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to make administrative regulations which apply to a limited area or to the entire state. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl within the state and do anything else necessary to control or improve the conservation or hunting of waterfowl not contrary to federal regulations. 50 C.F.R. 20 is the federal regulation our regulations must comply with.

(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 statutes by establishing the waterfowl zones to effectively manage waterfowl and comply with federal frameworks.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation in regards to waterfowl hunting zones.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals hunting waterfowl.

(4) Provide an analysis of how the entities identified in question (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: Compliance with the waterfowl season requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with regulations and sustainable wildlife populations.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The funding source is the KDFWR state fish and game 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. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment does not impact any state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.600(1), 50 C.F.R. 20

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 3:010. Public use of Wildlife Management Areas.

RELATES TO: KRS 150.025, 150.620, 150.640

STATUTORY AUTHORITY: KRS 150.025, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to impose and enforce special administrative regulations on lands acquired for public hunting, fishing, and related recreational uses. This administrative regulation prohibits certain actions inconsistent with the intended purpose of Wildlife Management Areas, establishes requirements for other uses and stipulates the procedure for obtaining group use permits on these areas.

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay or any other food materials, whether natural or manufactured, which may lure, entice or attract wildlife.

(2) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

(3) "Event" means:

(a) An activity conducted by a group;

(b) A commercial activity; or

(c) A field trial.

(4) "Field trial" means an event where unleashed dogs are worked and judged.

(5) "Group" means:

(a) A club, society or association;

(b) Ten (10) or more persons who gather to conduct an event;

or

(c) A field trial.

(6) "Horse" means a horse, pony, mule, donkey, llama or similar beast of burden.

(7) "Injurious substance" means a substance which may be injurious to aquatic life, wildlife or wildlife habitat.

(8) "Mechanized vehicle" means a motor vehicle, bicycle or other human conveyance except a wheelchair.

(9) "Motor vehicle" means a motor-driven conveyance, whether or not licensed for use on a public highway.

(10) "Ride" means to ride, drive or lead a horse.

(11) "Wildlife management area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license or cooperative agreement; and

(b) Having "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. While upon a WMA, a person:

(1) Shall observe the hunting dates, limits and other requirements that apply to the county in which the WMA is located, unless otherwise specified in:

(a) This administrative regulation;

(b) 301 KAR 2:049;

(c) 301 KAR 2:178;

(d) 301 KAR 2:140;

(e) 301 KAR 2:142;

(f) 301 KAR 2:144;

(g) 301 KAR 2:222; or

(h) 301 KAR 2:225.

(2) Shall wear hunter orange garments as required in 301 KAR 2:172 when deer hunting with firearms is allowed.

(3) May hunt small game, furbearers, or turkey by archery during the modern gun deer season, including the first two (2) days, if the statewide modern gun deer season is closed on that area.

(4) Unless specified otherwise in 301 KAR 2:049, shall not allow an unleashed dog from March 1 until the third Saturday in August, except when participating in:

(a) A department-authorized field trial;

(b) The spring squirrel season; or

(c) Training a retriever or other water dog, if:

1. The activity is authorized by a sign at the body of water; and

2. The dog remains leashed except while actively training in or within 100 feet of the body of water.

(5) Shall not:

(a) Hunt:

1. On a WMA or portion of a WMA designated by a sign as closed to hunting; or

2. At an established access point, launching ramp, or recreation area.

(b) Enter a portion of a Wildlife Management Area designated by a sign as closed to public access.

(c) Discharge a firearm within 100 yards of a residence or occupied building, whether or not the building is on a WMA.

(d) Camp, except in a designated area.

(e) Place or distribute bait or otherwise participate in baiting wildlife on a Wildlife Management Area. Bait does not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the area is occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(f) Hunt over bait.

Section 3. Horseback Riding. A person shall not:

(1) Ride a horse on a WMA except:

(a) On a trail or area specifically marked for horseback riding;

(b) A maintained public road open to public vehicular traffic;

(c) During an event where a horse is allowed under a permit issued under the provisions of Section 6 of this administrative regulation; or

(d) While engaged in a legal hunting activity.

(2) Allow a horse to roam or graze on department property.

(3) Tether a horse in a way that would cause damage to a tree or shrub.

(4) Participate in horseback riding during firearms seasons for turkey, deer and elk unless participating or assisting in a legal elk hunt. Any persons legally riding horses during an elk hunt shall abide by the hunter orange requirements found in 301 KAR 2:132, Section 5(5).

Section 4. Prohibited Activities. Except as authorized by the department, on a WMA a person shall not:

(1) Damage a tree or shrub;

(2) Dump trash or litter;

(3) Set fires, except for an attended campfire;

(4) Leave a campfire unattended;

(5) Cut or damage a fence or gate;

(6) Deface or destroy a sign;

(7) Destroy, harvest, or glean a crop;

(8) Allow livestock to roam freely;

(9) Dump the contents of a holding tank, portable toilet, or other container holding human waste;

(10) Deface or collect artifacts from historical or archeological sites;

(11) Ignite fireworks or rockets;

(12) Collect or remove plants;

(13) Place or cause to be placed an injurious substance on land or water;

(14) Engage in an activity which:

(a) Is commercial in nature and intent unless specified in Section 6(3) of this administrative regulation; or

(b) Could:

1. Unreasonably interfere with other uses or users of the area;

2. Pose a risk to persons or property; or

3. Damage facilities, roads, trails, or ecosystems of the area.

Section 5. Use of Mechanized Vehicles. Except as specifically authorized by the department, on a WMA, a person shall not:

(1) Use a mechanized vehicle except:

(a) On a maintained road open to public use; or

(b) In a designated parking area;

(2) Park in a way that would:

(a) Block a road or gate; or

(b) Prevent access to a portion of the area.

Section 6. Group Permits. (1) A group shall not conduct an event upon department property without obtaining a permit at least thirty (30) days before the date of the event.

(2) Application for the permit shall be upon a form provided by the department.

(3) The department shall deny a permit for an event that involves:

(a) The use of mechanized vehicles, except for travel to and from the area; or

(b) An activity prohibited in Section 4 of this administrative regulation except that a commercial activity may be permitted if it is:

1. An informational booth;

2. A food vendor;

3. For collecting registration or entrance fees;

4. A similar ancillary activity authorized by the event permit; or

5. An ecotourism event approved by the department.

(4) The department may:

(a) Require the group to reschedule an event to avoid user conflicts;

(b) Restrict an event to a specified location within the WMA;

(c) Cancel a scheduled event if flooding, fire danger or other unforeseen circumstances render the WMA unsafe or unsuitable for the event; or

(d) Require the group to provide portable sanitary toilet facilities if existing facilities on the WMA are inadequate for the expected size of the group.

(5) The department shall revoke the permit and cancel an event if the group's behavior:

(a) Is rude, obnoxious, disruptive, or disorderly;

(b) Creates a danger to the health or safety of other users;

(c) Results in damage to the area; or

(d) Violates a state or federal law.

(6) The department may deny a permit to a group which has had a previous event canceled under subsection (5) of this section.

Section 7. Appeal of Permit Denial. (1) A person who wishes to appeal the denial of a permit shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of denial.

(2) Upon receipt of the request for a hearing, the department shall:

(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and

(b) Schedule a hearing to be held either:

1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or

2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.

(4) The department may present evidence and call witnesses to support the suspension or revocation.

(5) The commission shall make its decision by majority vote.

(6) A person may appeal a decision of the commission in accordance with the provisions of KRS Chapter 13B.

Section 8. On Wildlife Management Areas not owned by the department, provisions of this administrative regulation shall not apply if:

(1) An activity prohibited by this administrative regulation is allowed by the entity owning the property; or

(2) An activity allowed by this administrative regulation is prohibited by the entity owning the property.

Section 9. Incorporation by Reference. (1) "Wildlife Management Area Use Permit Application", 1998 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Department of Fish and Wildlife, #1 Sportsman's Lane, Frankfort, Kentucky 40601 from 8 a.m. to 4:30 p.m. Monday through Friday.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2021 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation prohibits certain actions inconsistent with the intended purpose of Wildlife Management Areas, establishes requirements for other uses and stipulates the procedure for obtaining group use permits on these areas.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to prohibit certain actions inconsistent with the intended purpose of Wildlife Management Areas, and to establish requirements for other uses and procedures for other uses on these areas.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to impose and enforce special administrative regulations on lands acquired for public hunting, fishing, and related recreational uses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By prohibiting certain actions inconsistent with the intended purpose of Wildlife Management Areas, establishes requirements for other uses and stipulates the procedure for obtaining group use permits on these areas..

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation in regards to feeding of wildlife.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

(c) How does the amendment conform to the authorizing statutes See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals utilizing wildlife management areas.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Follow the provisions set forth in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Uniform compliance with the provisions of the regulation and consistent use and minimized conflicts on these lands.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the KDFWR Game and Fish Fund..

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees for direct implementation of this regulation are not necessary, as infrastructure for administration of this regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment does not impact any state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.620

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

RELATES TO: KRS 150.010, 150.240, 150.620, 150.640, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.240(2), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.240(2) authorizes the department to promulgate administrative regulations to establish permits for public or commercial shooting areas. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of these areas, and to charge fair and reasonable fees to the public for use of these areas. This administrative regulation establishes requirements for the use of the Otter Creek Outdoor Recreation Area.

Section 1. Definitions. (1) "Camp Piomingo" means a designated area within Otter Creek Outdoor Recreation Area that is leased from the department for an outdoor summer camp.

(2) "Event" means a planned gathering of thirty (30) or more people twelve (12) years or older on the area at the same time.

(3) "Shooting range" means a department built:

(a) Firearm target range facility in which a person is required to shoot through a metal tube at various stationary targets; or

(b) Archery range facility in which a person shoots at stationary targets from specified locations.

Section 2. General Area Use Restrictions. (1) A person, except for permit exempt individuals, shall possess and carry:

(a) A valid daily or annual Area Entry Permit when using the Otter Creek Outdoor Recreation Area; and

(b) A valid daily or annual Special Activities Permit if:

1. Biking on designated trails;
2. Horseback riding on designated trails; or
3. Using designated shooting range facilities.

(2) The department may enter into a lease agreement with Camp Piomingo to establish an annual flat-rate fee that[which] allows permit-exempt use of the area by Camp Piomingo:

(a) Campers; and

(b) Staff.

(3) A person shall not be on the area when the area is closed, except for:

- (a) Registered campers at the designated campground area;
- (b) Authorized hunters;
- (c) Department staff;
- (d) Department authorized contractors; or
- (e) Individuals taking part in a[A] special activity or event authorized by the department.

(4) The department shall notify the public when the area is closed by:

- (a) A pre-recorded phone message;
- (b) An internet posting; and
- (c) Visible signage on the area.

(5) A person shall park vehicles in designated parking areas only.

(6) A person who is hunting, fishing, trapping, or boating on the area shall follow all applicable administrative regulation requirements pursuant to 301 KAR Chapters 1, 2, 3, and 6;

(7) The area shall be closed to the general public, except for authorized hunters, during:

(a) A firearms deer quota hunt pursuant to 301 KAR 2:178; and

(b) Spring turkey season, pursuant to 301 KAR 2:142.

(8) The following activities are prohibited without prior department authorization:

(a) Cutting or removing live or standing trees, shrubs, or other vegetation;

(b) Riding motorized all-terrain or off-highway vehicles;

(c) Allowing unleashed dogs, except at times and areas designated by the department;

(d) Camping, except in designated areas;

(e) Setting fires, except for attended fires:

1. In designated camping areas; or

2. In grills at designated picnic areas.

(f) Blocking a roadway or gate;

(g) Igniting fireworks or rockets;

(h) Participating in a commercial activity or endeavor;

(i) Damaging or destroying crops or wildlife food plots;

(j) Damaging or defacing buildings, structures, signs, or other property;

(k) Hunting in an area closed to hunting;

(l) Tethering a horse to a tree, shrub, or sign; or

(m) Discharging a firearm:

1. Within 100 yards of a building;

2. Except on a designated firearm shooting range; or

3. Except during an authorized hunting season in an authorized hunting area.

Section 3. Trail Requirements. (1) A person shall only ride a horse or bike on designated trails or roadways.

(2) A person shall not possess a wheeled vehicle other than a bike on a designated bike trail, except for department authorized maintenance activities.

(3) A person shall not ride a bike or a horse on designated trails that have been temporarily closed by the department due to:

(a) Hunting activity;

(b) Wet conditions;

(c) Trail maintenance activity;

(d) Downed trees;

(e) Unsafe conditions; or

(f) An event authorized by the department.

(4) The department shall provide the public with a reasonable notification system for temporary trail closures that includes:

(a) A pre-recorded phone message;

(b) An internet posting; and

(c) Visible signage on the area.

Section 4. Event Permits. (1) A group of people conducting an event shall not meet on the area without first applying for and obtaining a completed Event Permit from the department.

(2) A person, on behalf of the people involved with an event, shall apply for an Event Permit at least thirty (30) days in advance of the planned event.

(3) The application for an Event Permit shall be on a form provided by the department.

(4) The department shall deny an Event Permit if the planned activity or event:

(a) Is prohibited pursuant to this administrative regulation; or

(b) Is in conflict with:

1. Another Event Permit activity already authorized by the department;

2. A hunting season;

3. A quota hunt; or

4. Recreational use of the area.

Section 5. Incorporation by Reference. (1) "Otter Creek Event Permit Application", 2011 Edition, is incorporated by reference.

(2) The permit application may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2021 at 1:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes requirements for the use of the Otter Creek Outdoor Recreation Area.

(b) The necessity of the administrative regulation: This regulation is necessary to establish regulated uses and requirements on the Otter Creek outdoor recreation area.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.240(2) authorizes the department to promulgate administrative regulations to establish permits for public or commercial shooting areas. KRS 150.620 authorizes the department's Commission to acquire, improve, and maintain lands for public shooting, fishing, and other recreational uses, to impose and enforce special regulations in the maintenance and operation of these lands, to pay for the cost of the operations and maintenance of these areas, and to charge fair and reasonable fees to the public for use of these areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing seasons, bag limits, appropriate permits and fees and allowable uses on the area.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected:

Individuals utilizing outdoor recreation area's.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Safe and compliant use of the area.

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

(a) Initially: There will be no additional cost to the agency on a continuing basis.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the KDFWR Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.240(2), 150.620

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 3:026. Access to Wildlife Management Areas for mobility-impaired individuals.

RELATES TO: KRS 150.025(1), 150.170, 150.175, 150.620
STATUTORY AUTHORITY: KRS 150.025(1), 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting seasons and to regulate bag and possession limits for, and the methods of taking and the devices used to take, wildlife. In addition, KRS 150.620 authorizes the department to regulate the use of its Wildlife Management Areas. This administrative regulation simplifies the process for obtaining method exemptions and special use permits for mobility-impaired individuals and promotes nature-related recreational access to department-managed lands.

Section 1. Definitions. (1) "ATV" is defined in KRS 189.010(24).

(2) "Department" is defined in KRS 150.010(8).

(3) "Mobility-impaired individual" means an individual who meets the requirements of Section 2(1) of this administrative regulation.

(4) "Motor vehicle" is defined in KRS 189.010(19)(b).

(5) "Qualified assistant" means an individual who is participating in the activity with the mobility-impaired individual and designated by the mobility-impaired individual.

(6) "WMA" means a Wildlife Management Area owned or operated by the department.

Section 2. Mobility-impaired Access Permit. (1) If a person meets one (1) of the following requirements, he shall qualify for a mobility-impaired access permit application from the department:

(a) Has permanent paralysis of at least one (1) leg;

(b) Has at least one (1) foot amputated;

(c) Is permanently confined to a wheelchair or must use crutches, or a walker as a means of support to pursue daily activities;

(d) Is restricted by a lung disease to such an extent that the person's forced respiratory expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/hg on room air at rest;

(e) Requires portable oxygen;

(f) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association; or

(g) Has a diagnosed disease which creates a severe mobility impairment.

(2) The mobility-impaired access permit shall allow the following activities by a mobility-impaired individual:

(a) Discharge of a firearm or other legal hunting device from a motor vehicle when the vehicle is motionless and has its engine turned off. The motor vehicle shall be used as a place to wait or watch for game and shall not be used to chase, pursue, or drive game.

(b) May operate electric wheelchairs, ATV's, and other passenger vehicles on or off gated or ungated or open-gated roads otherwise closed to vehicular traffic but only on designated tracts of designated WMAs.

1. The roads may be accessed March 1 through the third Friday in August.

2. Tracts designated as mobility-impaired access areas shall be posted with signs.

3. Vehicular access shall not be permitted on fields, openings, roads, paths, or trails planted with annual grains or agricultural crops.

4. It shall be permissible to access areas which are not roads the third Saturday of August until the end of February.

5. ATV users shall adhere to manufacturer recommendations including wearing a helmet, wearing safety glasses, and restricting

riding to one (1) person, while using ATVs on WMAs.

Section 3. (1) A mobility-impaired individual may designate one (1) qualified assistant. The qualified assistant may:

(a) Track and dispatch a wounded animal;

(b) Retrieve an animal; or

(c) Render other assistance in accordance with KRS Chapter 150 and 301 KAR Chapters 2 and 3.

(2) A qualified assistant shall not:

(a) Operate his or her own ATV; or

(b) Hunt or shoot from an ATV.

(3) Applicants for a mobility-impaired access permit shall:

(a) Fill out the required information on the Mobility-Impaired Access Permit Application; and

(b) Obtain the attestation and signature from a licensed physician describing the mobility impairment.

(4) In order to participate in activities authorized by Section 2(2) of this administrative regulation, a mobility-impaired individual shall have a completed mobility-impaired access application on his person at all times while participating in such activities.

Section 4. All method exemption cards and letters issued prior to the effective date of this administrative regulation are void.

Section 5. Incorporation by Reference. (1) "Mobility-impaired Access Permit", revised August 2001, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Fish and Wildlife Resources, #1 Sportsman's Lane~~(Game Farm Road)~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2021 at 2:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation simplifies the process for obtaining method exemptions and special use permits for mobility-impaired individuals and promotes nature-related recreational access to department-managed lands.

(b) The necessity of the administrative regulation: This regulation is necessary to all access to mobility-impaired individuals and promotes nature-related recreational access to department-managed lands.

(c) How does this administrative regulation conform to the

authorizing statute: KRS 150.025(1) authorizes the department to establish hunting seasons and to regulate bag and possession limits for, and the methods of taking and the devices used to take, wildlife. In addition, KRS 150.620 authorizes the department to regulate the use of its Wildlife Management Areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By simplifying the process for obtaining method exemptions and special use permits for mobility-impaired individuals and promotes nature-related recreational access to department-managed lands.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals utilizing wildlife management areas.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Access to state managed lands for mobility impaired individuals.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis..

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the KDFWR Game and Fish Fund. .

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Beth Frazee

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

No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.620

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 3:027. Hunting and fishing method exemptions for disabled persons.

RELATES TO: KRS 150.360, 150.390, 150.620

STATUTORY AUTHORITY: KRS 150.025, 28 C.F.R. Parts 35, 36, 43 C.F.R. Part 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. The department is required to comply with the Americans with Disabilities Act. This administrative regulation establishes the procedures for persons with a disability to apply for hunting methods exemption permit.

Section 1. Hunting or Fishing Method Exemptions for Persons with Disabilities. (1) Persons whose physical disabilities make it impossible for them to hunt or fish by conventional methods may request a vehicle or crossbow hunting method exemption application from the department.

(2) A completed hunting method exemption application shall serve as the hunter's method exemption permit.

(3) A complete permit shall include:

(a) Name of the applicant-permittee;

(b) Address and phone number of the applicant-permittee;

(c) Attestation by a licensed physician as to the nature of the applicant-permittee's disability;

(d) Duration of the disability;

(e) Name and business address of the physician who attests to the hunter's disability; and

(f) Signature of the physician who attests to the hunter's disability.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Hunting Methods Exemption-Vehicle", 2002; and

(b) "Hunting Methods Exemption-Crossbow, 2002".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[Game Farm Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the procedures for persons with a disability to apply for hunting methods exemption permit.

(b) The necessity of the administrative regulation: This administrative regulation is needed to meet the agency requirement to comply with the Americans with Disabilities Act and to establish the procedures for persons with a disability to apply for hunting methods exemption permit.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. The department is required to comply with the Americans with Disabilities Act.

(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 the procedures for persons with a disability to apply for hunting methods exemption permit.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Disabled veterans hunting and/or fishing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment No action needed to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Methods for persons with a disability to apply for hunting methods exemption permit

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

(a) Initially There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the KDFWR Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 28 C.F.R. Parts 35, 36, 43 C.F.R. Part 17.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 3:030. Year-round season for wildlife.

RELATES TO: KRS 150.010, 150.025, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish seasons and other administrative regulations necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes hunting requirements for species that may be taken year-round and specifies species that are unprotected.

Section 1. Definition. "Exotic wildlife" means living terrestrial wildlife species that have never naturally existed in the wild in Kentucky, including starlings (*Sturnus vulgaris*), English sparrows

(*Passer domesticus*), and Eurasian collared doves (*Streptopelia decaocto*).

Section 2. Year Round Seasons. (1) A person may take coyotes, wild hogs and woodchucks year round.

(2) A person taking coyotes, wild hogs, or woodchucks, unless exempted by KRS 150.170, shall possess:

(a) A hunting license; and

(b) A hog permit issued by the National Park Service if he is hunting on the Big South Fork National River and Recreational Area.

Section 3. Unprotected Species. (1) Except for rare, threatened or endangered species protected by federal laws, a person may take year-round:

(a) Exotic wildlife, except pheasants released during department administered quota hunts pursuant to 301 KAR 2:249[54];

(b) Moles (*Scalopus aquaticus*, *Parascalops breweri*, *Condalyra cristata*);

(c) Mice (*Mus musculus*);

(d) Rats (*Rattus rattus*, *R. norvegicus*); and

(e) Terrestrial invertebrates.

(2) A person may take the species listed in subsection (1) of this section without a hunting license.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2021 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes hunting requirements for species that may be taken year-round and specifies species that are unprotected. (b) The necessity of the administrative regulation: This administrative regulation is necessary to establish requirements for the take of species with year round seasons or are unprotected.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to establish seasons and other administrative regulations necessary to carry out the purpose of KRS Chapter 150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish hunting requirements for unprotected or year round take species.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals hunting/fishing wildlife.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

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

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the KDFWR Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.360(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. No revenue will be generated for the state or local 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? No revenue will be generated for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

(d) How much will it cost to administer this program for

subsequent years? There will be no additional costs incurred for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resource
(Amendment)

301 KAR 3:110. Mobility-impaired hunts for deer, turkey and waterfowl.

RELATES TO: 150.170, 150.175, 150.360, 150.362, 150.365, 150.370, 150.390, 150.990

STATUTORY AUTHORITY: KRS 150.025, 150.179, 28 C.F.R. Parts 35, 36, 43 C.F.R. Part 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations that set seasons and regulate methods of taking. KRS 150.179(2) authorizes the department to approve certain special events that provide education or appreciation of the recreational activity. 43 C.F.R. Part 17 and 28 C.F.R. parts 35 and 36 mandate that state government agencies comply with the Americans with Disabilities Act. This administrative regulation establishes procedures to allow mobility-impaired individuals to hunt during youth deer, turkey and waterfowl weekends at department-approved events.

Section 1. Department Approved Events. (1) The Kentucky Fish and Wildlife Commission may approve organized deer, turkey and waterfowl hunting events for mobility-impaired persons sponsored by bona fide organizations during youth deer, turkey, and waterfowl weekends.

(2) Requirements.

(a) A special mobility-impaired event request shall be received by the department by January 1 for the upcoming fall deer season, June 1 for the upcoming spring turkey season, and June 1 for the upcoming waterfowl season.

(b) The special event request shall contain the following information:

1. Identity of the organization;
2. The organization's articles of incorporation;
3. A contact person's name, address and phone number;
4. Location of event;
5. Type of hunt;
6. Number of expected mobility-impaired participants;
7. Number of expected assistants, mentors and facilitators;
8. A copy of the certification of an assistant or facilitator who shall be attending the event who is Red Cross-certified to administer CPR;

9. If the event is to take place on private land, written permission from the land owner or organization holding the land; and

10. If the event is to take place on a Wildlife Management Area and ATVs are to be used, the expected number of ATVs to be in used at the event.

Section 2. Seasons and Methods of Taking. (1) The approved mobility impaired hunting events shall take place during the youth deer, turkey, and waterfowl seasons.

(2) The methods of taking shall comply with 301 KAR 2:172, 301 KAR 2:142, 301 KAR 2:144, 301 KAR 2:221, 301 KAR 2:222; 301 KAR 3:026, 301 KAR 3:027, and 301 KAR 3:028.

(3) A mobility-impaired hunter shall comply with the licensing requirements of KRS 150.170, 150.175, 301 KAR 2:172 and 301 KAR 2:140.

(4) A mobility-impaired hunter shall carry on his person a mobility-impaired permit as required by 301 KAR 3:026.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2021 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes procedures to allow mobility-impaired individuals to hunt during youth deer, turkey and waterfowl weekends at department-approved events.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to allow mobility impaired individuals a means to hunt at department approved events

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations that set seasons and regulate methods of taking. KRS 150.179(2) authorizes the department to approve certain special events that provide education or appreciation of the recreational activity. 43 C.F.R. Part 17 and 28 C.F.R. parts 35 and 36 mandate that state government agencies comply with the Americans with Disabilities Act.

(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 mobility impaired hunts.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above .

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals who are mobility-impaired hunting.

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

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

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

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

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis..

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.179, 28 C.F.R. Parts 35, 36, 43 C.F.R. Part 17

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

RELATES TO: KRS 150.022, 150.023

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department of Fish and Wildlife Resources to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. KRS 150.022 requires that a meeting of

sportsmen in a wildlife district be held to nominate five (5) candidates for membership on the Kentucky Fish and Wildlife Commission. These five (5) candidate names shall then be submitted to the Governor for his or her selection. This administrative regulation establishes the procedures for nominating the ~~[five (5)]~~ candidates for commission member.

Section 1. Scheduling of Meetings and Notification of the Public. (1) At least thirty (30) days prior to the expiration of the term of a member of the Fish and Wildlife Resources Commission, the commissioner shall select the time and place for a public meeting to select a list of five (5) nominees to submit to the governor. The meeting shall be held within a county of the wildlife district that is centrally located and easily accessible to the majority of the sportsmen of that district.

(2) The location of the meeting shall be in a public building with facilities adequate to accommodate the expected turnout. If more participants attend than the facilities can reasonably accommodate, the commissioner (or his or her designee) may order a change in location, if a suitable site is readily available, or may take whatever steps he or she deems necessary to insure the orderly and safe conduct of the meeting.

(3) Each meeting shall be called to order at 7:30 p.m. local prevailing time. If a change of location is called as provided for in subsection (2) of this section, the commissioner shall delay the beginning of the meeting for at least one (1) hour. The commissioner [He] may also delay the beginning of the meeting for any other reason he or she deems necessary, but under no circumstances may the commissioner convene the meeting earlier than the stated starting time.

(4) The facilities where the meeting is held shall be made available to the public at 6 p.m. local prevailing time.

(5) The commissioner shall cause to be published in each newspaper in the district a legal notice announcing the purpose, time and place of the meeting. The commissioner [He] shall also prepare and distribute news releases announcing the meeting to all major mass media outlets in the district. In addition, the commissioner shall prepare and distribute posters about the meeting for posting at each county courthouse in the district and at those places where sportsmen are known to gather or frequent.

Section 2. Conduct of the Meeting. (1) The commissioner, or an official of the department designated by the commissioner, shall serve as chairman of the meeting, and this chairman shall be the final arbiter of any disputes or procedural questions which may arise during the course of the meeting.

(2) After calling the meeting to order, the chairman shall explain the purpose of the meeting and the rules under which it will be conducted.

(3) The chairman shall then open the floor to nominations.

(4) As each name is placed in nomination, the nominee shall sign an affidavit attesting to his or her residency in the district.

(5) The chairman shall not close the nominations until he or she has called three (3) times for additional nominations and has received none. Motions to close the nominations shall not be recognized while there are still those waiting to place a name in nomination.

(6) Should no more than five (5) names be placed in nomination, the chairman shall declare that the purpose of the meeting has been fulfilled and shall adjourn the meeting.

Section 3. Balloting to Select Five (5) Nominees. (1) Should more than five (5) names be placed in nomination, the list of nominees shall be narrowed to five (5) names by secret ballots cast by the qualified sportsmen in attendance.

(2) The chairman shall direct each nominee to appoint at least one (1) individual to serve on a balloting committee. The chairman shall determine the number needed for this committee, and each nominee shall be allowed an equal number of committee members.

(3) Members of the balloting committee shall distribute ballots to the participants in the meeting. Each ballot shall consist of two (2) parts: an affidavit by which each participant shall attest to his or her legal right to participate in the selection process as stipulated in

KRS 150.022 and a ballot with which the participant may vote for one (1) nominee.

(4) Each eligible participant shall complete the information requested on the affidavit and ~~[then all shall]~~ swear an oath attesting to the veracity of that information.

(5) Each eligible participant shall then vote for the nominee of his or her choice on the ballot provided. Ballot boxes, overseen by personnel of the department, will be available at designated exits. Each eligible participant shall hand the department employee his or her signed affidavit and shall place his or her ballot in the ballot box.

(6) After depositing his or her ballot, each participant shall immediately leave the meeting room and shall not return until all ballots are cast and the ballot boxes are closed.

(7) The ballot boxes shall be opened in the presence of the balloting committee, who shall count the ballots in the presence of the chairman or his or her designee(s).[

~~(8) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.]~~

(8)(9) Each member of the balloting committee shall sign an affidavit attesting to the ballot count and to the fact that, to the best of his or her knowledge, the process of distributing and counting the ballots was conducted in a fair and impartial manner. The chairman shall obtain a written statement from any committee member who feels that irregularities did occur during the course of the meeting.

(9) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.

Section 4. Resolving Disputes. (1) In the event of a tie vote for fifth and sixth place, the chairman shall settle the issue by the toss of a coin. Tie votes which do not affect the outcome of the selection of the five (5) names will not be resolved.

(2) Any other disputes, whether over vote counts or over procedural matters, shall be arbitrated immediately by the chairman, whose decision shall be binding unless subsequently overturned by the commission or the courts as stipulated below.

(3) Any individual who is aggrieved by a decision of the chairman or by any other action at the meeting may appeal in writing to the Fish and Wildlife Resources Commission within ten (10) calendar days after the meeting.

(4) Upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(5) Any party aggrieved by a final order of the commission may appeal to Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 5. Submission of the List of Nominees to the Governor.

(1) The commissioner shall, within five (5) working days after the meeting, submit to the governor the names of the five (5) nominees chosen at the meeting.

(2) If balloting was used to limit the list to five (5) names, the commissioner shall not submit any ballot totals to the governor.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 28, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021 at 2:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the

public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This regulation establishes the procedure for nominating individuals for consideration as members of the Fish and Wildlife Commission.

(b) The necessity of the administrative regulation: The regulation is necessary to provide a mechanism for the selection of Fish and Wildlife Commission members.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.022 requires the Governor appoint Fish and Wildlife Commission members and provides vacancies shall be filled from a list of up to five (5) names submitted by the sportsmen of the corresponding commission wildlife district. This regulation establishes the system by which the sportsmen create the list of five (5) names to submit to the Governor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides procedures for generating the list of nominees for a Fish and Wildlife Commission vacancy.

(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 will improve the readability of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more clearly describe the procedures of a Fish and Wildlife Commission member nomination meeting.

(c) How does the amendment conform to the authorizing statutes: It provides a mechanism for the sportsmen of a district to create the list of nominees to be submitted to the Governor.

(d) How the amendment will assist in the effective administration of the statutes: It improves the clarity of the procedures described in the regulation.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All sportsmen of the Commonwealth that choose to participate in Fish and Wildlife Commission member nomination meetings.

(4) Provide an analysis of how the entities identified in question (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 alter any actions any sportsmen will have to take to comply with the 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 added cost to comply with the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The sportsmen will benefit when reading the regulation due to the greater clarity provided by the amended language.

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

(a) Initially: No additional costs will be incurred.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Fish and Game 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. There will be no increase in fees or funding necessary for this amendment.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all sportsmen are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.022 and 150.025

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no impact on expenditures or revenues.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:010. Districts.

RELATES TO: KRS 150.010, 150.022(1), 150.025

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate fish and wildlife resources. This administrative regulation designates the counties within each wildlife district. It is necessary to place each county in one (1) of the nine (9) wildlife districts specified in KRS 150.022.

Section 1. Wildlife Districts. (1) For the purposes of representation on the Fish and Wildlife Resources Commission, each county in Kentucky is assigned to a wildlife district [as] indicated below:

(a) District I - Fulton, Hickman, Carlisle, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Lyon, Trigg, Caldwell, Crittenden, Christian.

(b) District II - Union, Webster, Hopkins, Muhlenberg, Todd, Henderson, McLean, Logan, Simpson, Allen, Warren, Butler, Ohio, Daviess, Hancock.

(c) District III - Meade, Bullitt, Jefferson, Spencer, Oldham, Breckinridge, Shelby.

(d) District IV - Hardin, Grayson, Nelson, Washington, Marion, Larue, Taylor, Adair, Cumberland, Monroe, Barren, Green, Hart, Edmonson, Metcalfe.

(e) District V - Carroll, Owen, Grant, Harrison, Robertson, Bracken, Pendleton, Gallatin, Boone, Kenton, Campbell, Trimble, Henry.

(f) District VI - Franklin, Scott, Anderson, Woodford, Fayette, Mercer, Jessamine, Boyle, Casey, Lincoln, Garrard, Rockcastle, Lee, Estill, Powell, Clark, Madison.

(g) District VII - Lawrence, Magoffin, Johnson, Martin, Pike, Floyd, Breathitt, Knott, Perry, Letcher, Leslie, Harlan, Owsley.

(h) District VIII - Mason, Lewis, Greenup, Carter, Boyd, Morgan, Wolfe, Menifee, Montgomery, Bath, Rowan, Fleming, Nicholas, Bourbon, Elliott.

(i) District IX - Clinton, Russell, Wayne, Pulaski, McCreary, Whitley, Laurel, Clay, Knox, Bell, Jackson.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 20, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021 at 3:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes the counties which are included in each of the nine (9) wildlife districts.

(b) The necessity of the administrative regulation: This regulation is necessary to establish which counties are a part of each of the nine (9) wildlife districts within the Commonwealth.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.022(1) requires the Fish and Wildlife Commission consist of nine (9) members, one (1) from each wildlife district. This regulation establishes the required wildlife districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of KRS 150.022 by establishing the required commission districts for Fish and Wildlife Commission members.

(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 modifies the regulation to be consistent with the standard numbering conventions for regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct the numbering convention in the regulation to be consistent with the standard convention.

(c) How does the amendment conform to the authorizing statutes: The amendment does not alter the commission districts, which are established in accordance with KRS 150.022(1).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in increasing the readability of the regulation.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All sportsmen within 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: The amendment of this regulation will not impact the sportsmen of the Commonwealth.

(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 sportsmen will not need to perform any action to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will benefit the sportsmen by increasing the readability of the regulation.

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

(a) Initially: There will be no cost to implement the amendment to this administrative regulation.

(b) On a continuing basis: There will be no cost to implement the amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This amendment does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals are treated in the same 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 Department of Fish and Wildlife Resources.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.0221 and 150.025.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment should have no effect on the expenditures or revenues for any entity.

(a) How much 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.

(b) How 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.

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:020. Ballard Wildlife Management Area restrictions.

RELATES TO: KRS 150.010, 150.025, 150.300, 150.600

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation pertains to entering upon the premises and disturbing or poaching waterfowl and other wildlife on Ballard Wildlife Management Area, located in Ballard County. This administrative regulation is necessary to prevent disturbance of migratory waterfowl. The function of this administrative regulation is to insure that migratory waterfowl and other wildlife are not disturbed or molested during specified periods or in places that are closed. The purpose of this amendment is to [update terminology and] clarify the administrative regulation.

Section 1. Trespass by Unauthorized Persons. A person shall not enter upon the premises of the Ballard Wildlife Management Area for any reason during the period of October 15 through March 15, except the following authorized personnel:

- (1) Department employees acting under the direction of the commissioner of the department;
- (2) The director of the Wildlife Division;
- (3) The Wildlife Management Area Manager;
- (4) U.S. Fish and Wildlife Service special agents; and
- (5) Persons participating in department managed activities.

Section 2. Carrying of Firearms or Accompanied by a Dog. Only authorized personnel or U.S. Fish and Wildlife Service special agents engaged in assigned duties, shall enter upon the premises of the Ballard Wildlife Management Area during the period October 15 through March 15, shall be permitted to be accompanied by a dog and possess firearms necessary to conduct permitted activities.

Section 3. Trespass by Boat. During periods of high water or flood, an unauthorized person shall not enter upon the premises of the Ballard Wildlife Management Area by boat for any purpose. High water or flood conditions do not affect or change the management area boundary which is marked by yellow signs.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane,

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation pertains to entering upon the premises and disturbing or poaching waterfowl and other wildlife on Ballard Wildlife Management Area, located in Ballard County.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to prevent disturbance or migratory waterfowl. The function of this administrative regulation is to ensure that migratory waterfowl and other wildlife are not disturbed or molested during specified periods or in places that are closed.

(c) How does this administrative regulation conform to the authorizing statute: KRS 13A.350 applies application of chapter to all grants of authority to promulgate administrative regulation and not administrative regulation shall be promulgated or adopted unless in conformity with provisions of this chapter, 150.025 defines the power of department to make administrative regulations as to game and fish, including seasons and limits -- Inclusion of administrative regulation on department's Web site.

(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 Ballard Wildlife Management Area restrictions.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals utilizing the Ballard Wildlife management area will be affected by this regulation.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Legal use of the Ballard Wildlife management area.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees not does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.300, 150.600, KRS 13A.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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:050. Swan Lake Unit of Boatwright Wildlife Management Area.

RELATES TO: KRS 150.010, 150.015, 150.600

STATUTORY AUTHORITY: KRS 150.025(1)(g), 150.600(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(g) authorizes the department to make administrative regulations that apply to a limited area or to the entire state. KRS 150.600(1) authorizes the department to establish waterfowl refuges on public or private lands. This administrative regulation establishes [area] use restrictions for the Swan Lake Unit of Boatwright Wildlife Management Area.

Section 1. Restrictions. (1) The Swan Lake Unit of Boatwright Wildlife Management Area shall be closed to all public access from October 15 through March 15, except for:

(a) Authorized personnel from:

1. The department; or

2. The U.S. Fish and Wildlife Service.

(b) Hunters assigned from a daily department quota hunt drawing during the regular waterfowl season, pursuant to 301 KAR 2:222.

(2) A person shall not:

(a) Have an unleashed pet;

(b) Camp except in a designated area;

(c) Camp for more than fourteen (14) consecutive days;

(d) Camp with a recreational vehicle; or

(e) Use a firearm to take frogs.

RICH STORM, Commissioner
MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwppubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes use restrictions for the Swan Lake Unit of Boatwright Wildlife Management Area.

(b) The necessity of the administrative regulation: This regulation is necessary to establish use restrictions consistent with waterfowl refuge status to limit disturbance to waterfowl.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1)(g) authorizes the department to make administrative regulations that apply to a limited area or to the entire state. KRS 150.600(1) authorizes the department to establish waterfowl refuges on public or private lands.

(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 Swan Lake unit of the Boatwright Wildlife Management Area restrictions.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals utilizing the Swan Lake unit of the Boatwright Wildlife Management Area will be affected by this regulation.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the

entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Legal use of the Swan Lake unit of the Boatwright Wildlife Management Area

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.010, 150.015, KRS 150.025(1)(g), 150.600(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 revenue will be generated for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:070. Scientific and educational collecting permits.

RELATES TO: KRS 150.010, 150.170, 150.180, 150.195, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.183, 150.275, 50 C.F.R. 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to

make these requirements apply to a limited area. KRS 150.183(3) authorizes the department to establish the terms and conditions for allowing the importation, transportation, possession, or sale of endangered species. KRS 150.275 authorizes the department to issue permits to persons for commercial nuisance wildlife control, and scientific or educational purposes. 50 C.F.R. Part 17 establishes the requirements for federally protected species. This administrative regulation establishes the requirements for the issuance and use of scientific and educational collecting permits.

Section 1. Definitions. (1) "Agent of the state" means a status that is granted by the department to an individual working on a project on behalf of the department.

(2) "Collected", "Collecting", or "Collection" means any sampling activity that removes, even temporarily, any protected wildlife from the wild in Kentucky.

(3) "Educational collection permit" means a permit issued by the department to an individual for use in:

- (a) The instruction of students; or
- (b) A university-related research project.

(4) "Federally protected species" means any species:

- (a) Listed by the United States Fish and Wildlife Service as:

1. Threatened; or

2. Endangered; or

- (b) Any bird protected under the:

1. Migratory Bird Treaty Act; or

2. Bald and Golden Eagle Protection Act.

(5) "Permit holder" means a person who possesses one (1) of the following two (2) valid permits issued by the department:

- (a) An educational collection permit; or

- (b) A scientific collection permit.

(6) "Scientific collection permit" means a permit issued by the department to an individual for the purpose of conducting a scientific study for which remuneration is received.

(7) "Watershed" means an 8-digit Hydrologic Unit Code assigned by the United States Geological Survey.

Section 2. Permit Issuance and Requirements. (1) A person shall obtain the applicable collection permit prior to collecting any protected wildlife species in Kentucky, except that a representative of the department who is engaged in collecting wildlife in an official capacity shall not be required to possess a collection permit.

(2) A person shall:

- (a) Apply for an educational or scientific collection permit on a Scientific and Educational Wildlife Collection Permit Application form provided by the department; and

- (b) Submit to the department the appropriate permit fee established in 301 KAR 3:022 along with the completed application.

(3) The department shall only issue a scientific or educational permit to a person who:

- (a) Has completed a college course in species taxonomy or species identification for the species group to be collected;

- (b) Has one (1) year of experience in collecting the species group to be collected; or

- (c) Submits a signed letter from a person qualified to be a scientific or educational permit holder attesting to the applicant's ability in species identification.

(4) A permit holder shall possess a valid federal permit or a department-issued agent of the state letter if collecting a:

- (a) Federally protected species;

- (b) Bat species;

- (c) Mussel species; or

- (d) Fish species in a watershed known to contain a federally protected fish species.

(5) A permit holder shall complete a Project Proposal Form for every project involving the sampling or collecting of:

- (a) A federally protected species;

- (b) A bat;

- (c) A mussel; or

- (d) Fish in a watershed known to contain a federally protected fish species.

(6) A permit holder shall submit to the department each Project

Proposal Form at least fifteen (15) days in advance of the project.

(7) A permit holder shall comply with all requirements pertaining to a federally protected species pursuant to 50 C.F.R. Part 17.

(8) A permit holder shall:

- (a) Not intentionally kill a federally protected species; and

- (b) Report any inadvertent killing of a federally protected species by:

1. Calling the department's Wildlife Diversity Program at 1-800-858-1549 within twenty-four (24) hours of the kill; and

2. Submitting all dead specimens to the department within seven (7) days of taking.

(9) A permit holder shall not use a scientific or educational collection permit in lieu of a:

- (a) Hunting license;

- (b) Fishing license; or

- (c) Trapping license.

(10) While collecting specimens, a permit holder shall carry a:

- (a) Valid scientific or educational collection permit; or

- (b) Photocopy of a valid collection permit.

(11) A permit holder who is collecting wildlife that will not be killed shall release the wildlife at the capture location.

Section 3. Reporting Requirements, Permit Renewal, and Revocation. (1) A permit holder shall submit to the department all wildlife collection data for the previous calendar year:

- (a) By January 15;

- (b) Electronically on the department's Web site at fw.ky.gov; and

- (c) Prior to renewal of a collection permit.

(2) A permit holder who is submitting annual collection data on the department's Web site shall complete the data submittal process in its entirety.

(3) The department shall not renew a scientific or educational collection permit until the permit holder has submitted the previous year's collection data via the electronic data submittal process on the department's Web site.

(4) A scientific or educational permit shall be revoked or denied by the department if the permit holder:

- (a) In the last year has been convicted of a violation of:

1. This administrative regulation;

2. A federal regulation involving the collection of federally protected species pursuant to 50 C.F.R. Part 17; or

3. Another state's regulation or law pertaining to the collection of protected wildlife; or

- (b) Falsifies the permit application.

(5) A person who has had a scientific or educational collection permit revoked shall be ineligible to apply for a period of one (1) year.

(6) A person who has had a permit denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(7) A request for a 13B hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Project Proposal Form", 2012 edition; and

- (b) "Scientific and Educational Wildlife Collection Permit Application", 2012 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1

Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the requirements for the issuance and use of scientific and educational collecting permits.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to establish requirements for scientific and educational collecting permits to protect wildlife from commercialization, overtake and disease concerns.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulation bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.183(3) authorizes the department to issue permits to persons for commercial nuisance wildlife control, and scientific or educational purposes. 50 C.F.R Part 17 establishes the requirements for federally protected species.

(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 scientific and educational collecting permits.

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

(a) How the amendment will change the existing administrative regulation This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals seeking a scientific and educational collection permit.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Legal compliance with scientific and educational collection permits use.

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

administrative regulation:

(a) Initially: There will be no additional cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees not die it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation does not establish any fees not does it indirectly increase any fees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.183, 150.275, 50 C.F.R. 17

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:100. Peabody Wildlife Management Area use requirements and restrictions.

RELATES TO: KRS 150.250, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.195(4)(f), (g), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to acquire lands for public use, to promulgate administrative regulations for their management, and to charge fees for their use. KRS 150.195(4)(f) and (g) authorize the department to establish the term and manner of license and permit sales. KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. This administrative regulation establishes a permit for public use of the Peabody Wildlife Management Area and places necessary restrictions on its use by the public.

Section 1. Definitions. (1) "The area" means the Peabody Wildlife Management Area.

(2) "Group" means a family, organization, or gathering using the area for a specific event.

(3) "The Peabody Wildlife Management Area" means the lands in Hopkins, Ohio, and Muhlenberg Counties owned or managed by the Department of Fish and Wildlife Resources.

(4) "Permanent structure" means a blind, pit, stand, or other structure left in place for more than twenty-four (24) hours.

Section 2. Permits Required. Except as provided in Sections 3 and 4 of this administrative regulation, a person sixteen (16) years or older while on the area shall:

(1) Have in his possession a Peabody Wildlife Management Area user permit; or

(2) Be a member of a group with an event permit, either an individual event permit or annual event permit.

Section 3. Individual and Annual Event Permits. (1) In lieu of individual user permits, a person representing a group using the area shall have in possession an event permit and the area use permit as established in 301 KAR 3:010, Section 6.

(2) An event permit shall:

(a) Apply to each member of the group;

(b) Specify:

1. If it is an individual event permit, its period of validity, not to exceed four (4) days or, if it is an annual event permit, the dates the permit is not valid;

2. The activities in which the group will engage;

3. The name of the group; and

4. The name and address of an individual representing the group.

(3) The department may:

(a) Limit the number of event permits issued; or

(b) Assign a specific location for an event.

(4) The department shall:

(a) Deny the application for an event which would interfere with:

1. A management objective for the area; or

2. Other uses or users; or

(b) Revoke individual or event permits for violations of the terms of the application or this administrative regulation;

(c) Not issue an event permit for an event at which wildlife is taken.

Section 4. Permit Exceptions. An individual or event permit shall not be required of a person:

(1) On official business and employed by or an agent of:

(a) Peabody Coal Company;

(b) Beaver Dam Coal Company;

(c) Peabody Holding Company; or

(d) The Kentucky Department of Fish and Wildlife Resources;

(2) En route through the area on a state or county road; or

(3) On the area:

(a) As a necessary part of his job; or

(b) For the protection of public safety or well-being.

Section 5. Permit Applications. (1) An applicant for an individual permit shall:

(a) Apply at an authorized license agent; and

(b) Pay the fee specified in 301 KAR 3:022.

(2) An applicant for an event permit shall:

(a) Apply on a form provided by the department; and

(b) Pay the fee specified in 301 KAR 3:022.

(3) The department shall keep applications and copies of event permits issued in a retrievable form for a minimum of one (1) year after the permits expire.

Section 6. Prohibited Activities. While on the area, a person shall not:

(1) Swim for recreational purposes;

(2) Camp except in a primitive fashion along an existing road;

(3) Leave a campfire unattended;

(4) Operate a motorized vehicle:

(a) Off an existing road; or

(b) Where prohibited by signs;

(5) Block a road or gate;

(6) Park except in a designated parking area unless none are available;

(7) Park or camp within 100 feet of well heads;

(8) Target shoot except at a designated area;

(9) Construct a permanent structure;

(10) Leave a temporary blind or stand in place overnight;

(11) Operate a boat:

(a) With a centerline exceeding eighteen (18) feet six (6) inches in length, except:

1. A canoe shall not have a length restriction; and

2. A pontoon boat shall not exceed twenty-two (22) feet in length; or]

(b) At greater than idle speed; or

(c) With an internal combustion engine on:

1. Goose Lake;

2. Island Lake; or

3. South Lake.

Section 7. Incorporation by Reference. (1) "Peabody Wildlife Management Area and Starfire and Robinson Forest Wildlife Management Area Permit Application, July 04" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 28, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2021 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes a permit for public use of the Peabody Wildlife Management Area and places necessary restrictions on its use by the public.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to allow the department to effectively manage the use of the Peabody Wildlife Management Area.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.620 authorizes the department to acquire lands for public use, to promulgate administrative

regulations for their management, and to charge fees for their use. KRS 150.195(4)(f) and (g) authorize the department to establish the term and manner of license and permit sales. KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150.

(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 Peabody Wildlife Management Area use requirements and restrictions.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation. (b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

(c) How does the amendment conform to the authorizing statutes: See (1) (c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1) (d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: The users of the Peabody Wildlife Management Area will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment No action needed to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Legal use of the Peabody Wildlife management area.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any additional fees nor does it indirectly increase any fees

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.195(4)(f), (g), 150.620

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 additional revenue will be generated for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated for state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 4:110. Administration of drugs to wildlife.

RELATES TO: KRS 150.025

STATUTORY AUTHORITY: 2008 Ky. Acts ch.133, sec.5

NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky. Acts ch.133, sec.5 instructs the department to promulgate administrative regulations that restrict a person from administering drugs to noncaptive wildlife. This administrative regulation prohibits the administration of drugs to wildlife and creates the necessary exceptions. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Captive wildlife" means wildlife legally kept in confinement by fence or other structure or restraint intended to prevent escape and does not include fish.

(2) "Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of any wildlife.

(3) "Noncaptive wildlife" means wildlife not legally kept in confinement by fence or other structure or restraint intended to prevent escape and does not include fish.

Section 2. Administration of Drugs. Except as provided in this administrative regulation, a person shall not administer drugs to noncaptive wildlife without written authorization from the commissioner.

Section 3. Petitions. (1) Persons or entities shall petition the commissioner in writing for authorization to administer drugs to noncaptive wildlife. Written petitions shall include:

(a) A biological or sociological justification for the need to administer a drug to noncaptive wildlife;

(b) A literature review of the known and potential effects of the drug on individual animals, the wildlife population, and potential consumers of wildlife; and

(c) A detailed plan and timeline for administration of the drug(s).

(2) The commissioner may issue a waiver for the petition requirement for authorization to administer drugs to noncaptive wildlife for specific situations involving:

(a) Public safety; or

(b) Wildlife disease outbreaks.

Section 4. Exemptions. This administrative regulation shall not

apply to: (1) The administration of drugs to captive wildlife including captive cervids;

(2) The treatment of sick or injured wildlife by:

(a) A licensed veterinarian;

(b) A holder of a wildlife rehabilitation permit; or

(c) A holder of a valid scientific collection permit;

(3) The administration of drugs by Commercial Nuisance Wildlife Control operators licensed by the department as set forth in 301 KAR 3:120; or

(4) Employees of federal or state government in the performance of their official duties related to public health, wildlife management, or wildlife removal.

Section 5. Disposition of Wildlife. An officer of the department may take possession or dispose of any noncaptive wildlife if the officer has probable cause to believe the noncaptive wildlife have been administered drugs in violation of this administrative regulation.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021 at 1:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: EO 2008-516, administration of drugs to wildlife and creates the necessary exceptions. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to restrict a person from administering drugs to noncaptive wildlife and create the necessary exceptions.

(c) How does this administrative regulation conform to the authorizing statute: 2008 Ky. Acts ch. 133, sec. 5 instructs the department to promulgate administrative regulation that restrict a person from administering drugs to noncaptive wildlife.

(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 regulation of administration of drugs to wildlife..

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative

regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected:

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: No action needed to comply with this 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: No action needed to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

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

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No state or local government units will be impacted by this change.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2008 Ky. Acts ch. 133, sec. 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? No revenue will be generated for state and local governments

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state and local governments

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

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

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

Revenues (+/-):

Expenditures (+/-):
Other Explanation:

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 5:001. Definitions for 301 KAR Chapter 5.

RELATES TO: KRS 150.195

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: To define the terms used in 301 KAR Chapter 5.

Section 1. Definitions. (1) "Agents of county clerks" means the business establishments included on the list submitted to the department by county clerks of their authorized license agents as of July 16, 1994.

(2) "Commission" is defined by KRS 150.010(4).

(3) "Commissioner" is defined by KRS 150.010(5).

(4) "Department" is defined by KRS 150.010(8).

(5) "License agent" means a county clerk, government office, or business authorized to sell licenses and conduct other transactions for the department.

(a) "Governmental agent" means a license agent who is a county clerk or the representative of another federal, state, or local governmental entity.

(b) "Out-of-state agent" means a license agent who sells licenses at a location outside the boundaries of Kentucky.

(6) "License stock" means the blank paper upon which licenses are printed by the POS device.

(7) "POS device" means a point-of-sale computer terminal, printer, and associated hardware, software, and connecting cables used to generate licenses and record license sale data.

(8) "POS licenses" means the licenses or permits authorized by KRS 150.175 and 301 KAR 3:022 which are available for sale through POS devices.

(9) "Transaction" means the application for a hunt or the purchase or sale of a license, permit, or product, ~~or the application for a hunt~~, using a POS device at a license agent location.

(10) "Upload" means the transfer, over telephone lines, of electronic data from the POS device to the department.

Approved by the Fish and Wildlife Commission

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 20, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2021 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubcomment@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: The regulation defines terms for 301 KAR chapter 5.

(b) The necessity of the administrative regulation: The regulation is necessary to establish the precise meaning of the terms when utilized within other 301 KAR chapter 5 regulations.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.195 authorizes the department to promulgate administrative regulations for the control, design, issuance, distribution, and other matters related to all licenses and permits issued by the department. This regulation provides definitions of terms utilized in the other regulations related to the issuance and distribution of licenses and permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of the statutes by providing definitions to the terms utilized in other regulations.

(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 improves the readability of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct grammatical errors and improve the readability of the regulation.

(c) How does the amendment conform to the authorizing statutes: The amendment does not make any substantive changes to the regulation.

(d) How the amendment will assist in the effective administration of the statutes: It will assist by improving the readability of the regulation which will improve the reader's understanding of the terms.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals purchasing licenses or permits as well as any businesses or governmental agencies which enter into agreements to become a license and permit vendor.

(4) Provide an analysis of how the entities identified in question (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 will not require any additional action on the part of any regulated entity.

(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 added cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is easier understanding of the terms of the regulation.

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

(a) Initially: There will be no additional cost to initially implement the regulation.

(b) On a continuing basis: There will be no continuing additional cost to implement the regulation.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Fish and Game 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. There will be no increase in fees or funding needed to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. The amendment does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. All entities 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? The Department of Fish and Wildlife Resources.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195,

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no added costs related to the administration of the amended regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no added costs related to the administration of the amended 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:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 5:030. Purchasing licenses and permits [obtaining replacement licenses].

RELATES TO: KRS 150.090, 150.170, 150.175, 150.195, 150.235, 150.990

STATUTORY AUTHORITY: KRS 150.170, 150.175, 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(1) authorizes the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. KRS 150.175 authorizes the department to require proof of residency and age or disability for those eligible to purchase a senior[~~/~~] or disabled [~~combination~~] sportsman's license. This administrative regulation specifies the information required to purchase a [POS] license or permit, [~~the information required on the license~~] the method of purchasing a license or permit, [~~how replacement~~] reprinting or refunding licenses or permits [~~may be obtained~~], and how to obtain a disability authorization [~~card~~].

Section 1. Purchasing Licenses or Permits. [~~Information Required to Purchase a POS License.~~](1) Licenses or permits can be obtained:

At license agent locations

Other department sponsored/approved sites or events; or

By accessing the department's online or mobile purchase portals.

(d) By Phone. Phone sales customers will be issued an authorization number and must comply with Section 2 of this regulation.

(2) A person buying a [POS] license or permit shall furnish the license agent the following applicant information:

(a) [(1) The license applicant's d] Date of birth; [and]

(b) [(2)] One of the following [An] identification numbers; [~~which shall be:~~

(a) The license applicant's:]

1. Social Security number; [or]

2. Fish and Wildlife Identification number; or
3. An agency approved state or federal identification number.
- (c) Address, including city, state, and zip code;
- (d) Email and/or phone number;
- (e) If purchasing a senior license, proof of age; and
- (f) If purchasing a disability license, an unexpired disability authorization issued by the department to the license applicant. [~~(b) If buying a senior/disabled license:~~
1. If age sixty-five (65) or over, proof of age and Kentucky residency; or
2. If under age sixty-five (65), an unexpired disability authorization card issued by the department and proof of Kentucky residency.]

Section 2. [~~Providing Information on Licenses~~]Proof of License or Permit. (1) Before performing an act authorized by the license or permit, the [license] holder shall:

(a) [~~Sign the POS license~~]Keep proof of license or permit purchase, whether printed, electronic, or department issued authorization number in possession at all times while performing any act authorized by the license or permit; [and

(b) Provide the following information, legibly in ink or indelible pencil, in the blanks provided on the POS license:

1. Address, including city, state and zip code;
2. Eye color;
3. Hair color;
4. Sex;
5. Height; and
6. Weight.]

(2) A license or permit not completed as specified in this section shall not be valid.

(3) A senior[~~/disabled combination~~] sportsman's license shall not be valid unless accompanied by:

(a) Proof of age and Kentucky residency, if the license recipient is age sixty-five (65) or over. [~~;-or]~~

(4) A disabled sportsman's license shall not be valid unless accompanied by proof of Kentucky residency. [~~(b) An unexpired disability authorization card issued to the license recipient, if the license recipient is under age sixty-five (65) and proof of Kentucky residency.~~]

(5) The authorization number shall serve in lieu of the paper or electronic license or permit. A person using an authorization number as proof of license or permit, while performing an act authorized by the license or permit, shall carry upon their person and present upon request to a law enforcement officer:

- (a) The authorization number; and
- (b) If sixteen (16) years of age or older, identification with a picture and date of birth.

(6) A person using an authorization number in lieu of a deer, elk, or turkey permit shall:

(a) Before hunting, write their name, address and applicable authorization number on a card;

(b) Immediately after taking an animal, write the date the animal was taken, the species and the sex of the animal on the card;

(c) Complete any check-in procedure required for that species, write the telecheck authorization number on the card; and

(d) If the carcass is out of the hunter's possession, the hunter shall attach another card to the carcass containing the hunter's name, address, authorization number, date the animal was taken, species, and telecheck authorization number, if already obtained.

Section 3. [~~Replacement of Lost or Destroyed Licenses~~]Reprint or Refunding of Licenses or Permits. (1) A person whose license or permit is lost or destroyed may:

(a) [~~Request a replacement license from the department~~]Reprint the license or permit using the reprint option available in the customer's profile on the department's Web site or mobile application; or

(b) [~~Purchase a replacement license and request a refund from the department~~] Ensure an electronic version is available as outlined in Section 2.

(2) A person may request [requesting] a refund or [replacement]

license or permit[or refund shall provide the department with] by: [

- (a) His name and complete mailing address;
- (b) The identification number used to purchase the original license; and
- (c) One (1) of the following:
 1. A replacement fee of five (5) dollars; or
 2. The license number of the license he bought to replace the lost or destroyed license.
- (3) If the department can verify the purchase of the original license, it shall:
 - (a) Void the original license; and
 - (b) Issue a:
 1. Replacement license; or
 2. Refund check for the amount of the license, less a five (5) dollar replacement fee.
 - (4) A person shall not use, or present to a conservation officer or other peace officer, a license voided by the issuance of a replacement.
 - (5) The department shall not refund a license replacement fee.

Section 4. Duplicate License Refunds. (1) A person may obtain a refund for a duplicate license or permit by:

- (a) Requesting a refund from the license agent who completed the transaction if the request is made within four (4) hours of the license or permit issuance; or
- (b) For duplicate licenses or permits, by furnishing the department with the license or permit holder's:
 1. Identification number used to purchase;
 2. Date of Birth;
 3. Last name;
 4. Mailing address to send the refund;
 5. License, permit, or authorization number of the original license or permit; and
 6. Reason for refund request.

(3) Upon receipt of the refund request, and subsequent verification of the original purchase, the department shall issue a refund check for the license or permit purchased. [A person may obtain refunds for a duplicate POS license:

- (1) From the license agent who completed the transaction, if:
 - (a) The request is made on the same day the license was issued; and
 - (b) The original license is surrendered to the license agent; or
- (2) By furnishing the department with:
 - (a) The duplicate license;
 - (b) The name and mailing address of the person requesting the refund;
 - (c) The license number of the original license; and
 - (d) An explanation of the reason for the refund request.
- (3) Upon receipt of the refund request and duplicate license, and subsequent verification of the original purchase, the department shall issue a refund check for the amount of the license less a fee of five (5) dollars.]

Section 5. Buying Licenses or permits for Another. A person purchasing a [POS] license or permit for another person shall provide the [license agent with the] information about the person for whom the license is being purchased as required in Section 1 of this administrative regulation. A person other than a parent or guardian may not purchase a junior hunting license for another person.

Section 6. Obtaining a Disability Authorization[Card]. (1) To verify that the applicant[he] qualifies for a [senior/disabled combination sportsman's] license because of a disability as specified in KRS 150.175, a person shall provide the department proof of Kentucky residency and one (1) of the following:

- (a) A department approved form or electronic verification from the applicant's [TPQY long] form from his local federal Social Security office certifying [that he] the applicant is receiving disability benefits from Social Security;
- (b) A copy of his disability rating showing at least a fifty (50) percent military service-connected disability;
- (c) A letter of verification from the United States Railroad

Retirement Board certifying that the applicant has been declared totally and permanently disabled;

(d) A letter, on that state board's letterhead, certifying that the applicant has been declared totally and permanently disabled by another state's workers' compensation board;

(e) A letter of verification from the Kentucky Teachers' Retirement System certifying that the applicant has been declared totally and permanently disabled from teaching; or

(f) A letter of verification from the U.S. Office of Personnel Management certifying that the applicant has been declared totally and permanently disabled.

(2) A person declared totally and permanently disabled by the Kentucky State Workers' Compensation Board shall:

- (a) Obtain a Disability Workers Compensation Exemption form from the department; and

- (b) Complete the form and mail it to the address given on the form.

(3) Upon receipt of the verification required by subsection (1) of this section or upon receipt of verification from the state Worker's Compensation Board, the department shall issue an authorization [card] certifying the person is eligible to purchase a [senior/disabled combination] sportsman's license.

Section 7. (1) Duration of Disability Exemption. Certification by the Social Security Administration, Kentucky Teachers' Retirement System, or a state worker's compensation board shall remain valid for three (3) years after issue of the disability authorization[card].

(2) Certification by the United States Railroad Retirement Board, U.S. Office of Personnel Management, or certification of at least fifty (50) percent military service-connected disability shall remain valid until the license holder turns sixty-five (65) years of age or no longer requires the disability exemption.]

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Disability Authorization Card", March 2001; and
- (b) "Disability Authorization Card Instructions", March 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, Division of Fiscal Control, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 15, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This regulation establishes the procedures for purchasing licenses and obtaining replacement licenses.

(b) The necessity of the administrative regulation: This regulation is necessary to inform the public and license vendors as to the documentation and information needed for the purchase of licenses and how to obtain replacements.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.195 requires the department to provide for the issuance and distribution of licenses and permits by administrative regulation. This regulation establishes the procedures for the issuance and distribution of licenses and permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedures for the issuance of licenses and permits to individuals desiring to purchase such licenses and permits.

(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 improves the readability by correcting grammatical issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to improve the readability of the existing regulation.

(c) How does the amendment conform to the authorizing statutes: The amendment does not make any substantive changes to the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: It will help to avoid confusion when individuals read the regulation.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals purchasing applicable licenses and permits as well as vendors of those licenses.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no added costs to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit for all entities identified in question 3 is improved readability and easier understanding of the regulation language.

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

(a) Initially: There will be no added costs to implement the amendment initially.

(b) On a continuing basis: There will be no added costs to implement the amendment on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Fish and Game 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 will be necessary to implement the change in this amendment.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This amendment does not create or alter any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

impacted by this administrative regulation? The Department of Fish and Wildlife Resources and any governmental divisions that apply to be license vendors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.170, 150.175, 150.195

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendment will not have any impact upon the expenditures or revenues of any state or local governmental agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will not have any impact upon the expenditures or revenues of any state or local governmental agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment will not have any impact upon the expenditures or revenues of any state or local governmental agency.

(c) How much will it cost to administer this program for the first year? The amendment will not have any impact upon the costs to administer the program for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment will not have any impact upon the costs to administer the 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:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 5:100. Interstate Wildlife Violators Compact.

RELATES TO: KRS 150.236

STATUTORY AUTHORITY: KRS 150.025, 150.236, 150.238

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025

authorizes the department to establish administrative regulations necessary to carry out the purpose of KRS Chapter 150. KRS 150.236 authorizes the department to promulgate administrative regulations regarding the suspension of hunting or fishing privileges for persons whose hunting or fishing privileges have been suspended or revoked by other jurisdictions. KRS 150.238 authorizes the department to enter into reciprocal agreements with other states regarding fish and wildlife violations. This administrative regulation establishes the provisions of a reciprocal interstate Wildlife Violators Compact.

Section 1. Definitions.

(1) "Citation" means any summons, complaint, ticket, penalty assessment, or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance" means the act of answering a citation through appearance at a court, a tribunal, or payment of fines, costs, and surcharges, if any, or both such appearance and payment.

(4) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, administrative regulation, ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to

secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(5) "Home state" means the state of primary residence of a person.

(6) "Issuing state" means the party state which issues a wildlife citation to the violator.

(7) "License" means any license, wildlife[,] permit, or other public document that conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state.

(8) "Licensing authority" means the department within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(9) "Party state" means any state which enacts legislation to become a member of this wildlife compact.

(10) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(11) "State" means any state, territory, or possession of the United States.

(12) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges or rights, including the privilege or right to apply for, purchase, or exercise the benefits conferred by any license.

(13) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(14) "Wildlife" means:

(a) 1. All species of animals, including mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans; and

2. Food, fish, and shellfish;

(b) Which are:

1. Defined as wildlife, food fish, or shell fish in that specific jurisdiction; and

2. Protected by or otherwise regulated by statute, administrative regulation, ordinance, or administrative rule in that specific jurisdiction.

(15) "Wildlife law" means any statute, law, administrative regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(16) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(17) "Wildlife violation" means any cited violation of a statute, law, administrative regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

Section 2. Procedures for the Issuing State. (1) If issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subsection (2) of this section, if the officer receives the person's personal recognizance that the person shall comply with the terms of the citation.

(2) Personal recognizance is acceptable:

(a) If not prohibited by local law or the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources; and

(b) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(3) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources as policy as minimum requirements for effective processing by the home state.

(4) Upon receipt of the report of conviction or noncompliance required by subdivision (3) of this administrative regulation, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual adopted by the Kentucky Department of Fish and Wildlife Resources as policy.

Section 3. Procedures for Home State. (1) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges or rights until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process rights shall be provided to any person who is issued a citation pursuant to this administrative regulation.

(2) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter the conviction in its records and shall treat the conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(3) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual adopted by the department as policy.

Section 4. Reciprocal recognition of suspension. All party states shall recognize the suspension of license privileges or rights of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and would have been the basis for suspension of license privileges or rights in their state.

Section 5. The commissioner shall designate a department representative who shall serve as the department's compact administrator.

Section 6. Appeals. (1) A person who is convicted pursuant to this administrative regulation or who is found to have committed a violation in another state that warrants the department denying them a hunting license, fishing license, trapping license, or any wildlife permit, may appeal the decision and request in writing an administrative hearing within thirty (30) days of the denial.

(2) Upon receipt of a written request for an administrative hearing, the department shall set the date, time, and place of the hearing and shall forthwith notify the person by regular U.S. mail.

(3) An administrative hearing conducted pursuant to this section shall be held in accordance with KRS Chapter 13B.

Section 7. Effective Dates of Suspensions. Only violations that are committed on or after the effective date of this compact, and resulting suspensions, shall be subject to the provisions of the compact.

Section 8. Incorporation by Reference. (1) "Compact Manual", 2/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Ky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 15, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2021 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five

business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This regulation establishes procedures for reciprocal enforcement of fish and wildlife laws pursuant to the Interstate Wildlife Violator's Compact.

(b) The necessity of the administrative regulation: This regulation is necessary to detail the Commonwealth's participation in the Interstate Wildlife Violator's Compact.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 establishes authority to regulate hunting and fishing of wildlife in the Commonwealth and KRS 150.236 requires reciprocal suspension of person's privilege to hunt and fish when suspended in other jurisdictions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines terms and set procedures regarding the reciprocal suspension of licenses to hunt and fish as required by KRS 150.236.

(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 corrects grammatical errors, but makes no substantive change.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to improve readability and understanding of the regulation's terms.

(c) How does the amendment conform to the authorizing statutes: The amendment makes no substantive changes to the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: It will assist by improving the readability of the regulation.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals who violate hunting and fishing laws of the Commonwealth or other cooperating jurisdictions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment makes no substantive change to the regulation and the only impact will be improved readability of the regulation.

(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 will not require any additional actions to comply with the 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 added costs due to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit will be increased readability of the regulation.

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

(a) Initially: There will be no added costs to implement this administrative regulation.

(b) On a continuing basis: There will be no added costs to implement this administrative regulation.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The fish and game 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. There will be no increase in fees or funding necessary due to this amendment.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This amendment does not establish any new fees or increase any existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals 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? The Department of Fish and Wildlife Resources.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.236, 150.238.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not alter any costs to administer the regulation.

(d) How much will it cost to administer this program for subsequent years? This amendment will not alter any costs to administer the 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:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 6:001. Definitions for 301 KAR Chapter 6.

RELATES TO: KRS Chapter 235

STATUTORY AUTHORITY: KRS 235.280[320]

NECESSITY, FUNCTION, AND CONFORMITY: To define the terms used in 301 KAR Chapter 6. [This amendment is necessary to add definitions for "Type V personal flotation device" and "manually propelled racing vessels".]

Section 1. Definitions. (1) "Adequate ventilation" means ventilation ~~that~~[which] met Boating Industry Association and U.S. Coast Guard requirements at the time the vessel was manufactured.

(2) "Airborne device" means a kite, parachute or similar device ~~that~~[which] holds a person aloft when towed behind a moving vessel.

(3) "Class A" means vessels less than sixteen (16) feet in length.

(4) "Class 1" means vessels sixteen (16) feet or over and less

than twenty-six (26) feet in length.

(5) "Class 2" means vessels twenty-six (26) feet or over and less than forty (40) feet in length.

(6) "Class 3" means vessels forty (40) feet or more in length.

(7) "Crossing" means a situation in which a vessel approaches another from an angle of 112.5 degrees or less from either side of the bow.

(8) "Documented by the federal government" means a vessel ~~that~~^{which} has been registered with, and issued official registration documents by, the United States Coast Guard.

(9) "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

(10) "International diving flag" means a red flag with a white stripe running diagonally from an upper corner to the opposite lower corner.

(11) "Length" means the longest dimension of a boat measured along the centerline from the bow to the stern, but not including outboard motors, swim platforms, or similar attachments.

(12) "Manually propelled racing vessel" means a racing shell, rowing scull, racing canoe or racing kayak recognized by national or international racing associations or use in competitive racing, and not designed to carry or not carrying equipment not solely for competitive racing.

(13) "Overtaking" means a situation in which a faster vessel approaches a slower vessel from an angle of more than 112.5 degrees from either side of the bow of the slower vessel.

(14) "Passing" means a situation in which vessels approach and pass each other from head on or nearly so.

(15) "Type I" means a personal flotation device:

(a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and

(b) Having more than twenty (20) pounds of buoyancy.

(16) "Type II" means a personal flotation device:

(a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and

(b) Having at least fifteen and one-half (15.5) pounds of buoyancy.

(17) "Type III" means a personal flotation device:

(a) Designed to keep a conscious person in a vertical or slightly backward position; and

(b) Having at least fifteen and one-half (15.5) pounds of buoyancy.

(18) "Type IV" means a personal flotation device:

(a) Designed to be thrown to a person in the water and not worn; and

(b) Having at least sixteen and one-half (16.5) pounds of buoyancy.

(19) "Type V" means a special use personal flotation device intended and approved by the U.S. Coast Guard for specific activities.

(20) "Water skis" means rigid or inflatable skis, kneeboards, tubes, wakeboards or similar devices. ~~[upon or in which a person is towed behind a moving vessel.]~~

(21) "Water skiing" means:

(a) The act of riding in or upon water skis while being towed behind a moving vessel or propelled by a boat's wake or while riding on/in a boat's wake directly behind a vessel that is underway; or

(b) Barefoot skiing.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021 at 2:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no

notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: It provides definitions for terms used in 301 KAR chapter 6.

(b) The necessity of the administrative regulation: The terms defined are not commonly understood or do not follow the commonly understood meaning of the terms.

(c) How does this administrative regulation conform to the authorizing statute: KRS 235.280 grants authority for the Commissioner, with approval of the Department of Fish and Wildlife Resources Commission, to promulgate regulations to govern the use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides valuable details as to how terms will be interpreted in other regulations under 301 KAR Chapter 6.

(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 statutory authority is updated, changes are made to improve readability, and definitions are amended to address wakeboards and wakeboarding.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to enhance safety for persons engaged in recreation upon the waters of the Commonwealth.

(c) How does the amendment conform to the authorizing statutes: It addresses the fair, reasonable, equitable, and safe use of the waters of the Commonwealth consistent with the dictates of KRS 235.280.

(d) How the amendment will assist in the effective administration of the statutes: It will allow existing safety regulations to apply to wakeboarding, which has become a more popular recreational activity in recent years.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals utilizing the waters of 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: Individuals enjoying wakeboarding will have to comply with the safety restrictions applicable to skiing found within other 301 KAR Chapter 6 regulations. Individuals engaged in other activities will not have to do any additional actions to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments will increase safety of those participating in wakeboarding and other recreation activities upon the waters of the Commonwealth.

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

(a) Initially: There should be no additional initial costs to implement this amendment.

(b) On a continuing basis: There should be no additional continuing costs to implement this amendment.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Fish and Game 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 establishes any fees directly or indirectly increases any fees. This regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied as the definitions of the terms will be equally applicable to all individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources, Division of Law Enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 235.280

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 6:070. Boat dealers.

RELATES TO: KRS 235.040, 235.220

STATUTORY AUTHORITY: KRS 235.220(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 235.220 authorizes the department to establish an annual registration fee for a manufacturers or dealer of motorboats in the state of Kentucky. This administrative regulation establishes the annual registration fee for boat manufacturers and dealers and establishes the requirements for registering as a boat manufacturer and boat dealer.

Section 1. Definitions. (1) "Boat dealer" means a person who is in the business of selling motorboats in Kentucky, other than a personal boat.

(2) "Boat manufacturer" means a person who is in the business

of manufacturing boats in Kentucky.

(3) "Dealer or manufacturer certificate" means the certificate issued to a boat manufacturer or boat dealer that bears an identification number assigned by the department signifying registration as a boat manufacture or a boat dealer.

(4) "Plate" means a moveable identification tag bearing a number assigned by the department signifying registration as a boat manufacture or a boat dealer.

Section 2. Application. (1) A person shall apply annually for a boat manufacturer's or boat dealer's registration on an application provided by the department or via the department's Internet site.

(2) A new application for annual registration shall be submitted each year to the department. Boat manufacturer and dealer certificates and plates shall expire April 30 of each year.

(3) Information to be provided on the application shall include:

(a) Name, address, and contact information;

(b) Address of business;

(c) Number of boats manufactured or sold in the year prior to application;

(d) Type of vessel manufactured or sold; and

(e) Copy of the Sales and Use Tax Permit issued by the Revenue Cabinet. If an applicant is using the Internet to process his or her application, he shall insert the six (6) digit account number issued by the Revenue Cabinet on the Sales and Use Tax Permit.

(4) A manufacturer shall include on an application for annual registration the assigned U.S. Coast Guard assigned manufacturers identification code.

(5) An applicant shall include a \$100 annual registration fee with his or her application.

(6) The registration provisions of this section shall not apply to licensed out-of-state manufacturers and dealers who are attending boat shows and other temporary exhibitions in Kentucky, provided their home state grants Kentucky manufacturers and dealers similar reciprocal privileges.

Section 3. Certification and Plate. (1) Boat manufacturers and dealers shall place in a conspicuous location at his or her place of business, the certificate issued by the department.

(2) The plate shall be kept aboard a boat and readily available for inspection by a law enforcement officer. The boat shall also abide by the registration requirements of KRS 235.220.

Section 4. Revocation of Certificate and Registration. A boat dealer or manufacturer shall forfeit his or her registration certificate and plate if he or she has:

(1) Been convicted of a violation of KRS Chapter 235;

(2) Falsified his or her application for certification as a boat manufacturer or dealer; or

(3) Misused his or her boat dealer or manufacturer certification and plate.

Section 5. Incorporation by Reference. (1) The Annual Application for Boat Manufacturer or Boat Dealer Registration, 2003 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[Game Farm Road], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021 at 3:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no

notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone: (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: The regulation authorizes the department to establish an annual registration fee for a manufacturers or dealer of motorboats in the state of Kentucky.

(b) The necessity of the administrative regulation: The regulation establishes the annual registration fee for boat manufacturers and dealers and establishes the requirements for registering as a boat manufacturer and boat dealer.

(c) How does this administrative regulation conform to the authorizing statute: This regulations established the annual registration fee for manufacturers or dealers of motorboats as required by KRS 235.220(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the specific process and fee amounts for manufacturers and dealers in motorboats.

(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 updates address for the Department of Fish and Wildlife Resources where individuals can inspect the material incorporated by reference to the regulation.

(b) The necessity of the amendment to this administrative regulation: It is necessary to provide accurate information to the public who may wish to inspect the material incorporated by reference.

(c) How does the amendment conform to the authorizing statutes: The amendment does not make any changes to the substance of the regulation.

(d) How the amendment will assist in the effective administration of the statutes: It assists in the effective administration of the statutes by providing accurate location information for the inspection of the material incorporated by reference.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All manufacturers and dealers in of motorboats within 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 action will be required to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with the amendment will not require any added costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): While the location of the building where the material incorporated by reference has not changed, the mailing address has. The benefit will be ease of locating the office where the material incorporated by reference may be inspected.

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

administrative regulation:

(a) Initially: There will be no added cost initially.

(b) On a continuing basis: There will be no continuing added cost..

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. The administrative regulation establishes direct registration fees for manufacturers and dealers in motorboats. The amendment makes no changes to those fees.

(9) TIERING: Is tiering applied? Tiering was not used as all entities shall be treated equally regarding applicable registration fees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 235.220

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 to the regulation will have no impact upon the revenues generated as the fees remain unchanged.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment to the regulation will have no impact upon the revenues generated as the fees remain unchanged.

(c) How much will it cost to administer this program for the first year? This amendment will not result in any no added cost to administer the program.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in any no added cost to administer the program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS, AND HERITAGE CABINET Kentucky State Fair Board (Amendment)

303 KAR 1:005. Vehicle speed.

RELATES TO: KRS 247.145, 247.153, 247.154

STATUTORY AUTHORITY: ~~KRS 247.153~~ [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate the speed of vehicles on the Kentucky State Fair Grounds.

Section 1. No operator of a vehicle within the Kentucky State Fair Grounds shall drive at a greater speed than:

(1) Fifteen (15) miles per hour at any time during the period in which the annual Kentucky State Fair is in progress; and

(2) Twenty-five (25) miles per hour at any other time.

DAVID BECK, President and Chief Executive Officer

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 10:00 am Eastern Time at Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2021. Send written notifications of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carrie Bauer, General Counsel, Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209; phone 502-367-5244; fax 502-367-5109; email carrie.bauer@kyvenues.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Bauer

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the vehicle speed limit at the Kentucky State Fair Grounds.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to regulate the speed of vehicles on the Kentucky State Fair Grounds.

(c) How does this administrative regulation conform to the authorizing statute: KRS 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control.

KRS 247.153 authorizes the State Fair Board to establish by resolution speed limits governing the operation of motor vehicles on state fairgrounds property and notice to the public of any speed limits thus established shall be given by signs or markings.

KRS 247.154 authorizes the State Fair Board to establish speed limits and other traffic control regulations governing the operation and parking of vehicles on state fairgrounds property, including, without limitation, regulations with respect to the removal, impounding, and release of vehicles parked or standing in violation of any regulation established pursuant to this subsection (1) and notice to the public of any speed limits or other traffic control regulations thus established shall be given by signs or markings.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This administrative regulation allows the Kentucky State Fair Board to regulate vehicle speed, which assists with traffic flow and helps with safety at the Kentucky State Fair 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 will maintain the same effect as the previous administrative regulation, but it clarifies the statutory authority.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to conform it to the correct authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute expressly authorizes this type of regulation.

(d) How the amendment will assist in the effective administration of the statutes: The current regulation was effectively administered, and the proposed amendment will not impact its administration.

(3) List the type and number of individuals, businesses, organization or state and local governments that will be affected: This will affect the Kentucky State Fair Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, including:

(a) List the action that each of the regulated entities in question (3) will have to take to comply with this administrative regulation: No new action will need to be taken based on 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 additional cost compared to the current regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky State Fair Grounds will be safer, and it will be a better experience for visitors to the Kentucky State Fair Grounds.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: To the extent needed, the source of funding is the Kentucky State Fair Board budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government will be impacted by this administrative regulation? The Kentucky State Fair Board 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 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control.

KRS 247.153 authorizes the State Fair Board to establish by resolution speed limits governing the operation of motor vehicles on state fairgrounds property and notice to the public of any speed limits thus established shall be given by signs or markings.

KRS 247.154 authorizes the State Fair Board to establish speed limits and other traffic control regulations governing the operation and parking of vehicles on state fairgrounds property, including, without limitation, regulations with respect to the removal, impounding, and release of vehicles parked or standing in violation of any regulation established pursuant to this subsection (1) and notice to the public of any speed limits or other traffic control regulations thus established shall be given by signs or markings.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government in subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? No additional costs will be expended based on this amendment.

(d) How much will it cost to administer the program for subsequent years? No additional costs will be expended based on

this amendment.

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

Revenues: N/A

Expenditures: N/A

Other explanation: The KSFB already regulates the vehicle speed on KSFB property, and the amendment does not change how that regulation occurs. There should be no change in any cost or revenue from this amendment, and the amendment should not impact revenues or costs of the KSFB.

TOURISM, ARTS, AND HERITAGE CABINET
Kentucky State Fair Board
(Amendment)

303 KAR 1:010. Vehicle parking.

RELATES TO: KRS 247.145, 247.154

STATUTORY AUTHORITY: KRS 247.154 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate parked vehicles within Kentucky State Fair Grounds and Exhibition Center.

Section 1. No person shall park a vehicle within the Kentucky State Fair Grounds or the Exhibition Center in any area designated by signs to be a no parking area or a fire lane. Any vehicle parked in violation of the preceding provision may be removed from the area or lane in which parked and impounded until the owner or operator thereof pays the cost of the removal and impounding of said automobile.

DAVID BECK, President and Chief Executive Officer

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 10:00 a.m. Eastern Time at Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2021. Send written notifications of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carrie Bauer, General Counsel, Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209; phone 502-367-5244; fax 502-367-5109; email carrie.bauer@kyvenues.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Bauer

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation allows the Kentucky State Fair Board to regulate parked vehicles at the Kentucky State Fair Grounds and to remove any vehicle parked improperly, and it assesses costs for vehicles that must be impounded.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to regulate the parking of vehicles on the Kentucky State Fair Grounds and Exhibition Center, and it ensures a better public experience and improves the safety of patrons of the Kentucky State Fair Grounds.

(c) How does this administrative regulation conform to the

authorizing statute: KRS 247.154 authorizes the State Fair Board to establish speed limits and other traffic control regulations governing the operation and parking of vehicles on state fairgrounds property, including, without limitation, regulations with respect to the removal, impounding, and release of vehicles parked or standing in violation of any regulation established pursuant to this subsection (1) and notice to the public of any speed limits or other traffic control regulations thus established shall be given by signs or markings. Thus, the authorizing statute expressly authorizes this type of regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This administrative regulation allows the Kentucky State Fair Board to regulate vehicle parking, which assists with traffic flow and helps with safety at the Kentucky State Fair Grounds and Exhibition Center.

(2) If 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 maintain the same effect as the previous administrative regulation, but it clarifies the statutory authority.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to conform it to the correct authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute expressly authorizes this type of regulation.

(d) How the amendment will assist in the effective administration of the statutes: The current regulation was effectively administered, and the proposed amendment will not impact its administration.

(3) List the type and number of individuals, businesses, organization or state and local governments that will be affected: This will affect the Kentucky State Fair Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, including:

(a) List the action that each of the regulated entities in question (3) will have to take to comply with this administrative regulation: No new action will need to be taken based on 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 additional cost compared to the current regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky State Fair Grounds and Exhibition Center will be safer, and it will be a better experience for visitors to the Kentucky State Fair Grounds and Exhibition Center.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: To the extent needed, the source of funding is the Kentucky State Fair Board budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government will be impacted by this administrative regulation? The Kentucky State Fair Board 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 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control.

KRS 247.154 authorizes the State Fair Board to establish speed limits and other traffic control regulations governing the operation and parking of vehicles on state fairgrounds property, including, without limitation, regulations with respect to the removal, impounding, and release of vehicles parked or standing in violation of any regulation established pursuant to this subsection (1) and notice to the public of any speed limits or other traffic control regulations thus established shall be given by signs or markings.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government in subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? No additional costs will be expended based on this amendment.

(d) How much will it cost to administer the program for subsequent years? No additional costs will be expended based on this amendment.

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

Revenues: N/A

Expenditures: N/A

Other explanation: The KSFB already regulates vehicle parking on KSFB property, and the amendment does not change how that regulation occurs. There should be no change in any cost or revenue from this amendment. Thus, specific dollar amounts cannot be determined, but it is not anticipated that the regulation will increase revenue or costs.

TOURISM, ARTS, AND HERITAGE CABINET
Kentucky State Fair Board
(Amendment)

303 KAR 1:015. Traffic flow.

RELATES TO: KRS 247.145, 247.154

STATUTORY AUTHORITY: KRS 247.154 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate traffic flow within the Kentucky State Fair Grounds.

Section 1. No person shall operate a vehicle within the Kentucky State Fair Grounds in violation of "one way" traffic flow signs, or "no vehicular traffic" signs.

DAVID BECK, President and Chief Executive Officer

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2021, at 10:00 a.m. Eastern Time at Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2021. Send written notifications of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carrie Bauer, General Counsel, Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209; phone 502-367-5244; fax 502-367-5109; email carrie.bauer@kyvenues.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Bauer

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation allows the Kentucky State Fair Board to regulate the vehicle traffic flow within the Kentucky State Fair Grounds.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to regulate the flow of vehicles on the Kentucky State Fair Grounds.

(c) How does this administrative regulation conform to the authorizing statute: KRS 247.154 authorizes the State Fair Board to establish speed limits and other traffic control regulations governing the operation and parking of vehicles on state fairgrounds property, including, without limitation, regulations with respect to the removal, impounding, and release of vehicles parked or standing in violation of any regulation established pursuant to this subsection (1) and notice to the public of any speed limits or other traffic control regulations thus established shall be given by signs or markings.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This administrative regulation allows the Kentucky State Fair Board to regulate vehicle traffic flow and helps with safety at the Kentucky State Fair 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 will maintain the same effect as the previous administrative regulation, but it clarifies the statutory authority.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to conform it to the correct authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute expressly authorizes this type of regulation.

(d) How the amendment will assist in the effective administration of the statutes: The current regulation was effectively administered, and the proposed amendment will not impact its administration.

(3) List the type and number of individuals, businesses, organization or state and local governments that will be affected: This will affect the Kentucky State Fair Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, including:

(a) List the action that each of the regulated entities in question (3) will have to take to comply with this administrative regulation: No new action will need to be taken based on 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 additional cost compared to the current regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky State Fair Grounds will be safer, and it will be a better experience for visitors to the Kentucky State Fair Grounds.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: To the extent needed, the source of funding is the Kentucky State Fair Board

budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government will be impacted by this administrative regulation? The Kentucky State Fair Board 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 247.154 authorizes the State Fair Board to establish speed limits and other traffic control regulations governing the operation and parking of vehicles on state fairgrounds property, including, without limitation, regulations with respect to the removal, impounding, and release of vehicles parked or standing in violation of any regulation established pursuant to this subsection (1) and notice to the public of any speed limits or other traffic control regulations thus established shall be given by signs or markings. This regulation involves traffic flow and is directly authorized by KRS 247.154.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government in subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? No additional costs will be expended based on this amendment.

(d) How much will it cost to administer the program for subsequent years? No additional costs will be expended based on this amendment.

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

Revenues: N/A

Expenditures: N/A

Other explanation: The KSFB already regulates the traffic flow on KSFB property, and the amendment does not change how that regulation occurs. There should be no change in any cost or revenue from this amendment. Thus, specific dollar amounts cannot be determined, but there should not be any change in revenue or costs based on this amendment.

TOURISM, ARTS, AND HERITAGE CABINET Kentucky State Fair Board (Amendment)

303 KAR 1:075. Conduct and operation of concessions and exhibits.

RELATES TO: KRS 247.145, 247.160

STATUTORY AUTHORITY: KRS 247.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.160 grants to the Kentucky State Fair Board exclusive control of concessions, exhibitions, entertainment, and attractions at any place on the state fair grounds and exhibition center. The purpose of this administrative regulation is to regulate and control the conduct and operation of concessions and exhibits by prohibiting unauthorized persons from conducting them. The regulation is authorized by KRS 247.145 because it allows the Kentucky State Fair Board to establish regulations for the operation, maintenance,

or use of the Kentucky State Fair Board's property.

Section 1. No person, except with authorization or permission from the Kentucky State Fair Board, shall set up, conduct, carry on, operate or maintain, or make sales, sales promotions, or sales demonstrations from any booth, table, exhibit display or attraction of any sort on the grounds of the Kentucky Fair and Exposition Center or do any of the foregoing acts from any motor vehicle or other mobile apparatus on such grounds.

Section 2. No person, except with authorization or permit from the Kentucky State Fair Board, shall operate any concession or offer for sale or sell any articles or objects of any sort on the grounds of the Kentucky Fair and Exposition Center.

Section 3. (1) No person shall carry on any commercial activity at the Kentucky Fair and Exposition Center without permission of the Kentucky State Fair Board;

(2) No person shall post, distribute or display commercial signs, circulars or printed or written materials within the grounds of the Kentucky Fair and Exposition Center without permission of the Kentucky State Fair Board.

Section 4. No person is licensed to enter or to remain upon the grounds of the Kentucky Fair and Exposition Center for the purpose of doing any of the acts described in Sections 1, 2, and 3 of this administrative regulation unless such person has received authorization or permission from the Kentucky State Fair Board for such acts.

Section 5. Authority to authorize or grant permission to do any of the acts described in Sections 1 and 2 of this administrative regulation is hereby delegated to the Executive Director of the Kentucky State Fair Board and may be redelegated by him to other employees or agents of the Kentucky State Fair Board or, for specific events only, to the group or person conducting or sponsoring such events.

DAVID BECK, President and Chief Executive Officer

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 10:00 a.m. Eastern Time at Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2021. Send written notifications of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carrie Bauer, General Counsel, Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209; phone 502-367-5244; fax 502-367-5109; email carrie.bauer@kyvenues.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Bauer

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation regulates the concessions and activities on property owned by the Kentucky State Fair Board.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to regulate the conduct and operation of concessions and exhibits on the Kentucky State Fair

Grounds and Exhibition Center.

(c) How does this administrative regulation conform to the authorizing statute: KRS 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control. This regulation seeks to regulate conduct and activities on property owned by the Kentucky State Fair Board in order to maintain good order, protect the safety of the public, and helps protect the public interest and convenience.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This administrative regulation allows the Kentucky State Fair Board to regulate and control the conduct and operation of concessions and exhibits by prohibiting unauthorized persons from conducting activities at the Kentucky State Fair Grounds and Exhibition Center.

(2) If 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 maintain the same effect as the previous administrative regulation, but it clarifies how the regulation conforms to the statutory authority.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to conform it to its authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute expressly authorizes this type of regulation.

(d) How the amendment will assist in the effective administration of the statutes: The current regulation was effectively administered, and the proposed amendment will not impact its administration.

(3) List the type and number of individuals, businesses, organization or state and local governments that will be affected: This will affect the Kentucky State Fair Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, including:

(a) List the action that each of the regulated entities in question (3) will have to take to comply with this administrative regulation: No new action will need to be taken based on 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 additional cost compared to the current regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky State Fair Grounds and Exhibition Center will be safer, and it will be a better experience for visitors to the Kentucky State Fair Grounds and Exhibition Center.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: To the extent needed, the source of funding is the Kentucky State Fair Board budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government will be impacted by this administrative regulation? The Kentucky State Fair Board 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 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government in subsequent years? No additional revenue will be generated.

(c) How much will it cost to administer this program for the first year? No additional costs will be expended based on this amendment.

(d) How much will it cost to administer the program for subsequent years? No additional costs will be expended based on this amendment.

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

Revenues: N/A

Expenditures: N/A

Other explanation: The KSFB already regulates operation of concessions and exhibits on KSFB property, and the amendment does not change how that regulation occurs. There should be no change in any cost or revenue from this amendment. While the Kentucky State Fair Board does generate revenues from the operation of concessions and exhibits on its property, this regulation focuses on how the KSFB regulates such activities; thus, specific dollar amounts attributable to this regulation cannot be determined.

TOURISM, ARTS, AND HERITAGE CABINET Kentucky State Fair Board (Amendment)

303 KAR 1:080. Exposition Center, grounds; dissemination of material; demonstrations.

RELATES TO: KRS 247.145

STATUTORY AUTHORITY: KRS 247.145 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate dissemination of material and demonstrations on the Kentucky State Fair and Exposition Center grounds.

Section 1. (1) The peaceful noncommercial distribution of leaflets, the setting up of tables and the peaceful holding of discussions with patrons of the Kentucky Fair and Exposition Center to aid in that distribution, and the peaceful carrying of placards shall be permitted on the grounds of the Kentucky Fair and Exposition Center in the following manner at the locations designated on a diagram of the Kentucky Fair and Exposition Center, a copy of which is filed herein by reference. Copies may be obtained from the Kentucky State Fair Board, P. O. Box 21179, Louisville, Kentucky 40221.

(a) Main Entrance to the Coliseum: Areas A, B, C and D.

(b) Inside the Coliseum Building: Areas E and F.

(c) Main entrance to East Hall: Areas G and H.

(d) Inside East Hall Entrance: Areas J and K.

(e) Main Entrance to East Wing: Areas L and M.

(f) Inside Entrance to East Wing: Areas N and O.

(g) Main Entrance to West Hall: Areas P and Q.

(h) Inside Entrance to West Hall: Areas R and S.

(i) Main Entrance to West Wing: areas T and U.

(j) Inside Entrance to West Wing: Areas V and W.

(k) Main Entrance to Broadbent Arena: Areas X and Y.

(l) Inside Entrance to Broadbent Arena: Areas Z and Z-1.

(m) Entrance to Stadium: Areas AA through OO.

(n) Pavilion: Area Z-2.

(o) New Market Hall: Areas Z-3 and Z-4.

(p) In the event that functions are scheduled on the grounds of the Kentucky Fair and Exposition Center at locations with respect to which no areas for distributions and demonstrations have been above designated, the executive director shall designate such additional areas for such activities as he may deem appropriate.

(q) One (1) table may be set up at all areas, other than Areas E and F, in order to aid distribution activities.

(r) Placards shall be permitted at all areas other than Areas E and F.

(s) Areas E and F shall be unavailable when control gates for admission charges and/or registration for an event are set up at the main entrance to the Coliseum.

(2) Any person or group who wishes to conduct any of the above activities at the locations specified shall apply to the Executive Director of the Kentucky fair and Exposition Center on forms provided by him for this purpose. Application shall be made not less than seventy-two (72[4]) hours nor more than two (2) weeks before commencement of the activities. The application shall set forth the type of activities to be conducted, the expected number of participants in such activities, the time, location and duration of the activities, and the name, address and telephone number of the person making the application in the case of a group it shall be sufficient to supply the name, address and telephone number of one (1) person who can be contacted if problems arise concerning the grant of the application.

(a) A deposit of twenty-five (25) dollars cash or money order shall be submitted with the application, and shall be returned to the applicant within twenty-four (24) hours after the termination of the activities if there has been no extra cleanup time required by the Kentucky Fair and Exposition Center staff as a result of the litter created by the aforesaid activities.

(b) The executive director shall grant each application to engage in the activities permitted hereunder, unless he and the President of the Kentucky State Fair Board determine that the proposed number of participants contained in and application will unreasonable and substantially interfere with either:

1. The safety of patrons attending the Kentucky Fair and Exposition Center;

2. The orderly movement of vehicle and pedestrian traffic on the grounds of the Kentucky Fair and Exposition Center; or

3. The normal functions of the Kentucky Fair and Exposition Center.

4. In the event that the executive director and the president of the Kentucky State Fair Board find that the proposed number of participants will create such unreasonable and substantial interference, the executive director, after consultation with the President of the Kentucky State Fair Board, shall grant the application subject to a reduced number of participants in the proposed activities, and shall notify the applicant in writing of the grounds for reducing the number of participants. In the event of multiple applications for any given times and locations, the executive director shall have discretion to:

a. Allocate such locations, on a proportional basis, among the various applicants;

b. Allocate times, on a proportional basis, during which the various applicants may conduct their activities; or

c. Allocate any given period of time or location, on a proportional basis, among the various applicants;

d. In exercising such discretion, the executive director shall try, to the maximum extent possible, to accommodate the location and time requests of all applicants.

(c) The grant of the application by the executive director shall be in the form of a permit which shall set forth the number of persons covered by the permit, the activities which are permitted, the permitted time and duration of those activities, and the location at which the activities may be conducted.

(d) The duration of each permit issued shall not be in excess of two (2) days. Any person or group may renew a permit for successive two (2) day periods. Renewal applications shall be made on the same form as new applications and shall be processed as if they were new applications.

(3) No signs, leaflets, placards or other material shall be affixed

to the building facilities. N[no] leaflets or other material shall be distributed by leaving them unattended throughout the Kentucky Fair and Exposition Center.

(4) No voice amplification equipment of any kind shall be used by any person or group to aid in the conducting of any of the activities permitted hereunder.

(5) No signs, leaflets, placards or other material distributed shall contain any obscene, subversive, salacious, or libelous material.

(6) The executive director may suspend any permit already granted in the event that the conduct of the applicant or any of his agents or associates unreasonably and substantially interferes with either:

(a) The safety of patrons attending the Kentucky Fair and Exposition Center;

(b) The orderly movement of vehicle and pedestrian traffic on the grounds of the Kentucky Fair and Exposition Center; or

(c) The normal functions of the Kentucky Fair and Exposition Center;

(d) Or in the event of the failure of the applicant or any of his agents or associates to comply with any of the provisions set forth in this section. The executive director shall suspend the permit by notice in writing to the applicant; and such notice shall state the grounds for the suspension.

(7) No person shall engage in the activities permitted hereunder without first securing a permit pursuant to the provisions of this section.

DAVID BECK, President and Chief Executive Officer

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 10:00 a.m. Eastern Time at Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2021. Send written notifications of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carrie Bauer, General Counsel, Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209; phone 502-367-5244; fax 502-367-5109; email carrie.bauer@kyvenues.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Bauer

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation allows the Kentucky State Fair Board to regulate the dissemination of material and demonstrations on its grounds.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to regulate the dissemination of material and demonstrations on the Kentucky State Fair and Exposition grounds.

(c) How does this administrative regulation conform to the authorizing statute: KRS 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control. Thus, this statute directly authorizes this regulation, which establishes reasonable time, place, and manner restrictions in order to protect the public's safety and maintain good order.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This administrative regulation allows the Kentucky State Fair Board to regulate dissemination of material and demonstrations on the Kentucky State Fair and Exposition Center grounds, assist with patrons' safety, the orderly movement of vehicle and pedestrian traffic, and the normal functions on those 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 will maintain the same effect as the previous administrative regulation, but it clarifies the statutory authority.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to conform it to the correct authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute expressly authorizes this type of regulation.

(d) How the amendment will assist in the effective administration of the statutes: The current regulation was effectively administered, and the proposed amendment will not impact its administration.

(3) List the type and number of individuals, businesses, organization or state and local governments that will be affected: This will affect the Kentucky State Fair Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, including:

(a) List the action that each of the regulated entities in question (3) will have to take to comply with this administrative regulation: No new action will need to be taken based on 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 additional cost compared to the current regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky State Fair and Exhibition Center grounds will be safer, and it will be a better experience for visitors to the Kentucky State Fair and Exhibition Center grounds.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: To the extent needed, the source of funding is the Kentucky State Fair Board budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government will be impacted by this administrative regulation? The Kentucky State Fair Board 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 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government in subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? No additional costs will be expended based on this amendment.

(d) How much will it cost to administer the program for subsequent years? No additional costs will be expended based on this amendment.

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

Revenues: N/A

Expenditures: N/A

Other explanation: The KSFB already regulates the dissemination of materials and demonstrations on KSFB property, and the amendment does not change how that regulation occurs. There should be no change in any cost or revenue from this amendment, and there should not be any direct costs or revenue from this amendment. As such, specific dollar amounts cannot be determined.

TOURISM, ARTS, AND HERITAGE CABINET Kentucky State Fair Board (Amendment)

303 KAR 1:090. Exhibit Center, dissemination of material; demonstrations.

RELATES TO: KRS 247.145

STATUTORY AUTHORITY: KRS 247.145 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate dissemination of material and demonstrations at the Exhibition Center.

Section 1. (1) The peaceful noncommercial distribution of leaflets, the setting up of tables and the peaceful holding of discussions with patrons of the Exhibition Center to aid in this distribution, and the peaceful carrying of placards shall be permitted in the following manner at the locations of the main entrances to the lobby at the corners of Jefferson and Fourth, Market and Fourth and the entrance on Fourth, and inside the Lobby designated on a diagram of the Exhibition Center, a copy of which is herein filed by reference. Copies may be obtained from the Kentucky State Fair Board, P. O. Box 21179, Louisville, Kentucky 40221.

(a) Main Entrance to the Lobby.

1. Area A. Two (2) persons shall be permitted to peacefully distribute leaflets and/or carry placards and/or hold discussions with patrons of the Exhibition Center. No table shall be permitted in this area.

2. Area B. Two (2) persons shall be permitted to peacefully distribute leaflets and/or carry placards and/or hold discussions with patrons of the Exhibition Center. No table shall be permitted in this area.

3. Area C. Two (2) persons shall be permitted to peacefully distribute leaflets and/or carry placards and/or hold discussions with patrons of the Exhibition Center. Additionally, these persons may set up one (1) table at this location to aid in such distribution.

4. Area D. Two (2) persons shall be permitted to peacefully distribute leaflets and/or carry placards and/or hold discussions with patrons of the Exhibition Center. Additionally, these persons may set up one (1) table at this location to aid in such distribution.

(b) Inside the Lobby.

1. Area E. One (1) person shall be permitted to distribute leaflets and hold discussions with patrons. No placards shall be permitted nor shall a table be permitted in this area. This area shall be unavailable when control gates for admission charges and/or registration for an event are set up in the Lobby.

2. Area F. One (1) person shall be permitted to distribute leaflets and hold discussions with patrons. No placards shall be permitted nor shall a table be permitted in this area. This area shall be unavailable when control gates for admission charges and/or registration for an event are set up in the Lobby.

(2) Any person or group who wishes to conduct any of the above activities at the locations specified shall apply to the Manager of the Exhibition Center on forms provided by him for this purpose. Application shall be made not less than seventy-two (72) hours nor more than two (2) weeks before commencement of the activities. The application shall set forth the type of activities to be conducted, the time, location and duration of the activities, and the name, address and telephone number of the person making the application. In case of a group, it shall be sufficient to supply the name, address and telephone number of one (1) person who can be contacted if problems arise concerning the grant of the application.

(a) A deposit of five (5) dollars cash or money order shall be submitted with the application, and shall be returned to the applicant within twenty-four (24) hours after the termination of the activities if there has been no extra cleanup time required by the Exhibition Center staff as a result of the litter created by the aforesaid activities.

(b) The manager shall grant all such applications on a first come, first served basis so long as the number of persons, the activities and the time, duration and location applied for are in compliance with the provisions set forth in paragraph (a) of this subsection.

(c) The grant of the application by the manager shall be in the form of a permit which shall set forth the number of persons covered by the permit, the activities which are permitted, the permitted time and duration of those activities, and the location at which the activities may be conducted.

(d) The duration of each permit issued shall not be in excess of two (2) days. Any person or group may renew a permit for successive two (2) day periods. Renewal applications shall be processed as if they were new applications.

(3) No signs, leaflets, placards or other material shall be affixed to the building facilities. No leaflets or other material shall be distributed by leaving them unattached throughout the Exhibition Center.

(4) No voice amplification equipment of any kind shall be used by any person or group to aid in the conducting of any of the above activities.

(5) No signs, leaflets, placards or other material distributed shall contain any obscene, subversive, salacious or libelous material.

(6) The manager may suspend any permit already granted in the event of violence caused by the applicant or his agents or associates, or in the event of any emergency which renders the traffic flow in any of the areas covered by the permit such that conduct of the activities would create a dangerous condition or substantially interfere with traffic at the Exhibition Center or in the event of the failure of the applicant or any of the provisions set forth in this administrative regulation.

DAVID BECK, President and Chief Executive Officer

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 10:00 a.m. Eastern Time at Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2021. Send written notifications of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carrie Bauer, General Counsel, Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209; phone 502-367-5244; fax 502-367-5109; email carrie.bauer@kyvenues.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Bauer

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation regulates the dissemination of material and demonstrations at the Exhibition Center.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to regulate the dissemination of material and demonstrations at the Exhibition Center.

(c) How does this administrative regulation conform to the authorizing statute: KRS 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control. This regulation seeks to maintain good order and protect the public by establishing reasonable time, place, and manner restrictions, so it is expressly authorized by KRS 247.145.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This administrative regulation allows the Kentucky State Fair Board to regulate the dissemination of material and demonstrations at the Exhibition Center.

(2) If 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 maintain the same effect as the previous administrative regulation, but it clarifies the statutory authority.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to conform it to the correct authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute expressly authorizes this type of regulation.

(d) How the amendment will assist in the effective administration of the statutes: The current regulation was effectively administered, and the proposed amendment will not impact its administration.

(3) List the type and number of individuals, businesses, organization or state and local governments that will be affected: This will affect the Kentucky State Fair Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, including:

(a) List the action that each of the regulated entities in question (3) will have to take to comply with this administrative regulation: No new action will need to be taken based on 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 additional cost compared to the current regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Exhibition Center will be safer, and it will be a better experience for visitors to the Exhibition Center.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: To the extent needed, the source of funding is the Kentucky State Fair Board budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation:

It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government will be impacted by this administrative regulation? The Kentucky State Fair Board 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 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government in subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? No additional costs will be expended based on this amendment.

(d) How much will it cost to administer the program for subsequent years? No additional costs will be expended based on this amendment.

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

Revenues: N/A

Expenditures: N/A

Other explanation: The KSFB already regulates the dissemination of materials on KSFB property, and the amendment does not change how that regulation occurs. There should be no change in any cost or revenue from this amendment, and it is not anticipated that the amendment will have any impact on the KSFB's costs and expenses. Thus, specific dollar amounts attributable to this amendment cannot be determined.

TOURISM, ARTS, AND HERITAGE CABINET Kentucky State Fair Board (Amendment)

303 KAR 1:100. Exposition Center grounds; sales and dissemination of real property, fixtures and goods, solicitation of contribution or sales during annual State Fair; rental of space; use of sound amplification equipment.

RELATES TO: KRS 247.145

STATUTORY AUTHORITY: KRS 247.145 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate sale and dissemination of real property, fixtures and goods, solicitation of contributions and sales, and use of sound amplification

equipment on the Kentucky Fair and Exposition Center grounds during the annual Kentucky State Fair in order to insure orderly movement of crowds and the safety and convenience of state fair patrons and provide exhibitors with equal and adequate access.

Section 1. Administrative Regulation 303 KAR 1:080 will not apply to the Kentucky Fair and Exposition Center grounds during the annual Kentucky State Fair.

Section 2. During the annual Kentucky State Fair, no person shall make sales or distribution of real property, fixtures or goods, including but not limited to all printed or written material, solicit for either contributions or sale, make sales promotions or sales demonstrations, carry placards, or post, distribute or display signs or any other printed or written materials, except from within the confines of a booth or fixed location rented from the Kentucky State Fair Board or, in the case of locations in the carnival midway area, from the Fair Board's lessee of the carnival midway area.

Section 3. A rental will be charged for each booth or fixed location assigned and leased from the Fair Board in accordance with this administrative regulation, and such rental shall be set according to the size, location, and use (sales, nonsales commercial, or nonprofit) of the space assigned.

Section 4. The spaces available from the Fair Board for booths or fixed locations will be assigned on a first come, first served basis after May 1 of each year, except that:

(1) The sponsor of an event during the state fair may be authorized by his contract with the Fair Board to sell or distribute his goods specified in the contract from locations in the area of the event which are specified in the contract;

(2) The Fair Board reserves the right to limit the assignment of booths and locations in designated "theme" areas of the state fair to applicants whose proposed design and use of the booths or locations conform to the Fair Board's specifications and theme for the respective theme areas, and, in the case of the Made in Kentucky Showcase, to applicants displaying goods of the required origin;

(3) The Fair Board reserves the right to limit to the civic midway area the number and location of vendors who will sell substantially the same items;

(4) In order to attract and maintain high-quality concessions and exhibits, the executive vice president may annually, at a time on or before April 30 of each year, extend to the renters of space from the prior year's state fair the opportunity to renew their space rental contracts for the next state fair on the basis of a renewal for the same space, purpose, and ownership as in the prior year. Even when renewals are so offered to renters from the prior year, the Fair Board reserves the right not to renew any space rental contract where the renter has violated any administrative regulation of the Fair Board or any state or federal law in previous use of the booth.

Section 5. No sales or distribution of food or drink shall be made from booths or fixed locations rented from the Fair Board under this administrative regulation unless the rental contract specifically allows such sales or distribution.

Section 6. Unless specifically authorized by the Fair Board, no person shall use on the grounds of the Kentucky Fair and Exposition Center during the state fair any sound amplification equipment or any device with a speaker emitting loud sound.

DAVID BECK, President and Chief Executive Officer

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 10:00 am Eastern Time at Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2021. Send written notifications of intent to be

heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carrie Bauer, General Counsel, Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209; phone 502-367-5244; fax 502-367-5109; email carrie.bauer@kyvenues.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carrie Bauer

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation regulates the dissemination and sale of goods, real property, and fixtures during the Kentucky State Fair.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to regulate the dissemination and sale of goods, real property, and fixtures at the Kentucky State Fair in order to ensure an orderly and safe Kentucky State Fair.

(c) How does this administrative regulation conform to the authorizing statute: KRS 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control. This regulation seeks to maintain good order and protect the public by regulation the sale and dissemination of goods at the Kentucky State Fair.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This administrative regulation allows the Kentucky State Fair Board to promote and run an orderly Kentucky State Fair 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 will maintain the same effect as the previous administrative regulation, but it clarifies the statutory authority.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to conform it to the correct authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute expressly authorizes this type of regulation.

(d) How the amendment will assist in the effective administration of the statutes: The current regulation was effectively administered, and the proposed amendment will not impact its administration.

(3) List the type and number of individuals, businesses, organization or state and local governments that will be affected: This will affect the Kentucky State Fair Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, including:

(a) List the action that each of the regulated entities in question (3) will have to take to comply with this administrative regulation: No new action will need to be taken based on 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 additional cost compared to the current regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Exhibition Center will be safer, and it will be a better experience for visitors to the Exhibition Center.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: To the extent needed, the source of funding is the Kentucky State Fair Board budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: It will not be necessary to increase a fee or funding to implement this

administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government will be impacted by this administrative regulation? The Kentucky State Fair Board 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 247.145 authorizes the State Fair Board to promulgate this regulation to maintain decency and good order; to protect the peace or safety of the general public; to protect the public interest, convenience, or necessity; or to govern the operation, maintenance, or use of property under its custody and control. This regulation directly impacts how KSFB property is used.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? This regulation will allow the KSFB to continue to charge rental fees which will allow it raise revenue. The KSFB already imposes these fees, and the amendment does not change the process by which the KSFB imposes the fees.

(b) How much revenue will this administrative regulation generate for the state or local government in subsequent years? This regulation should continue to generate similar revenue as the regulation which it is amending.

(c) How much will it cost to administer this program for the first year? No additional costs will be expended based on this amendment.

(d) How much will it cost to administer the program for subsequent years? No additional costs will be expended based on this amendment.

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

Revenues: N/A

Expenditures: N/A

Other explanation: The KSFB already regulates the sale of goods and real property during the Kentucky State Fair, and the amendment does not change how that regulation occurs. Because the amendment does not change this process, the amount of revenue that the KSFB makes from rental spaces during the Kentucky State Fair should continue to be about the same, but the specific dollar amount could change based on yearly demand. Thus, specific dollar amounts cannot be determined.

JUSTICE AND PUBLIC SAFETY CABINET

Parole Board (Amendment)

501 KAR 1:050. Granting final discharge from parole.

RELATES TO: KRS 439.352, 439.356, 439.358, 532.043[523.043], 532.060(3)

STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.340(3)(b), 439.354, 439.563

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) authorizes the Parole Board to establish administrative regulations concerning matters that come before it. KRS 439.330(1)(g) establishes the authority of the Parole Board to grant a final discharge from parole. KRS 439.563 prohibits final discharge from parole if an identified victim of the crime or a government agency to whom restitution has been ordered has not yet been paid in full.

Section 1. If an offender paroled prior to July 15, 1998, reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board.

Section 2. (1) If an offender paroled on or after July 15, 1998, owes restitution, he shall not automatically receive a final discharge from parole upon reaching the maximum expiration of his sentence.

(2) The board shall not issue a final discharge to a parolee until he pays restitution in full in compliance with KRS 439.563(5).

(3) Verification of payment of restitution shall be obtained from the parole officer.

The Kentucky Parole Board approved this administrative regulation at its meeting on July 26, 2021 prior to its filing with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADEIDRA N. JONES, Chair

APPROVED BY AGENCY: July 27, 2021

FILED WITH LRC: August 4, 2021 at 11:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes the procedure for final discharge from parole in compliance with KRS 439.563.

(b) The necessity of this administrative regulation: KRS 439.330 authorizes administrative regulations by the Parole Board and this administrative regulation establishes the procedure for final discharge from parole in compliance with KRS 439.563. KRS 439.563 prohibits final discharge from parole if an identified victim of the crime or a government agency to whom restitution has been ordered has not yet been paid in full.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the procedure for final discharge from parole in compliance with KRS 439.330 and 439.563 and prevents final discharge since the statute went into effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the procedure for final discharge from parole in compliance with KRS 439.330 and 439.563.

(2) If 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 statute citations for authority and enlarges the authorization language. It provides the statute reference that prohibits final discharge if there is a restitution obligation remaining.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies the authority and purpose of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 439.330 authorizes administrative

regulations by the Parole Board. KRS 439.563 prohibits final discharge from parole if an identified victim of the crime or a government agency to whom restitution has been ordered has not yet been paid in full.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the authority and purpose of the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Parole Board, DOC staff who assist the board, DOC probation and parole staff who monitor restitution payments, DOC staff who provide victim services, the Crime Victim's Compensation Board and its staff, Commonwealth Attorney's Offices and approximately 2,320 offenders who have not received final discharge from parole.

(4) Provide an analysis of how the entities identified in question (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 is anticipated.

(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 entities will better understand the basis for the administrative regulation.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Parole Board and Department of Corrections.

(7) Provide an assessment of whether an 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. The administrative regulation applies equally to those 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 Parole Board, DOC staff who assist the board, DOC probation and parole staff who monitor restitution payments, DOC staff who provide victim services, the Crime Victim's Compensation Board and its staff, and Commonwealth Attorney's Offices.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.330, 439.340, 439.354, 439.563

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? No increase in cost is anticipated due to the administrative regulation. KRS 439.563 prohibits final discharge and 864 of the

2320 parole cases continue on supervision past their minimum expiration date due to the restitution obligation at the cost of \$3.84 per day and approximately \$1,210,982 per year.

(d) How much will it cost to administer this program for subsequent years? No increase in cost is anticipated due to the administrative regulation. The statutory costs are likely to be similar 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:

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)**

501 KAR 3:110. Classification.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 197.020 requires the Department of Correction to promulgate administrative regulations that include a requirement of a physical barrier between male and female prisoners. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for the classification of prisoners in full-service jails.

Section 1. Procedure. (1) Each jail shall develop a prisoner classification system, which shall be included in the facility's written policy and procedure manual.

(2) The prisoner classification system shall provide for separation of the following categories of prisoners:

(a) Male and female prisoners shall be separated by a physical barrier, except in diversion holding areas[holding];

(b) Mental inquest detainee and other prisoners;

(c) Mentally ill or intellectually disabled [~~mentally retarded~~] prisoner and other prisoners;

(d) Chemically incapacitated prisoner and other prisoners;

(e) A prisoner with a tendency to harm others, be harmed by others, or requiring administrative segregation and other prisoners; and

(f) A prisoner with a communicable disease and other prisoners.

(3) The criteria to be used in the classification of other prisoner categories shall be as follows:

(a) Seriousness of current offense;

(b) Institutional behavioral history;

(c) Special needs;

(d) Known criminal history; and

(e) Trustees.

(4) Trustees. The jailer or his designee shall base selection of prisoners for trustee status on the following criteria:

(a)[1-] The nature of the prisoner's offense and sentence;

(b)[2-] Previous escape attempts; and

(c)[3-] The generally positive nature of the prisoner's daily ["day-to-day"] behavior.

(5)[(4)] A prisoner's classification shall be reevaluated if the prisoner's status changes based on factors to include the following[:]:

(a) Results of a court appearance by the prisoner, such as being sentenced;

(b) Disciplinary hearing and action; and

(c) Reevaluation of the prisoner's physical, emotional, or mental condition.

(6)[(5)] The prisoner classification system shall prohibit

discrimination or segregation based upon race, color, creed, or national origin.

Section 2. (1) Each detention facility with direct supervision areas shall, and other detention facilities may, develop a system of prisoner classification to assess prisoners for the purposes[purpose] of:

(a) Protecting public or institutional safety;

(b) Providing an acceptable level of health care services; and

(c) Considering the opportunity to provide programs intended to reduce the likelihood of reincarceration.

(2) The classification system shall provide for the assessment of prisoner risk and need, considering elements including:

(a) Need for medical care;

(b) Need for mental health care;

(c) Propensity for suicidal behavior;

(d) Potential conflict arising from contact with another individual or group within the facility[institution];

(e) Potential threat of escape;

(f) Potential threat to public safety if placed in a community release program;

(g) Potential risk to staff or another prisoner;

(h) Record of previous institutional behavior; and

(i) Assessment for participation in educational, vocational, rehabilitative, or work-related programming.

(3) Each classification system shall consider the development of the following components:

(a) An assessment of a prisoner upon intake to the facility to determine:

1. Legal custody;

2. Medical fitness for acceptance; and

3. Information asked of the arresting or transporting agent concerning the prisoner's potential risk and needs.

(b) A screening component to assess, as soon as practical after acceptance into the facility, the prisoner's risk and need for the purpose of determining appropriate housing, supervision requirements, and the need for providing immediate health care or other services.

(c) A primary classification of a prisoner shall be accomplished as soon as practical after his initial court appearance, or prior to a permanent housing placement within the facility[institution] population to address the long term housing, supervision, and health care needs of the prisoner. Primary classification may also address the appropriateness of program placement in consideration of the needs of the prisoner and the potential risks to the community and the facility[institution] associated with the placement.

(4) A reclassification component shall be developed that reassesses the prisoner's risk, need, [and] housing assignment, and supervision based upon either time, event, change of status, or request.

(5) An instrument of assessment shall be developed for each of the classification components using sources including charged offense, criminal history of the prisoner, available institutional behavior history, interview, and observation of the prisoner, or other information sources available to the facility[institution].501 KAR 3:110. Classification.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes procedures for the classification of prisoners in full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b). It establishes procedures for the classification of prisoners in full-service jails.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the criteria for the classification of prisoners in full-service 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: The amendment enlarges the authorization language. It updates the criteria for the classification of prisoners, clarifies language, changes "mentally retarded" to "intellectually disabled," and adds language in compliance with KRS 197.020(1)(e).

(b) The necessity of the amendment to this administrative regulation: The minimum standards were revised as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It clarifies how to classify the inmates and adds new statutory requirements.

(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 and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 18,800 prisoners in the jails, including 5,585 Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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: Jail staff will have to apply the revised criteria when classifying an inmate.

(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 amendment provides clarification on how to classify the prisoners.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and full-service county 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, 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? No increase in cost is anticipated. For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 3:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes admission, search, and release procedures for full-service jails.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) A person in need of emergency medical attention shall not be admitted to the jail until a medical examination is conducted. A Denial of Admission document shall be completed, listing the reason for denial. The document shall be signed by jail personnel on duty.

(2) Jail personnel shall ensure that each prisoner is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new admission and shall include the following:

- (a) Time and date of commitment;
- (b) Name, alias, and nickname;
- (c) Official charge;
- (d) Authority ordering commitment;
- (e) Unit of government to be billed;
- (f) Signature and title of arresting or committing officer;
- (g) Date of birth;
- (h) Race;
- (i) Sex;
- (j) Height and weight;
- (k) Current or last known address;
- (l) Telephone number;
- (m) Marital status;
- (n) Spouse or next of kin;
- (o) Emergency contact including name, relationship [relation], address, and telephone number;
- (p) Employer, place of employment, and telephone number;
- (q) Social Security number;
- (r) Health status including current medications, known allergies, diet, or other special medical needs;
- (s) The name of any known person in the jail who might be a threat to the prisoner; and
- (t) Mental health history including past hospitalizations, comprehensive care treatment, current treatment, and medication.

Section 3. Searches. (1) Jail personnel shall conduct a search of each prisoner and his possessions.

(a) Each prisoner shall be searched for contraband in a manner jail personnel reasonably determine is necessary to protect the safety of fellow prisoners, jail personnel, and facility [institutional] security.

(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion may be based upon one (1) or more of the following examples:

- 1. A current felony offense, fugitive status, or past felony conviction, involving violence or drug charges;
- 2. Institutional behavior, reliable information, or history that indicates possession or manufacturing of a dangerous contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of a dangerous contraband;
- 3. Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access; or
- 4. The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance, and the prisoner was not in custody prior to the court appearance.

(c) The jailer shall require that a strip search or body cavity search be documented in writing. Documentation shall include:

- 1. Basis for reasonable suspicion to conduct a search;
- 2. Date and time of search;
- 3. Name of prisoner;
- 4. Name of person conducting search;
- 5. Type of search; and
- 6. Result of search.

(d) A strip search shall be conducted by jail personnel of the

same sex as the prisoner and in a private area.

(e) Probing of body cavities shall:

1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity; and

2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.

(2) Each jail shall develop written policies and procedures[,] specifying the personal property that a prisoner may retain in his possession.

(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving jail personnel and the prisoner and kept for the jail record.

(b) If the prisoner is inebriated, is a mental inquest detainee, [or] is mentally ill, or has an intellectual disability [mentally retarded], there shall be at least one (1) witness to verify the transaction in paragraph (a) of this subsection. As soon as the prisoner is able to understand and account for his actions, the prisoner may sign the receipt.

(c) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

(3) The jailer may establish a written policy on hair length or beards if based on actual concerns for safety, security, identification, or hygiene. A prisoner may be permitted freedom in personal grooming if not in conflict with the jail's policy. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding religious practice.

Section 4. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each prisoner.

(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;

(b) Rules of prisoner conduct established pursuant to 501 KAR 3:060, Section 1(3);

(c) Disciplinary procedures;

(d) Information regarding work, educational and vocational training, counseling, and other social service programs; and

(e) Procedures for making a request or registering a complaint with [the] jail personnel or department personnel. Prisoners shall follow the grievance procedure and attach a copy of the grievance documents if requesting a review by the department.

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.

(2) When a prisoner is released or removed for a legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.

(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.

(5) Before jail personnel releases a prisoner to an out-of-state jurisdiction, jail personnel shall consult with the appropriate prosecutorial office in the county.

(6) Property, not legally confiscated or retained, receipted from the prisoner upon admission shall be returned to the prisoner when the prisoner is released.

(7) Each prisoner shall sign a receipt for property returned at the time of release.

(8) A complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes admission, search, and release procedures for full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b). It establishes minimum standards for admission, search, and release procedures for full-service jails.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will clarify admission, search and release minimum standards for full-service 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: The amendment adds statute citations for authority and enlarges the authorization language. It corrects typographical errors, changes "mentally retarded" to "intellectual disability," and clarifies language.

(b) The necessity of the amendment to this administrative regulation: The minimum standards were revised as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It clarifies language for the procedures for admission, search and 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 and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 18,800 prisoners in the jails, including 5,585 Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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: Jail staff will have to review the clarified language to ensure compliance with 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 cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment provides clarification on admission, search and release.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and full-service county 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 196.35, 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)**

501 KAR 3:130. Prison programs; services.

RELATES TO: KRS 439.179, 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 532.100(4)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 requires the secretary to promulgate administrative regulations he or she deems necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet, including qualification for the receipt of federal funds and for cooperation with other state and federal agencies. KRS 532.100(4)(d) requires the Department of Corrections to promulgate administrative regulations establishing required programs for a jail that houses state inmates under this subsection. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for prisoner programs and services in those jails.

Section 1. Work Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities, and library services.

(2) Sentenced prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedure shall provide that unsentenced prisoners shall not be required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy and procedure that encourages the implementation of education programs in the jail. The use[utilization] of community resources in these efforts shall also be encouraged to offset the costs of the programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.

Section 3. Library Services. If resources are available in the community, library services may be made available to all prisoners.

Section 4. Religious Programs. (1) Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the jail.

(2) The jailer or designee shall ensure that an inmate has the opportunity to participate in practices of his religious faith in accordance with the Religion Reference Manual incorporated by reference in 501 KAR 6:080. For specific situations not addressed in the Religion Reference Manual, the jailer or designee may refer to department Policy and Procedure 23.1 incorporated by reference in 501 KAR 6:020.

(3) Inmate responsibilities.

(a) Upon entry into the correctional system, an inmate's religious preference shall be recorded on the inmate I.D. form.

(b) After three (3) months, an inmate may change his religious preference by contacting the jailer or designee.

(c) It shall be the inmate's responsibility to seek a job or program assignment that does not conflict with his religious beliefs and practices.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all prisoners with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times

per week if weather permits. Prisoners who pose a threat to the safety and security of the jail shall be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit prisoners to participate in board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.

Section 6. Programs for State Prisoners. (1) State prisoners may be provided the opportunity to participate in work programs in accordance with KRS 441.125.

(2) Substance abuse programs. State prisoners shall be provided the opportunity to participate in self-help substance abuse programs offered within the jail. State prisoners who apply for treatment and are accepted by the Division of Addiction Services[Mental Health], shall be allowed to participate in the substance abuse program (SAP), if space is available or may be housed in jails offering the program, if space is available.

(3) Evidence based programs. Eligible state prisoners may be provided the opportunity to participate in evidence based programming offered within the jail with the approval of department staff. State prisoners who complete evidence based programming may be eligible to receive program completion credit, in accordance with CPP 15.4 incorporated by reference in 501 KAR 6:020.

Section 7. Required Documents. The jail may provide required documents to prisoners in an electronic format.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes procedures for prisoner programs and services in full-service jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (1)(a)2.a., and (1)(b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes minimum standards for prisoner programs and services in full-service jails as required by KRS 441.055 and 532.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for prisoner programs and services in full-service 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: The amendment enlarges the authority explanation, changes the name of a department division to the revised name, adds language to comply with a statutory change in KRS 441.055(1)(a)2.a., and adds a subsection concerning evidence based programming.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards of KRS 441.055(1)(a), (b).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards of KRS 441.055(1)(a), (b).

(d) How the amendment will assist in the effective administration of the statutes: It establishes the criteria for the programs and services in full-service jails.

(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 and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 18,800 prisoners in the jails, including 5,585 Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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: Jail staff will have to apply the revisions when addressing programs and services for state prisoners.

(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): Jail facilities may have a higher quality of programs available. Additionally, local jails will receive either a \$2 or \$10 per diem for each day of attendance state inmates are enrolled in Department approved programming. This is in addition to the housing per diem.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

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

(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. These standards apply equally to all new full service jails and jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and full-service county 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, 441.055, 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? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? No increase in Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 3:150. Hearings, procedures, disposition.

RELATES TO: KRS Chapter 13B, 441

STATUTORY AUTHORITY: KRS 13B.170, 196.035, 441.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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. The Commissioner of the Department of Corrections is authorized by KRS 441.075(4) to hear matters covered by the order of the department requesting county jails, correctional or detention facilities to comply with the minimum standards for local jails pursuant to KRS 441.055 and to issue, modify or repeal the order at the conclusion of the hearing.

Section 1. Definitions. (1) "Day" means a calendar day.

(2) "Hearing officer" means a hearing officer appointed by the commissioner pursuant to KRS 441.075.

(3) "Order" means the order of the commissioner requiring the petitioner or petitioners to comply with the minimum jail standards for local jails as specified in the order.

(4) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the commissioner's order.

(5) "Proceeding" means any proceeding before the commissioner or before a hearing officer.

(6) "Standards" means the minimum jail standards for local jails as established by the department in 501 KAR Chapters 3, 7, and 13.

Section 2. Assignment of Hearing; Filings. (1) Pursuant to KRS 441.075(4), cases coming before the commissioner may be assigned to a hearing officer within the discretion of the commissioner for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commissioner.

(2) A recommended order or adjudication by the hearing officer or the initial order of the commissioner, if dismissed or disposed of as provided in subsection (1) of this section, or any modification or repeal of the initial order, shall become the final order of the

commissioner under the provisions of KRS 441.075(4), appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.

(3) Prior to the assignment of a case to a hearing officer, the [county] jailer or county judge/executive shall, within seventy-two (72) hours of receipt of notification of the order, request in writing a public hearing before the commissioner or his designee on the matters covered by the order to the Commissioner of the Department of Corrections, Division of Local Facilities, P.O. Box 2400, Frankfort, Kentucky 40602-2400. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and interveners and all proof shall be presented at the hearing. Additional evidence shall not be permitted after the hearing except in unusual circumstances and within the discretion of the commissioner or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the commissioner.

(6) Unless otherwise ordered, all filing may be accomplished by:

(a) First class mail; or

(b) Sending to Jail.Inspections@ky.gov and including "Hearing" in the subject line of the message.

(7) Filing shall be deemed effective when mailed, if sent by first class mail, or when the email is received in the designated email account.

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) This administrative regulation shall govern all proceedings before the department and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with KRS Chapter 13B and the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. If service of a pleading or documents is by mail pursuant to Section 2 of this administrative regulation, three (3) days shall be added to the time allowed by this administrative regulation for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and interveners within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the commissioner or his designee. A hearing shall not be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall comply with KRS 13B.050(3).

Section 6. Continuance of Hearing. (1) Continuance of a hearing shall not be allowed except in the case of an extreme emergency or in usual circumstances.

(2) A request for a continuance shall be provided to the department at least three (3) days in advance of the time set for the hearing. The request for continuance shall include the reasons for the continuance.

(3) The hearing officer may consider a request for an extension during the hearing, if extenuating circumstances:

(a) Arise during the hearing; or

(b) Prevented compliance with the timing provisions of subsection (2) of this section.

(4) Continuance of the hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. An additional continuance shall not be granted without approval of the commissioner.

Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the right[rights] to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing shall be made in the absence of extraordinary circumstances within five (5) days

after the scheduled hearing date.

(3) The commissioner or the hearing officer, upon a showing of good cause, may excuse a failure to appear. If the failure to appear is excused, the hearing shall be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commissioner's own motion, if there exist common parties, common questions of law or fact, or both, or in other appropriate circumstances.

Section 9. Severance. Upon his or her[its] own motion, or upon motion of any party or intervener, the commissioner or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal, before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commissioner or the hearing officer may grant a petition for intervention to the extent and upon the terms determined by [as] the commissioner or the hearing officer [determines].

(4) The caption of all cases where intervention is allowed shall reflect the intervention by adding to the caption after the name of the respondent the name of the intervener, followed by the designation "intervener."

Section 11. Service. (1) If filing pleadings or other documents, the filing party or intervenor shall serve a copy on every other party or intervener.

(2) Service upon a party or intervener who has appeared through a representative shall be made only upon the representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail, [or] by personal delivery, or by email to the email address provided by the party. Service shall be deemed effected at the time of mailing (if by mail), [or] at the time of personal delivery (if by personal delivery), or at the time the email is received in the email account.

(4) Proof of service shall be accomplished by a written statement of service which sets forth the date and manner of service. The statement shall be filed with the pleading or document.

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervener upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to this administrative regulation when due, may, in the discretion of the commissioner or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the commissioner.

Section 16. Prehearing Conference. (1) At any time before a hearing, the commissioner or the hearing officer, on his or her own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a

prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings, or for any other matter in accordance with KRS 13B.070(1).

(2) The commissioner or the hearing officer may issue a prehearing order in accordance with KRS 13B.070(2). The order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within a shorter or longer time as the commissioner or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with this administrative regulation and filed with the commissioner within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the commissioner or the hearing officer, discovery depositions of parties, interveners, or witnesses, and interrogatories directed to parties, interveners, or witnesses shall not be allowed.

(2) If the commissioner or the hearing officer grants an application to conduct discovery depositions or interrogatories, the order shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervener fails to comply with an order of the commissioner or the hearing officer to permit discovery in accordance with the provisions of this administrative regulation, the commissioner or the hearing officer may issue appropriate orders.

Section 20. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, ensure that the facts are fully elicited, adjudicate all issues, and avoid delay. The hearing officer, in cases assigned to him, between the time he is designated and the time he issues his decision, subject to the administrative regulations of the department, may:

- (1) Administer oaths and affirmations;
- (2) Rule upon offers of proof and receive relevant evidence;
- (3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- (4) Hold conferences for the settlement or simplification of the issues;
- (5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commissioner and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated;
- (6) Examine witnesses and to introduce into the record documentary or other evidence;
- (7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof; and
- (8) Adjourn the hearing as the needs of justice and good administration require.

Section 21. Exhibits. (1) All exhibits offered in evidence shall be marked with a designation identifying the party or intervener by whom the exhibit is offered.

(2) In the absence of objection by another party or intervener, exhibits shall be numbered and admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each exhibit shall be given to the other parties and interveners.

(4) All exhibits offered, but denied admission into evidence, shall be identified as required by subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 22. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. An objection shall not be deemed waived by further participation in the hearing.

(2) If evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 23. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the commissioner disposing of all issues before him in accordance with KRS 13B.110.

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order in accordance with KRS 13B.110(4).

(3) The commissioner shall issue a final order in accordance with KRS 13B.120.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes procedures and definitions for administrative hearings.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes administrative hearing 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: The amendment adds a statute citation for authority and enlarges the authorization language. It clarifies an address, corrects

typographical errors, and makes additional clarifications of language. New provisions are made for electronic filing for the administrative hearing records and for service of the records.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b) and to comply with requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(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 and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 18,800 prisoners in the jails, including 5,585 Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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 follow the address change and may use the electronic filing and service provisions if desired.

(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): Mailings will reach the correct individuals more quickly and an additional filing and service option is available.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

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

(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. The hearing procedures apply equally to all jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Dept. of Corrections and county 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, 441.055, 441.075.

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

(a) How much 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 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 3:170. Classifications.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 441.045, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes jail categories defined by the maximum bed capacity of full-service jails.

Section 1. Jail Categories.

(1) Category I – Jails with one (1) to 100 beds shall be classified as a Category I jail.

(2) Category II – Jails with 101 beds to 250 beds shall be classified as a Category II jail.

(3) Category III – Jails with 251 beds to 500 beds shall be classified as a Category III jail.

(4) Category IV – Jails with 501 beds to 999 beds shall be classified as a Category IV jail.

(5) Category V – Jails with 1,000 beds or more shall be classified as a Category V jail. 501 KAR 3:170. Classifications.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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

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 jail categories defined by the maximum bed capacity of jails.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b), and the authorization to establish classifications of jails in KRS 441.055(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes jail categories defined by the maximum bed capacity of the jails.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides classifications based on maximum bed capacity.

(2) If 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 statute citation for authority and enlarges the authorization language.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity to the authorization language.

(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 and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 18,800 prisoners in the jails, including 5,585 Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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 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): It provides clarity to the authorization language.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all full-service jails.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and full-service county 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, 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. In addition, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections Sex Offender Risk Assessment Advisory Board (Amendment)

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(1), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(1) requires the Sex Offender Risk Assessment Advisory Board to approve providers to conduct court-ordered comprehensive sex offender presentence evaluations and treatment of sex offenders. This administrative regulation establishes approval requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).

(2) "Board" is defined by KRS 17.550(1).

(3) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the factors listed in KRS 17.554(2).

(4) "Corrective action plan" means a plan submitted by the approved provider and accepted by the board or a plan imposed by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.

(5) "Sex offender" is defined by KRS 17.550(2).

(6) "Victim" is defined by KRS 17.550(4).

Section 2. Qualifications of Approved Providers. (1) To qualify as an approved provider, [an applicant shall,] in addition to meeting

the requirements of KRS 17.550(3), an applicant shall:

(a)[(4)] Have completed forty (40) hours of specialty training provided or approved by the board under Section 7[8] of this administrative regulation including the following:

- 1.[(a)] Characteristics and offense patterns of sex offenders;
- 2.[(b)] Treatment modalities used with sex offenders;
- 3.[(c)] Legal and ethical issues in the risk assessment of sex offenders;

4.[(d)] Victim's issues, not to exceed two (2) hours of credit against the total requirement;

5.[(e)] Issues related to the assessment of juvenile and female sex offenders; and

6.[(f)] Use of the appropriate actuarial or evaluation instruments;

(b)[(2)] Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the applicant[he] has professional status; and

(c) 1.[(3)] Have a minimum of [250 hours documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of]:

a.[(a)] Sixty (60) hours documented experience conducting sex offender evaluations or completion of a practicum as described in Section 2(2)[6] of this administrative regulation; and

b.[(b)] 190 hours documented clinical contact conducting sex offender treatment or completion of a practicum as described in Section 2(2)[6] of this administrative regulation[.];

2. Complete a practicum as described in Section 2(2) of this administrative regulation;

3. Have a current approval or certification as a sex offender treatment provider in another state and be in good standing with that credentialing authority; or

4. Have had an approval or certification as a sex offender treatment provider within the last five (5) years in Kentucky or another state and was in good standing with the credentialing authority during the period of approval or certification.

(2) Practicum Requirements.

(a) To successfully complete the practicum, the practicum participant being supervised shall:

1. Have a minimum of 100 hours of face-to-face supervision by the practicum supervisor, which shall include:

- a. Case discussion;
- b. Review of reading assignments;
- c. Skill building; and
- d. (i) Supervised actual clinical practice; or

(ii) Review of audio or video recording of actual clinical practice;

2. Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;

3. Obtain a minimum of 190 hours of supervised clinical experience conducting sex offender treatment; and

4. Participate in the practicum for a minimum of eighteen (18) months.

(b) A practicum supervisor shall:

1. Have a minimum of 2,000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

- a. 500 hours conducting sex offender evaluations; and
- b. 1,500 hours of clinical contact in sex offender treatment;

2. Be an approved provider in good standing with the board;

3. Submit a written request to conduct a practicum for each participant and receive prior approval by the board to conduct the practicum by:

a. Email to SORAABoard@ky.gov; or

b. Mail to SOTP/SORAA Board, Kentucky State Reformatory, 3001 W. Highway 146, LaGrange, Kentucky 40032.

4. Directly observe the practicum participant's clinical practice in person or through video or audio recording;

5. Examine, approve, and sign all comprehensive sex offender presentence evaluations performed by the practicum participant;

6. Give written notice to the board if the practicum supervisor determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501

KAR 6:200, or 6:220; and

7. Give written notice to the board if the practicum supervisor stops supervising the practicum prior to its completion.

~~Section 3. Duties. (1) [If an approved provider performs a comprehensive sex offender presentence evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.~~

~~(2) If an approved provider has provided treatment for a sex offender, the approved provider [he] shall not perform a comprehensive sex offender presentence evaluation [for personal financial gain] for the sex offender [for six (6) months following the treatment.]~~

~~(2)[(3)] An approved provider shall:~~

~~(a) Submit the first four (4) evaluations prepared after becoming an approved provider for review by the board;~~

~~(b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the approved provider[he] has professional status;~~

~~(c) Provide the board with the following contact information:~~

~~1. Mailing address that may be included on approved provider list sent to courts;~~

~~2. Mailing address to be used by board for contact with approved provider if different than address included on approved provider list sent to courts;~~

~~3. Phone number that may be included on approved provider list sent to courts;~~

~~4. Email address, if approved provider has one, that may be included on approved provider list sent to courts;~~

~~(d) Provide the board with changes in the contact information listed in paragraph (c) of this subsection within thirty (30) days of a change in information; [and]~~

~~(e) Notify the board within thirty (30) days of the occurrence of:~~

~~1. Discontinuance of practice as an approved provider;~~

~~2. Being convicted of, pleading guilty to, or entering an Alford plea for a felony;~~

~~3. Being convicted of, pleading guilty to, or entering an Alford plea for a misdemeanor against a person;~~

~~4. A domestic violence order issued against the approved provider;~~

~~5. An interpersonal protective order issued against the approved provider; or~~

~~6. Suspension, revocation, or other disciplinary action taken by the licensing or certifying body under which the approved provider has professional mental health treatment status; and~~

~~(f)[(e)] Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes an approved provider.~~

~~1. A minimum of six hours of the required continuing education hours shall cover one or more of the areas indicated in Section 2(1)(a) – (f):~~

~~2. The approved provider shall submit continuing education hours earned each year to the board by January 31 of the year following the year in which the hours were obtained by:~~

~~a. Email to SORAABoard@ky.gov; or~~

~~b. Mail to SOTP/SORAA Board, Kentucky State Reformatory, 3001 W. Highway 146, LaGrange, Kentucky 40032.~~

~~3. The board may grant an extension of twelve (12) [six (6)] months in which to complete hours of continuing education if:~~

~~a. Requested by the approved provider for good cause shown; and~~

~~b. A plan to make up uncompleted hours has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years.~~

~~4.[2.] To request an extension, an approved provider shall:~~

~~a. Submit a plan detailing how the uncompleted hours will be obtained within the next twelve (12)[six (6)] months;~~

~~b. Submit a plan detailing how the next year's eight (8) hours will be obtained within the next calendar year; and~~

~~c. State the reasons for the request for extension.~~

~~5.[3.] The extension request shall:~~

~~a. Be made in writing;~~

- b. Include the number of hours that need to be completed for the calendar year;
- c. Include proof of any hours that were completed; and
- d. Be postmarked on or before December 31 of the calendar year for which the hours were required.

(3)(4) An approved provider shall not:

(a) Identify himself or herself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 if performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500.

(b) Refer to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of a sex offender as established in KRS 17.550.

Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if the applicant[he] meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.

(2) An individual may apply to the board for approval status as an approved provider by submitting:

(a) A written request for approval, which shall include the following:

1. Full name;
2. Business address;
3. Home address;
4. Daytime telephone number;
5. Fax number, if available; and
6. Social Security number;

(b) Documentary evidence of the applicant's[his] qualifications; and

(c) Evidence that the applicant[he] has remedied the cause for the denial or revocation, if approval was previously denied or revoked under Section 5 of this administrative regulation.

(3) The board shall determine that an application is incomplete if:

(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;

(b) The board is unable to verify the authenticity of the documentation of qualifications; or

(c) Any of the information required in subsection (2) of this section is not submitted.

(4) If the board determines that an application is incomplete, the board shall specify to the applicant additional documentation or information that is required or identify the information that cannot be verified.

(5) The board shall notify the applicant of its intent to approve or deny the application for approval in writing no later than 120[ninety-(90)] days after receiving a complete application for approval.

(6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:

(a) The approved provider[He] submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 7[8] of this administrative regulation; and

(b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.

(7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend or revoke approval if an applicant or an approved provider has:

(a) ~~[Been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;~~

~~(b) Had a domestic violence protective order issued against him within the previous five (5) years;~~

(c) Failed to meet the qualifications for approval set forth in

Section 2 of this administrative regulation;

~~(b)(4) Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the applicant or approved provider[he] has professional status;~~

~~(c)(e) A substance use disorder as defined by KRS 222.005(12) [An alcohol or drug abuse problem as defined in KRS 222.005(3)];~~

~~(d)(f) Falsified any information or documentation, or has concealed a material fact, in the[his] request for approval;~~

~~(e)(g) Failed to implement a corrective action plan imposed by the board in accordance with Section 6[7] of this administrative regulation;~~

~~(f)(h) Three (3) or more evaluations which the board finds are below standard upon review;~~

~~(g)(i) Failed to comply with the comprehensive sex offender presence evaluation procedure established in 501 KAR 6:200;~~

~~(h)(j) Shown an inability to conduct an evaluation with reasonable skill;~~

~~(i)(k) Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent;~~

~~(j)(l) Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent;~~

~~(k)(m) Failed to comply with an order of the board; or~~

~~(l)(n) Failed to comply with instructions of the board during an investigation.~~

(2) The board may deny, suspend, or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pled guilty to a felony criminal offense or a[any] misdemeanor criminal offense [that is not against a person];

(b) Has a current active domestic violence or interpersonal protective order issued against the applicant or approved provider;

(c) Had a domestic violence or interpersonal protective order issued against the applicant or approved provider within the previous three (3) years;

(d)(b) Had a sanction applied against the applicant or approved provider's[his] mental health professional licensure or certification at any time in the past two (2) years;

(e)(e) Failed to comply with the duties set forth in Section 3 of this administrative regulation;

(f)(d) Less than three (3) evaluations that the board finds are below standard upon review;

(g)(e) Failed to comply with the treatment requirements established in 501 KAR 6:220;

(h)(f) Failed to comply with the evaluation procedure established in 501 KAR 6:200;

(i)(g) Failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 2 of this administrative regulation;

(j)(h) Identified himself or herself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 if performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500; or

(k)(i) Referred to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of sex offender established in KRS 17.550.

(3) If the board intends to deny, suspend or revoke approval, it shall:

(a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider; and

(b) Notify the applicant or approved provider of the[his] hearing [rights], in accordance with KRS Chapter 13B and KRS 17.560.

(4) An approved provider who has had [his] approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date the[his] approval was revoked unless the[his] revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.].

~~Section 6. Practicum Requirements. (1) A practicum required~~

by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:

(a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

1. 500 hours conducting sex offender evaluations; and

2. 1,500 hours of clinical contact in sex offender treatment;

(b) Be an approved provider in good standing with the board;

(c) Submit a request to conduct a practicum for each participant and be approved by the board to conduct the practicum;

(d) Directly observe the practicum participant's clinical practice in person or through video or audio tape;

(e) Examine and approve all comprehensive sex offender presentence evaluations performed by the practicum participant; and

(f) Give written notice to the board if he determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220.

(2) To complete a practicum required by this administrative regulation, the participant shall:

(a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;

(b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;

(c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;

(d) Participate in the practicum for a minimum of six (6) months; and

(e) Meet the requirements of the practicum within a maximum of eighteen (18) months.

(3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in subsections (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.]

Section 6.[Section 7.] Monitoring. (1) The board may:

(a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220;

(b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider's scope of practice, to the appropriate Kentucky licensure or certification board; and

(c) Investigate and evaluate an approved provider's adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 6:220, on its own initiative.

(2) The board or staff that assists the board may monitor an approved provider by the following activities:

(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;

(b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;

(c) Direct observation of the evaluation or treatment of a sex offender; or

(d) Interviewing judicial, correctional, law enforcement officials or other individuals that interact with an approved provider in relation to comprehensive sex offender presentence evaluations or treatment of sex offenders.

(3) If an approved provider fails to comply with provisions of this administrative regulation, 501 KAR 6:200, or 6:220, the board shall notify him in writing of its determination and may:

(a) Require the approved provider to submit a corrective action plan for approval by the board;

(b) Impose a corrective action plan; or

(c) Revoke approval in accordance with Section 5 of this administrative regulation.

(4) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within 120[ninety (90)] days.

Section 7.[Section 8.] Approval of Specialty Training and Continuing Education. (1) Specialty training.

(a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.

(b) An applicant seeking approval of a specialty training course shall submit to the board the following:

1. A certificate of attendance which shall include the number of hours of training received; or

2. a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and

b. An agenda from the training seminar that describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under subsection (1)(b) of this section.

(2) Continuing education.

(a) Continuing education, as required in Section 3 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.

(b) An approved provider seeking approval of continuing education hours shall submit to the board the following:

1. A certificate of attendance that shall include the number of hours of education received; or

2. a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and

b. An agenda from the seminar, which describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under subsection (2)(b) of this section. 501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.

The Sex Offender Risk Assessment Advisory Board approved this administrative regulation at its meeting on March 8, 2021 and June 22, 2021 prior to its filing with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JENNIFER BOGARD, Chairperson

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 26, 2021 at 1:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 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 October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-668, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker, phone (502) 564-3279, email

Justice.RegContact@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the approval process and the qualifications for approved providers of court ordered risk assessment and treatment for sex offenders.

(b) The necessity of this administrative regulation: KRS 17.564 authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991. KRS 17.552 requires approval of the board for the conduct of sex offender risk evaluations and treatment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides the approval process that the board is required to determine and the duties of the approved provider.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides direction to mental health professionals who desire to be approved providers who are authorized to provide court ordered risk assessment and treatment for sex offenders.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies continuing education requirements, adds additional avenues for eligibility for approved providers, removes a prohibition involving evaluations, and reorganizes the administrative regulation for clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment updates the practical training for new approved providers and clarifies the information in the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes give the board regulatory authority concerning the approval process and the providers approved by that process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment meets the requirements for the board concerning approval of court ordered risk assessment and treatment for sex offenders in KRS 17.552.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 25 approved providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The approved providers will need to match their continuing education practices to the changes made. New approved providers will need to follow the practical training requirements. Approved providers will need to comply with the practicum requirements when applicable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increased cost is not anticipated for the changes that involve clarification of existing requirements like continuing education. A cost for the practical training requirement is not known.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will provide for better continuing education and practical training of approved providers.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is provided. The Board is attached administratively to the Department of Corrections.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation,

if new, or by the change if it is an amendment: No increase in fees or funding is anticipated.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation may impact circuit courts, probation and parole officers, and approved providers who are employed by a state or local agency.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.552, 17.564

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 create 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 does not create any revenue.

(c) How much will it cost to administer this program for the first year? The amendment is not expected to increase costs.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to increase 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

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections Sex Offender Risk Assessment Advisory Board (Amendment)

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(2), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) authorizes the Sex Offender Risk Assessment Advisory Board to establish a comprehensive sex offender presentence evaluation procedure for court-ordered evaluations of sex offenders. KRS 17.564(1) authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991. This administrative regulation establishes the evaluation procedure to ensure the quality of court-order comprehensive sex offender presentence evaluations.

Section 1. Definitions. (1) "Amenability to treatment" means the offender is free from intellectual disability[organic] or psychological disturbance[impairment] that would prevent the offender from engaging meaningfully in sex offender treatment and he is[.] at least minimally able[receptive] to participate in the treatment process.

(2) "Appropriate setting" means a secure institutional setting or a community-based setting.

(3) "Approved provider" is defined by KRS 17.550(3).
 (4) "Board" is defined by KRS 17.550(1).
 (5) "Clinically adjusted" means a change in the risk level recommendation based on compelling~~[facts or]~~ evidence which indicates~~[indicate]~~ to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender, such as a risk factor being in an acute phase of severity.
 (6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) areas of assessment listed in KRS 17.554(2).
 (7) "Evidence based standards of care" means standards and practices that:
 (a) Are based on the best available clinical scientific research or evidence for treatment of sex offenders;
 (b) Take into account the offender's current clinical state and factors that may influence treatment gain; and
 (c) Are generally accepted by reasonable providers within the sex offender treatment field.
 (8)~~[(7)]~~ "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.
 (9) "Responsivity factors" means factors that impact an offender's ability to begin, engage in, and complete treatment and can interfere with the ability of the offender to respond to treatment.
 (10)~~[(8)]~~ "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument used or other clinically relevant data that suggests sexual reoffense is more likely than not.
 (11)~~[(9)]~~ "Sex offender" is defined by KRS 17.550(2).
 (12) "Stages of change" means the change process occurs gradually over time and includes levels or stages as follows:
 (a) Precontemplation, in which the individual does not intend to make a change in the behavior;
 (b) Contemplation, in which the individual has an awareness of the problem and may consider the pluses and minuses of change;
 (c) Preparation, in which the individual intends to take action within one (1) month and may make small behavioral changes;
 (d) Action, in which the individual modifies the problem behavior for one (1) to six (6) months; and
 (e) Maintenance, in which the behavior change extends from six (6) months and the individual works to prevent relapse.

Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures. (1)(a) An approved provider shall conduct a comprehensive mental health evaluation following evidence based~~[the professional]~~ standards of care~~[in the area of his certification or licensure]~~.

(b) The evaluation shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview.

(c) If the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.

(2) Risk of recommitting a sex crime shall be determined in the following manner:

(a) If applicable, an actuarial instrument shall be used which is appropriate to the sex offender. An actuarial instrument shall be appropriate for use if:

1. The instrument's developmental sample or subsequent study samples contained individuals with characteristics similar to the offender being evaluated; and

2. The instrument's reliability and validity has been demonstrated through research. The results of the instrument may be clinically adjusted at the discretion of the approved provider.

(b) If an actuarial instrument is not appropriate, an empirically guided approach shall be used. An empirically-guided approach shall mean that the approved provider shall consider risk factors that research has demonstrated to be associated with risk for recidivism.

(3) The threat to public safety shall be determined in the following manner:

(a) The approved provider shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:

1. The sex offender's amenability to treatment;
2. The degree of threat of harm or actual force employed in the index offense and in prior offenses;
3. The nature and duration of the offending;
4. The sex offender's psychological adjustment;
5. The sex offender's social and occupational adjustment; and
6. The sex offender's statements or indications of harm directed to another.

(b) The approved provider shall make a recommendation as to the appropriate setting in which treatment, if indicated, should be provided for the sex offender.

(4) ~~[To assess amenability.]~~ The approved provider shall assess~~[address]~~ the following factors for amenability:

~~(a) [-]~~ The sex offender shall:
 (a) ~~Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment participation;~~

(b) The sex offender shall exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he will be referred;

(c) Whether the sex offender will receive a benefit from treatment designed for sex offenders with intellectual developmental disorder, if the sex offender has an intellectual developmental disorder;

~~(d) Whether the sex offender acknowledges~~~~[Acknowledge]~~ involvement in the sex offense for which he or she is convicted~~[charged]~~;

~~(e) Whether the sex offender considers~~~~(d-Consider)~~ his or her involvement in the sex offense to be a problematic behavior that he or she does not want to repeat; and

~~(f) The level of acknowledgment and desire to change expressed by the sex offender~~~~(e-Verbalize a willingness to enter and fully participate in treatment)]~~.

(5) In assessing the nature of required sex offender treatment, the approved provider shall address management issues including:

- (a) Recommendations for the focus of treatment;
- (b) Special treatment considerations, including:
 1. Recommendations to address identified responsivity factors;
 and

2. Other issues that impact the offender's ability to engage in treatment;

- (c) Further evaluation; and
- (d) Restrictions to minimize the risk of recidivism.

Section 3. Evaluation Report. (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.

(2) The first section of the report shall consist of information prepared specifically for the court and shall contain the following headings:

- (a) Identifying information including:
 1. Name;
2. Social Security number;
3. Date of birth;
4. Age; and
5. Indictment number or county;
- (b) Referral information, including reason for referral, informed consent, and procedures;
- (c) Information sources; and
- (d) Summary, conclusions, and recommendations.

(3) The second section shall include the following information from which the summary and conclusions were reached:

- (a) Criminal justice information, including index offense, prior sex offense, or other legal history;
- (b) Psychosocial history including:
 1. Family of origin;
2. Education;
3. Military;

4. Occupational;
5. Financial;
6. Sexual;
7. Relationship;
8. Mental health; and
9. Medical;

- (c) Behavioral observations and mental status;
- (d) Standardized assessment or psychological testing;
- (e) Diagnosis impressions;
- (f) Treatment considerations; and
- (g) The statutory factors found in KRS 17.554(2).

(4) The report shall be entitled "Comprehensive Sex Offender Presentence Evaluation."

(5) An approved provider shall place his or her signature at the end of the recommendation report if the approved provider~~[he]~~:

(a) Conducted the comprehensive sex offender presentence evaluation; or

(b) Reviewed and approved the evaluation.

(6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.

Section 4. Recordkeeping. (1) An approved provider shall maintain the evaluation records for the period of time required for the approved provider to maintain patient files by the licensing or certifying body under which the approved provider has professional status:

~~(a) Transmit all comprehensive sex offender presentence evaluation information to the board; or~~

~~(b) Maintain the information for a period of fifteen (15) years].~~

(2) The original or a copy of all comprehensive sex offender presentence evaluation information shall be provided to the board:

~~(a) upon request; or~~

~~(b) At the death of the approved provider].~~

The Sex Offender Risk Assessment Advisory Board approved this administrative regulation at its meeting on March 8, 2021 prior to its filing with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JENNIFER BOGARD, Chairperson

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 26, 2021 at 1:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 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 October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-668, 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 administrative regulation provides the requirements for conducting court-ordered comprehensive sex offender presentence evaluations.

(b) The necessity of this administrative regulation: KRS 17.564 authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580

and 17.991. KRS 17.552 requires approval of the board for the conduct of sex offender risk evaluations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides the evaluation process approved by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the evaluation requirements for mental health professionals who conduct court-ordered comprehensive sex offender presentence evaluations.

(2) If 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 definitions to match definitions in related administrative regulations promulgated by the board and requires the use of evidence based standards in the evaluation. It revises the record keeping period to match the period required by the approved provider's professional licensing or certifying board.

(b) The necessity of the amendment to this administrative regulation: The amendment updates the evaluation process.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes give the board regulatory authority concerning the evaluation process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the evaluation process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 25 approved providers and the sex offenders for which approved providers provide evaluations under the statutes.

(4) Provide an analysis of how the entities identified in question (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 providers will have to follow the updated requirements in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment requires the use of evidence based standards for improvement of the evaluation process.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is provided. The Board is attached administratively to the Department of Corrections.

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

(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.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used) 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? This regulation may impact circuit courts, probation and parole officers, and approved providers who are employed by a state or local agency.

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

requires or authorizes the action taken by the administrative regulation. KRS 17.552, 17.564

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? The amendment is not expected to increase costs.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to increase 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:

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)**

501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

RELATES TO: KRS 196.030, 439.250, 439.3105-439.3108, 439.551, 439.553, 446.010

STATUTORY AUTHORITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, and 439.551 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions and to establish a system of graduated sanctions for probation violations. This administrative regulation establishes graduated sanctions for responding to violations of probation.

Section 1. Definitions. (1) "Conditions of supervision" or "conditions of probation" means general and specific directives given to an offender placed on probation by the sentencing judge or the Division of Probation and Parole.

(2) Demonstrated pattern of failure to comply with conditions of supervision means that the offender has a major violation of the same or similar condition of supervision more than three (3) times over the course of the offender's supervision.

(3) "Division" means the Kentucky Department of Corrections Division of Probation and Parole.

(4)(3) "Graduated sanctions" is defined in KRS 446.010.

(5)(4) "High risk behavior" means an action or [a lifestyle] activity that places a person at risk of violating a condition of supervision or committing a crime [suffering a particular harmful condition].

(6)(5) "Offender" means a person placed under the supervision of the division by a court with jurisdiction over the sentence.

(7)(6) "Officer" or "probation and parole officer" means a person employed by the division who supervises, counsels, and directs an offender on probation.

(8)(7) "Releasing authority" means the court with jurisdiction over the sentence that granted probation.

(9)(8) "Revocation" means an offender having his probation ended and being incarcerated as a result of a hearing for violations of conditions of supervision.

(10)(9) "Risk and needs assessment" is defined in KRS

446.010(38).

(11) "Probation and parole violation matrix" means the table within this administrative regulation that addresses sanction decisions.

Section 2. Informal Response and Mandatory Return to Court.

~~(1) [Application of Graduated Sanctions. If the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:~~

~~(1) The officer shall consider the:~~

~~(a) Offender's assessed risk and needs level;~~

~~(b) Offender's adjustment on supervision;~~

~~(c) Severity of the current violation;~~

~~(d) Seriousness of the offender's previous criminal record;~~

~~(e) Number and severity of any previous supervision violations;~~

~~and~~

~~(f) Extent to which graduated sanctions were imposed for previous violations.~~

~~(2) The officer shall review the circumstances of the offender and the violations at issue to determine if the violation behavior is appropriately responded to with graduated sanctions.~~

~~(a) Informal response.~~

~~(a) Unless otherwise ordered by the court [In lieu of graduated sanctions], the officer may resolve the following minor violations through an informal case management strategy:~~

~~1. Missing scheduled report day;~~

~~2. Traffic offense without arrest;~~

~~3. Failure to seek employment;~~

~~4. Failure to enroll or maintain school attendance; and~~

~~5. Failure to notify officer prior to change of address.~~

~~(b) The officer shall compile a violation report documenting the reason and the informal response.~~

~~(c) The officer shall meet with the offender to discuss and sign the violation response.~~

~~(2)(b) Violations which shall be returned to the releasing authority.~~

~~(a) Graduated sanctions shall not be used by the officer and violation documentation shall be submitted to the releasing authority for violation proceedings up to and including revocation for the following violations:~~

~~1. Absconding supervision;~~

~~2. New felony conviction;~~

~~3. New misdemeanor conviction of assault;~~

~~4. New misdemeanor conviction of violation of emergency protective or domestic violence order;~~

~~5. New misdemeanor conviction for sexual offense;~~

~~6. New misdemeanor conviction for driving under the influence;~~

~~7. Possession or use of a firearm;~~

~~8. Failure to complete sex offender treatment program; or~~

~~9. Demonstrated pattern of failure to comply with conditions of supervision; or~~

~~10. Violations of an assaultive nature.~~

~~(b) The officer shall provide the violation documentation to a supervisor and discuss the case prior to submitting the violation documentation to the releasing authority.~~

Section 3. Review for Graduated Sanctions and Use of the Matrix. If the violation is not handled by an informal response as established in Section 2 of this administrative regulation and the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:

(1) The officer shall consider the:

(a) Offender's assessed risk and needs level;

(b) Offender's adjustment on supervision;

(c) Severity of the current violation;

(d) Seriousness of the offender's previous criminal record;

(e) Number and severity of any previous supervision violations;

(f) Extent to which graduated sanctions were imposed for

previous violations; and

(g) Any other factors related to public safety.

~~(2) [(3) If the officer determines that an informal response and graduated sanctions are not appropriate, then the officer shall report the violation to the releasing authority.~~

~~(4) If a determination is made by the officer to proceed with graduated sanctions] The officer shall:~~

~~(a) Determine whether the violation is a major or minor violation in accordance with Sections 4[3] and 5[4] of this administrative regulation; and~~

~~(b) Review the probation and parole violation matrix in Section 6[5] of this administrative regulation to impose sanctions or determine other appropriate action as directed in this administrative regulation.~~

~~(3) [(5)] The officer shall consider the following when reviewing the violation behavior with the matrix: [-]~~

~~(a) If there are multiple violations, the officer shall use the most serious violation for the review for sanctions.~~

~~(b) If the possible sanctions in a response range have been exhausted on previous violations, the officer may use sanctions in the next highest response range.~~

~~(c) If the offender has violated conditions of supervision imposed in more than one case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for probation and parole or other form of community supervision), the officer shall determine the criminal conviction in the case for which the graduated sanctions will be imposed. A graduated sanction shall not be imposed on more than one case at a time and cases shall not be sanctioned separately for individual violations arising from the same series of violations.~~

~~(4) [(6)] In order to determine the range of sanctions that may be imposed, the officer shall:~~

~~(a) Determine the offender's risk and needs level based on the offender's most recent risk and needs assessment; and~~

~~(b) Use the probation and parole violation matrix in section 6[5] of this administrative regulation to cross reference the violation behavior category as determined in subsection (3) [(5)] of this section with the offender's risk and needs level to determine the sanctions available in the indicated response range.~~

~~(5) If the officer recommends a graduated sanction or discretionary detention, the officer shall:~~

~~(a) Discuss with a supervisor an appropriate graduated sanction for the violation, if necessary, prior to completing the violation report;~~

~~(b) Complete and provide the violation report to the supervisor including information about compliance with the probation and parole matrix in section (6) of this administrative regulation;~~

~~(c) State the reasons for a recommendation of an alternative response outside of the responses outlined in the probation and parole matrix, if the officer makes an alternative response recommendation. The reasons may include:~~

~~1. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;~~

~~2. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation;~~

~~3. Interventions not included in the matrix are appropriate for the circumstances of the violation; or~~

~~4. The officer determines that the offender has failed to comply with prior graduated sanctions imposed and further implementation of graduated sanctions would be futile;~~

~~(d) Obtain approval from a supervisor for the violation response prior to imposing the sanction; and~~

~~(e) Document the approval, denial, or resubmission of an alternative graduated sanction action in the offender management system. [~~

~~(7) If the officer determines that the indicated response range or a lower response range contains an appropriate sanction for the circumstances of the violation, then the officer shall impose the sanction.~~

~~(8) The officer shall seek approval from the supervisor, if the~~

officer determines that:

~~(a) More than two sanctions from response range 3 or higher are appropriate for the circumstances of the violation;~~

~~(b) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;~~

~~(c) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation; or~~

~~(d) Interventions not included in the matrix are appropriate for the circumstances of the violation.]~~

~~(6) [(9)] Upon receiving a recommendation for graduated sanctions [which requires approval before being implemented]; [~~

~~(a)] The [district] supervisor [or designee] shall review the recommendation and [may]:~~

~~1. Approve the recommendation; or~~

~~2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation; [-] and~~

~~(b) The officer shall document the action in the offender management system.~~

~~(10) If the officer determines that the offender has failed to comply with graduated sanctions and further implementation of graduated sanctions would be futile, the officer shall seek approval from the district supervisor or designee to submit violation documentation to the releasing authority for violation proceedings.~~

~~(11) Upon receiving a recommendation to submit violation documentation to the releasing authority for violation proceedings:~~

~~(a) The district supervisor or designee shall review the recommendation and:~~

~~1. Approve the recommendation; or~~

~~2. Reject the recommendation and refer the violation back to the officer for alternative sanctions; and~~

~~(b) The officer shall document the action in the offender management system.]~~

Section 4[3]. Minor Violations. Minor violations shall include the following:

(1) Failure to report a citation or arrest;

(2) Failure to report;

(3) Being in an establishment where alcohol is sold as a primary commodity;

(4) Traffic offenses unless arrested;

(5) Failure to pay financial obligations as ordered by the releasing authority;

(6) Failure to seek employment;

(7) Failure to enroll or maintain school attendance;

(8) Falsifying a release report;

(9) Violation of other special conditions unless ordered by releasing authority;

(10) Association with convicted felon;

(11) Violation of travel restrictions;

(12) Visiting a correctional facility without prior approval;

(13) Issuance of an Emergency Protective Order or Domestic Violence Order;

(14) Violation of curfew;

(15) First or second positive drug or alcohol test;

(16) Failure to comply with re-entry programming;

(17) Failure to complete community service; and

(18) Other violations of similar magnitude.

Section 5[4]. Major Violations. Major violations shall include the following:

(1) Misdemeanor conviction that does not require submission to the releasing authority pursuant to Section 2(2)(a)[b]) of this administrative regulation;

(2) Failure to complete[comply with] treatment;

(3) Failure to complete halfway house program;

(4) [(3)] Multiple minor violations within ninety (90) days;

(5) [(4)] Multiple positive drug or alcohol tests or high risk behavior;

(6) [(5)] Refusal to submit to an alcohol or drug test;

(7) Altering or attempting to alter the results of a drug screen;

(8)(6) Harassing[Intimidating] or threatening a probation and parole officer;
 (9)(7) Possession or use of a weapon other than a firearm by an offender;
 (10)(8) Failure to comply with sex offender registry;
 (11)(9) Over three (3) months behind on restitution;
 (12)(10) Violation of a special condition ordered by the releasing authority;
 (13)(11) Violation of travel restrictions to another state;
 (14)(12) Violation of curfew with electronic monitoring device;

(15)(13) Change of residence without officer's permission;
 (16)(14) Failure to notify probation and parole officer about address change;
 (17)(15) Failure to participate in a required program or service; and
 (18)(16) Other violations of similar magnitude.

Section 6[5]. Probation and Parole Violation Matrix. The following matrix shall be used to determine allowable graduated sanctions for probation violations:

PROBATION AND PAROLE VIOLATION MATRIX					
	OFFENDER RISK LEVEL				
VIOLATION	Very High	High	Moderate	Low	Admin
1st Minor	2	1	1	1	1
2nd Minor	3	2	2	2	1
3rd (or more) Minor	4	3	3	2	2
1st Major	4	3	3	2	2
2nd Major	4	3	3		
3rd (or more) Major	4	4	4		
Response Range 1	Response Range 2		Response Range 3		Response Range 4
	Any response or combination of responses in range 1 or:		Any response or combination of responses in ranges 1-2 or:		Any response or combination of responses in ranges 1-3 or:
Verbal or Written Warning	Curfew up to 60 days		Curfew up to 120 days		Curfew up to 180 days
<u>Evidence Based Programming</u>	Community Service 20-30 hours		Community Service 30-40 hours		Community Service 40-50 hours
<u>Coaching by supervisor & officer</u>	Electronic Monitoring		Halfway House		[Jail Time up to 60 days (requires hearing with releasing authority)]
Increase[Increased] Reporting	Increased Treatment Up To Residential		<u>6-10 days Discretionary Detention with Supervisor Approval</u>		<u>Additional jail time at the discretion of the releasing authority</u>
Increase Frequency of Drug Testing	Up to 5 days Discretionary Detention [up to 10 days] with Supervisor Approval		Jail Time <u>in excess of 10 days</u> [up to 30 days] (requires hearing with releasing authority)		<u>Request Revocation</u>
<u>Referral to programming approved by the Department</u>					
<u>Up to 3 days Discretionary Detention with Supervisor Approval</u>					
Increase Level of Supervision					
Loss of Travel or Other Privileges					
Curfew up to 30 days					
Referral to the Social Service Clinician for substance abuse assessment and treatment					
Referral to Community Service Agency for Counseling or Treatment					
Community Service up to 8 hours					
*Upon consideration of the totality of the circumstances and with supervisory approval, the officer may direct the offender into appropriate interventions not included in the violation matrix or seek to impose a high lever sanction, up to and including revocation. <u>Discretionary detention for probationers shall be implemented pursuant to this administrative regulation to the extent that it is not in conflict with the orders of the court.</u>					

Section 7[6]. Documentation and Notice of Graduated Sanctions. (1) Prior to imposing the graduated sanctions, the officer shall prepare a probation violation report with graduated sanctions. The report shall include:
 (a) A description of the violation behavior;
 (b) A description of the sanctions which will be imposed; and
 (c) Notice of the offender's right to:

1. A violation hearing before the court;
 2. Representation by an attorney at the hearing; and
 3. Have an attorney appointed for him at state expense if he cannot afford one.
- (2) The officer shall:
 (a) Provide a copy of the probation graduated sanctions violation report to the offender prior to the imposition of sanctions;

(b) Ask the offender if he can read the probation graduated sanctions violation report. If the offender states that he cannot read, then the officer shall read the report to the offender; and

(c) Ask the offender if he can understand English. If the offender informs the officer that he cannot understand English, the officer shall provide the offender with a probation graduated sanctions violation report in the offender's language or a language interpreter, if available. If the report cannot be provided in the offender's language and a language interpreter is not available, then the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctions[sanctioning] process.

(3) If the offender indicates to the officer that he does not understand his rights as stated in the probation graduated sanctions violation report, the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctions[sanctioning] process.

(4) If the offender chooses to waive his right to a violation hearing and elects to participate in the graduated sanctions[sanctioning] process, then:

(a) The offender shall note his choice and sign the probation graduated sanctions violation report;

(b) The officer shall sign the probation graduated sanctions violation report;

(c) The district supervisor or designee shall sign the probation graduated sanctions violation report;

(d) The officer shall provide the probation graduated sanctions violation report to the releasing authority; and

(e) The officer shall document the actions taken in the offender management system.

(5) If the offender contests the graduated sanction to be imposed for minor violations, the officer shall report the contest to the supervisor. The supervisor shall deny the offender's contest or grant an alternative sanction.

(6) If the offender chooses not to waive his right to a violation hearing, the officer shall report the violation to the releasing authority for proceedings.

Section 8[7]. Discretionary Detention [Up to Ten Days].

(1) Discretionary Detention Up to Ten (10) Days.

(a) If the officer recommends discretionary detention as a graduated sanction, the officer shall review the offender's record to determine if the recommended days of detention will cause the offender to serve more than sixty[thirty] days in discretionary detention during the calendar year as limited by KRS 439.3108.

(b)[(2)] The officer shall determine a period of detention, not to exceed ten days in compliance with the probation and parole matrix in Section 6 of this administrative regulation.

(c)[(3)] The officer shall seek approval from a[the district] supervisor for the detention. If the officer takes the offender into custody, the officer shall:

1.[(a)] Obtain approval from a[the District] supervisor within four (4) hours;

2.[(b)] If the detention is not approved, follow directives of a[the District] supervisor;

3.[(c)] Continue the detention if other legal process permits; or

4.[(d)] Release the offender from detention.

(d)[(4)] Upon receiving a recommendation for detention:

1.[(a)] The [district] supervisor shall:

a.[(1)] Approve the recommendation; or

b.[(2)] Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation; and

(e)[(b)] The officer shall document the action in the offender management system.

(2) Discretionary detention for more than ten (10) days.

(a) If the officer recommends discretionary detention as a graduated sanction in excess of ten (10) consecutive days:

1. Discuss the detention days in excess of ten (10) days with a supervisor;

2. Complete a violation report with reasons for the additional period of detention;

3. Submit the violation report to a supervisor for approval;

4. Submit the violation report to the releasing authority with the

reason for the additional detention days, if approval is received from a supervisor; and

5. Document the actions in the offender management system.

(b) Upon receiving a recommendation for detention the supervisor shall:

1. Approve the recommendation; or

2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.

(3)[(5)] The officer shall determine if the offender is employed and whether it is feasible for the offender to serve the approved detention at times that the offender is not scheduled to work.

(4)[(6)] The officer shall document the violation and provide notice to the offender and the releasing authority pursuant to the provisions of Section 7[6] of this administrative regulation.

Section 9. After consideration of the totality of the circumstances, if the officer determines that graduated sanctions are not appropriate for the violation and seeks to return the offender to the releasing authority for violation proceedings, the officer shall discuss the case with a supervisor.

(1) The supervisor and officer shall review the following factors:

(a) The offender has demonstrated an inability to comply with supervision;

(b) Graduated sanctions have been previously imposed or the serious nature of the violation merits return to the releasing authority;

(c) The offender refuses graduated sanctions;

(d) All resources available in the community have been exhausted; and

(e) The offender poses a safety risk to himself or the community.

(2) The case review shall be documented in the offender management system by the supervisor, including why graduated sanctions were not appropriate and the factors used to make the recommendation to the releasing authority.

Section 10[8]. Compliance Incentives. An officer may use proportionate incentives for compliance with conditions of supervision including:

(1) Reduced reporting requirements;

(2) Lower levels of supervision as indicated by the offender's risk and needs assessment;

(3) Removal of supervision conditions, for example home detention or curfew;

(4) Eligibility for early termination of probation;

(5) Awarding certificates of achievement;

(6) Deferring a monthly supervision fee payment;

(7) Asking the supervised individual to be a mentor to others; or

(8) Other similar incentives.

This administrative regulation has been through the process advised for consultation with the Supreme Court prior to its filing with the Legislative Research Commission as required by KRS 439.551, 13A.120(3), and 13A.220(6)(a).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 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 October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed

administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Justice.RegContact@ky.gov, telephone number (502) 564-8207, facsimile number (502) 564-6686.

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 system of graduated sanctions for probationers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of KRS 439.3106, 439.3107, 439.3108, 439.470, 439.551, and 439.553.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation adjusts the system of graduated sanctions for non-compliance with probation supervision that are required by KRS 439.551.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets a system of standard responses for probation officers to violations of probation, but still allows flexibility in response to violations of conditions of probation.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the procedures for graduated sanctions for probationers supervised by the Division of Probation and Parole. A primary change is to require additional consultation with and approval by a Probation and Parole supervisor before graduated sanctions are imposed or revocation is requested from the court. The regulation was reorganized to accommodate this change with a number of items being moved in the administrative regulation. Additional graduated sanctions were added to the matrix and the possible detention days were reorganized in the table.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation was reviewed under the sunset law and revisions were determined to be advisable after working with graduated sanctions for a number of years. The amendment is necessary to prevent expiration of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The Department of Corrections is required to promulgate an administrative regulation concerning graduated sanctions for probationers pursuant to KRS 439.551.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows improvement in the operation of the graduated sanctions system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, over 500 employees, over 30,000 offenders, and 120 releasing courts.

(4) Provide an analysis of how the entities identified in question (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 courts will have to determine the extent of the applicability of the sanctions system because the Department cannot act in conflict with the courts' orders in the supervision of probationers. Probation and parole officers will have to review the offender's case for imposition of graduated sanctions for violations and provide notice to the releasing authority in many cases. Offenders who violate their terms of probation will have to determine whether to agree with the imposition of sanctions or alternatively have the court rule on the violations.

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

Graduated sanctions for non-compliant offenders may include short term incarceration at a local detention facility with an average cost of over \$30 per day. The sanction may be imposed in lieu of incarceration at a state prison at the average cost of over \$80 per day.

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

Offenders will receive graduated sanctions in the community in an effort to avoid incarceration for less serious violations. Offenders will have the system of graduated sanctions clearly stated for a better understanding of the consequences of violations and giving offenders the opportunity to comply prior to revocation of supervision being sought.

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

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

(b) On a continuing basis: There is no cost to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Over 500 employees, over 30,000 offenders, and 120 releasing courts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? The Department continues to staff as funding levels allow.

(d) How much will it cost to administer this program for subsequent years? The Department continues to staff as funding levels allow.

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 7:040. Personnel.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all prisoners by providing a minimum of one (1) jail personnel excluding jail personnel designated for communication. If requested by the jailer or governing authority, the department may conduct a staffing analysis.

(2) If a female prisoner is housed in the center, the center shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. Sworn jail personnel shall be at least twenty-one (21) years of age.

Section 3. Compensation. Each employee shall receive a wage that is at least equal to the State Minimum Wage Law except if Federal Minimum Wage Law applies.

Section 4. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every position.

Section 5[4]. Physical Fitness. The jailer shall ensure that a level of physical fitness is maintained that will allow each employee to satisfactorily perform the employee's[his] duties.

Section 6[5]. Code of Ethics. (1) The jailer shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include the following:

(a) An employee shall not:

1. Exchange a personal gift or a favor with a prisoner, prisoner's family, or prisoner's friend;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;
4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;
5. Discriminate against any prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;
6. Employ corporal punishment or unnecessary physical force;
7. Subject a prisoner to physical or mental abuse;
8. Intentionally demean or~~demeanor~~ humiliate a prisoner;
9. Bring a weapon or an item declared as contraband into the center without proper authorization;
10. Engage in critical discussion of jail employees or any prisoner in the presence of a prisoner;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the center, jail employees, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise

with a prisoner;

15. Inquire about, disclose, or discuss details of a prisoner's crime other than as may be absolutely necessary in performing official duties;

16. Enter into an intimate, personal relationship with a prisoner while the prisoner is incarcerated at the same jail by which~~[that]~~ the employee is employed ~~[by]~~; or

17. Enter into an intimate, personal relationship with a former prisoner of the jail within six (6) months~~[month]~~ of that prisoner's release.

(b) An employee shall:

1. Comply with established rules, administrative regulations, and lawful orders from superiors;
 2. Treat prisoners in a fair, impartial manner; and
 3. Report a violation of the code of ethics to the jailer.
- (3) A violation of the code of ethics shall be made a part of the employee's personnel file. 501 KAR 7:040. Personnel.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes minimum standards for personnel procedures in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for personnel in restricted custody centers.

(2) If 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 statute citation for authority and enlarges the authorization language. It corrects various typographical errors, adds "sworn" to the description of jail personnel that must be 21 years old, and makes gender neutral language changes.

(b) The necessity of the amendment to this administrative

regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity to the regulation language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody prisoners and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 1,500 prisoners in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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 is anticipated.

(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 regulation is clearer.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will

have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 7:060. Security; control.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035

authorizes 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 197.020 requires the Department of Correction to promulgate administrative regulations that include a requirement of a physical barrier between male and female prisoners. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes security procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing the security aspects of the center's operation.

(2) If requested in writing, the department may provide technical assistance to the jailer in formulating written policy and procedure.

(3) The policies and procedures shall include:

(a) Prisoner rules;

(b) Staffing; (c) Searches of prisoner and of secure areas;

(d) Visitation;

(e) Key and weapon control;

(f) Prisoner head counts;

(g) Movement of prisoners;

(h) Emergency situations;

(i) Center schedule; and

(j) Administering medication.

Section 2. Prisoner Supervision. (1) Jail personnel shall conduct rounds of the center at least every sixty (60) minutes.

(2) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed or his location accounted for. At least one (1) count shall be conducted per shift.

(3) Males and females shall be housed separately and be separated by a physical barrier.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to any prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The center rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the center. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities and for confiscating contraband.

(2) A weapon, ammunition, chemical agent, related security equipment, or an object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. A

firearm shall not be permitted in the security area unless authorized by the jailer, under emergency circumstances.

(3) All weapons, ammunition, chemical agents, or related security equipment, if not being carried or used, as authorized by the jailer, shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected each quarter to ensure they are maintained in proper working order.

(5) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area not accessible to prisoners.

(6) A prisoner shall not use hazardous tools, supplies, or equipment unless the prisoner is [only] under the direct supervision of jail personnel, and shall be provided with proper safety equipment.

(7) A prisoner may be assigned the responsibility of providing prisoner services, including providing meals under the direct supervision of jail personnel.

(8) A prisoner shall not be:

(a) Permitted to perform or assist in a security duty; or

(b) Assigned to a position of authority over another prisoner.

(9) A prisoner and his belongings shall be searched, in accordance with the requirements [guidelines] established in 501 KAR 7:120, if entering the security perimeter.

(10) Written procedures shall be developed for transporting a prisoner outside the center.

(11) Each center shall have key control procedures.

Section 4. Daily Center Log; Special Reports. A daily center log shall be kept current and shall reflect significant occurrences within the center. Special reports shall include:

(1) Use of force;

(2) Disciplinary action;

(3) Medical or mental health treatment;

(4) Feeding schedule and menus;

(5) Extraordinary occurrences:

(a) Fire;

(b) Assault;

(c) Suicide or attempted suicide that constitutes a serious health situation; or

(d) Escape or attempted escape;

(6) Prisoner vandalism;

(a) Destruction of center property; or

(b) Flooding of plumbing fixtures;

(7) Jail personnel roster for each shift;

(8) Visitors' log; or

(9) Fire emergency planning sessions, pursuant to 501 KAR 7:070, Section 1(1). 501 KAR 7:060. Security; control.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes security procedures to be followed in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards to be followed for security procedures in restricted custody centers.

(2) If 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 statute citations for authority and enlarges the authorization language. It adds language concerning physical barriers to separate male prisoners from female prisoners to comply with a statutory change.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b) and to comply with the statute change.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It up-dates the minimum security standards as required by KRS 441.055 and includes language from a statutory change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 15 Local Facilities staff, and approximately 1,500 inmates in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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: Jail personnel will have to ensure that prisoners are separated by a physical barrier according to gender.

(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 regulation is clearer and includes statute compliance requirements.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

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

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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and restricted custody centers.

(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, 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 7:090. Medical services.

RELATES TO: KRS 72.025, 441.045, 441.055, 441.560

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 441.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 441.560 requires the department to promulgate administrative regulations relating to the transfer of prisoners to the department for medical treatment and care. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to provide proper medical services in restricted custody centers.

Section 1. Medical Services. (1) The center's medical services

shall be provided by contracting with a Kentucky licensed health care provider.

(2) The medical authority shall be a licensed practical nurse (LPN), a higher level of licensed nurse, a licensed medical doctor, or licensed doctor of osteopathy. Telehealth services may be used.

(3) The health care staff and mental health professionals shall not be restricted by the jailer in the performance of their duties except to adhere to the center's security requirements. (4) All health care staff working in the center shall comply with state licensure and certificate requirements commensurate with similar health care personnel working elsewhere in the community. Copies of the licenses and certificates for health care staff employed by the center shall be maintained on file within the center.

(5) A daily medical log shall be maintained documenting specific medical treatment rendered in the center. This log shall be kept current to the preceding hour.

(6) Prisoners shall not perform any medical functions within the center.

(7) Prisoners shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the center.

(8) All medical procedures shall be performed according to orders issued by the responsible medical authority.

(9) Medical screening information shall be transferred to the center from the jail on each prisoner. Jail personnel shall ensure that the information is current when the prisoner is transferred. The medical screening inquiry shall include ~~but not be limited to~~:

(a) Current illnesses and health problems;

(b) Medications taken and special health requirements;

(c) Screening of other health problems designated by the medical authority;

(d) Behavioral observation, state of consciousness, and mental status;

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics;

(f) Condition of skin and body orifices, including rashes and infestations; and

(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis.

(10) Medical, dental, and psychological care for prisoners shall be provided in accordance with KRS Chapter 441.

(11) Medical research shall not be permitted on any prisoner in the center.

(12) Access to the prisoner's medical file shall be controlled by the medical authority and the jailer. The medical record shall be separate from custody and other administrative records of the center.

(13) The jailer or designee shall notify the coroner, if a prisoner dies while in the jail's custody, to allow for a postmortem examination pursuant to KRS 72.025.

(14) The center shall have first aid kits available at all times.

(15) If a urine surveillance program is in effect, there shall be written procedures for carrying out the program

Section 2. Medical Transfers pursuant to KRS 441.560. (1) A jailer may request that a prisoner be transferred to the department for necessary medical treatment and care if the prisoner:

(a) Is injured;

(b) Is pregnant;

(c) Becomes sick or ill;

(d) 1. Is severely and persistently mentally ill; and

2. Is presenting an imminent risk of harm to self or others; or

(e) Requires specialized medical care or long-term medical care which is not available at the local jail.

(2) The transfer request shall be submitted to the Classification Branch in writing and shall contain the following information:

(a) Prisoner's name;

(b) Prisoner's Social Security number;

(c) County where currently housed;

(d) Inmate number;

(e) Pending charge or conviction and whether felony or misdemeanor;

- (f) Estimated sentence or time to serve;
- (g) Whether the prisoner has insurance or not;
- (h) Whether the prisoner is indigent or not;
- (i) Justification for medical transfer;
- (j) Whether the care is necessary or not;
- (k) Any conflict reports; and
- (l) Relevant attachments such as:
 1. Copy of prisoner's insurance card;
 2. Doctor's report;
 3. Incident report;
 4. Citation;
 5. Booking information;
 6. Preexisting medical records; or
 7. Current medication.

(3) If a prisoner is approved for transfer to the department, pursuant to KRS 441.560, the jail shall provide the following, unless already provided with the transfer request:

- (a) All medical information;
- (b) Current medication in proper container;
- (c) Booking information;
- (d) Incident reports;
- (e) Current citation;
- (f) Classification information;
- (g) Conflict reports;
- (h) Any additional pertinent information; and
- (i) Custody receipt.

(4) If a prisoner is approved for transfer to the department pursuant to KRS 441.560, the prisoner shall be transported by the department.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes minimum standards to provide proper medical services in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: It establishes minimum medical services requirements for restricted custody centers.

(2) If 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 statute citations for authority and enlarges the authorization language. It changes language in compliance with KRS Chap. 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity to the regulation language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 1,500 inmates in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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 anticipated.

(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 regulation is clearer.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and restricted custody centers.

(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, 441.055, 441.560

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)**

501 KAR 7:100. Food services.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for the delivery of proper food services in restricted custody centers.

Section 1. Procedures. (1) The center shall comply with KRS 217.280 through 217.390 and 902 KAR 45:005.

(2) The jailer shall provide adult prisoners with a nutritionally adequate diet containing at least 2,400 calories per day.

(3) The jailer shall provide for religious diets in accordance with 501 KAR 3:130 after review and approval of a religious authority.

(4) The jailer shall provide for medical diets if prescribed by a medical authority. This shall include any special dietary requirements to ensure adequate nutrition is provided for pregnant prisoners.

(5) The center shall maintain accurate records of all meals served.

(6) Food shall not be used for disciplinary purposes.

(7) A nutritionist or dietician shall approve the nutritional value of the center menu on an annual basis.

(8) Jail personnel shall directly supervise all food prepared within the center.

(9) All food shall be served under the direct supervision of jail personnel.

(10) The center shall have sufficient cold and dry food storage facilities if food is prepared in the center.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on

October 21, 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 October 31, 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, 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 administrative regulation establishes minimum standards for food services in restricted custody centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes minimum standards for food services in restricted custody centers as required by KRS 441.055.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for food services in restricted custody centers.

(2) If 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 specifies that a local jailer shall provide an adequate diet containing at least 2400 calories per day and standardizes terms used in the Chapter.

(b) The necessity of the amendment to this administrative regulation: To revise the minimum standards as part of the standard review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the Jails Standards Review Advisory Commission recommendations and revises the standards as part of the standard review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It clarifies the minimum 2400 calorie diets for prisoners.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 1,500 inmates in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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: A jailer will have to provide a minimum of 2400 calories per day.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Inmates will receive adequate daily calories.

(5) Provide an estimate of how much it will cost the administrative body 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: Budgeted 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: An increase in funding would depend on the factors discussed in (5)(a) & (b) and should be covered by the money paid to the jail for incarcerating state inmates.
- (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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

- (1) What 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 Corrections and restricted custody centers.
- (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, 441.055
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.
- (c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.
- (d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 7:110. Classification.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 197.020 requires the Department of Correction to promulgate administrative regulations that include a requirement of a physical barrier between male and female prisoners. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations

establishing minimum standards for jails that house state prisoners. This administrative regulation establishes the procedure for the classification of prisoners in restricted custody centers.

Section 1. Procedures. (1) Each center shall develop an appropriate prisoner classification system, which shall be included in the center's written policy and procedure manual.

(2) The classification system shall:

(a) Establish guidelines for admission to the center and for transfer to the jail from the center;

(b) Provide for the separation of male and female prisoners by a physical barrier;

(c) Provide for a program evaluation of each prisoner by jail personnel whenever there is a change in the prisoner's status; and

(d) Prohibit discrimination or segregation based on race, color, or national origin.

(3) Each center shall establish a procedure for an appeal by the prisoner of his classification.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes minimum standards for the classification of prisoners in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes classification standards for prisoners in restricted custody centers.

(2) If 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 statute citations for authority and enlarges the authorization language. It adds language concerning physical barriers to separate male prisoners from female prisoners to comply with a statutory change.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It includes language from a statutory change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 15 Local Facilities staff, and approximately 1,500 inmates in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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: Jail personnel will have to ensure that prisoners are separated by a physical barrier according to gender.

(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 regulation is clearer and includes statute compliance requirements.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and restricted custody centers.

(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, 441.055

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will

have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 7:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035

authorizes 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 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes admission, search, and release procedures for restricted custody centers.

Section 1. Policy and Procedure. Each center shall develop written admission, orientation, and release procedures to be included in the center's policy and procedure manual.

Section 2. Admission. (1) Jail personnel shall ensure that each prisoner is transferred under proper legal authority by a duly authorized officer.

(2) Prisoner records shall be delivered to the center when the prisoner is admitted. The admitting jail personnel shall make certain that all required forms are complete and that information is current.

Section 3. Searches. (1) Jail personnel shall conduct a search of each prisoner and his possessions upon admission. (a) Each prisoner shall be searched for contraband in a manner jail personnel reasonably determine is necessary to protect the safety of fellow prisoners, jail personnel, and ~~facility~~^[institutional] security. The search shall be conducted in a private area and in a manner which protects the prisoner's dignity to the extent possible in that particular center.

(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion may be based upon one (1) or more of the following examples:

1. A current felony offense, fugitive status, or past felony conviction involving violence or drug charges;

2. Institutional behavior, reliable information, or history that indicates possession or manufacturing of a dangerous contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of a dangerous contraband;

3. Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access; or

4. The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance and the prisoner was not in custody prior to the court appearance.

(c) The jailer shall require that a strip search or body cavity search be documented in writing. Documentation shall include:

1. Basis for reasonable suspicion to conduct a search;

2. Date and time of search;

3. Name of prisoner;
4. Name of person conducting search;
5. Type of search; and
6. Result of search.

(d) A strip search shall be conducted by jail personnel of the same sex as the prisoner, and in a private area.

(e) Probing of body cavities shall:

1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity; and
2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.

(2) Each center shall develop written policies and procedures[.] specifying the personal property that a prisoner may retain in his possession.

(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving jail personnel and the prisoner.

(b) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

Section 4. Orientation. (1) The prisoner shall sign to indicate if he has received an oral and a written copy of the prisoner orientation information. This document shall be placed in the prisoner's file. Special assistance shall be given to any illiterate or non-English speaking prisoner.

(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;

(b) Rules of prisoner conduct established pursuant to 501 KAR 7:060, Section 1(3);

(c) Disciplinary procedures;

(d) Information regarding work, educational and vocational training, counseling, and other social service programs; and

(e) Procedures for making a request or registering a complaint with the center's jail personnel or department personnel. Prisoners shall follow the grievance procedure and attach a copy of the grievance forms if requesting a review by the department.

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.

(2) When any prisoner is released or removed for any legal purpose to the custody of another, the identity of the receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.

(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.

(5) Before jail personnel releases a prisoner to an out-of-state jurisdiction, jail personnel shall consult with the appropriate prosecutorial office in the county.

(6) Property, not legally confiscated or retained, receipted from the prisoner upon admission shall be returned to the prisoner when the prisoner is released.

(7) Each prisoner shall sign a receipt for property returned at the time of release.

(8) A complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

Section 6. Transfer. (1) The jailer shall develop policy and procedure to determine the conditions under which a prisoner becomes ineligible to remain at the restricted custody center and shall be transferred to the secure jail.

(2) A prisoner transferred to the secure jail shall be accompanied by:

- (a) An incident report specifying the reasons for the transfer;
- (b) The prisoner's record; and
- (c) The prisoner's personal property.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes minimum standards for admission, search, and release procedures in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for admission, search and release procedures in restricted custody centers.

(2) If 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 statute citations for authority and enlarges the authorization language. It changes and add wording for consistency and corrects a typographical error.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity to the regulation language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 1,500 inmates in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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 is anticipated.

(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 regulation is clearer.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 7:130. Prisoner programs; services.

RELATES TO: KRS 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS 196.035, KRS 441.055, 532.100(4)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 requires the secretary to promulgate administrative regulations he or she deems necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet, KRS 532.100(4)(d) requires the Department of Corrections to promulgate administrative regulations establishing required programs for a jail that houses state inmates under this subsection. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for prisoner programs and services.

Section 1. Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities, and library services.

(2) Prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedures shall establish rules[guidelines] for prisoners as to acceptable means of transportation to and from work, school, and programs.

(4) There shall be written procedures for the verification and monitoring of the prisoner's employment status. A written schedule shall be maintained for program release to include time of departure, destination, telephone number and address of program location, and time of return. Periodic monitoring of a prisoner's adherence to the approved schedule shall occur.

(5) Written procedures shall specify the monetary amount of reimbursement for room and board at the center by the prisoner and the process by which these fees shall be collected and used. Accurate records of receipts shall be maintained.

Section 2. Religious Programs. Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the center.

Section 3. Recreation Programs. Written policy and procedure shall provide all prisoners with the opportunity to participate in an average of one (1) hour of recreational activity per day. Recreation programs may include board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.

Section 4. Volunteers. The policy and procedure manual shall establish rules[guidelines] for the selection and use of volunteers in the center.

Section 5. Prisoner Programs and Services. (1) On-the-job training (OJT) work programs. State prisoners shall be provided the opportunity to participate in OJT work programs in accordance with KRS 441.125. State inmates who have an approved custody level shall be allowed to work on community service projects outside the jail if authorized by the jailer.

(2) Education programs. State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.

(3) Substance abuse programs. State prisoners shall be provided the opportunity to participate in substance abuse programs including Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). State prisoners who have been determined to have substance abuse problems shall be referred to outpatient

treatment available in the community. State prisoners, who are in need of extensive substance abuse treatment and have been referred by the Division of Addiction Services~~[Mental Health]~~, shall be allowed to participate in the substance abuse program (SAP), if space is available.

(4) Evidenced based programs. Eligible state prisoners may be provided the opportunity to participate in evidence based programming offered within the jail with the approval of department staff. State prisoners who complete evidence based programming may be eligible to receive program completion credit, in accordance with CPP 15.4.

Section 6. Required Documents. The jail may provide required documents to prisoners in an electronic format.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes minimum standards for prisoner programs and services in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for prisoner programs and services in restricted custody centers.

(2) If 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 statute citation for authority and enlarges the authorization language, changes the name of a department division to the revised name, adds language to comply with a statutory change in KRS 441.055(1)(a)2.a., and adds a subsection concerning evidence based programming to allow for program completion credit.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity to the regulation language, updates a term, and adds language for a statute change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 1,500 inmates in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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: Jail staff will have to apply the revisions when addressing programs and services for state prisoners.

(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): Jail facilities may have a higher quality of programs available. Additionally, local jails will receive either a \$2 or \$10 per diem for each day of attendance state inmates are enrolled in Department approved programming. This is in addition to housing per diem.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, KRS 441.055, 532.100(4)(d)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails

approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)**

501 KAR 7:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.055

STATUTORY AUTHORITY: KRS 196.035, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to ensure the rights of prisoners in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall have a written statement of prisoner rights which shall address:

- (a) Access to court;
- (b) Access to attorney;
- (c) Mail;
- (d) Telephone;
- (e) Grievance procedure;
- (f) Search and seizure;
- (g) Disciplinary procedure;(h) Racial segregation;
- (i) Medical care;
- (j) Counseling, if available; and
- (k) Religion.

(2) The statement of prisoner rights shall be made available to all inmates being assigned to general housing units. The statement of prisoner rights may be posted in a conspicuous place, provided in hard-copy format, or provided through close-circuit cable television.

(3) The jailer shall not prohibit a prisoner's right of access to the judicial process.

(4) The jailer shall ensure the right of each prisoner to have confidential access to his attorney and his authorized representative. Confidential prisoner access to the prisoner's attorney through unmonitored phone lines in non-contact visitation areas shall be permitted.

(5) The jailer shall have a written policy and procedure that defines the center's visitation rules, which shall include:

- (a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend;
- (b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner has been assessed a disciplinary penalty for an infraction of rules governing visitation;
- (c) A visit shall not be less than fifteen (15) minutes;
- (d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; and
- (e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) Attorneys, clergy, and health care staff shall be permitted to visit a prisoner at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) Each visitor shall register and show proper photo identification before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) of this section or established in subsection (6) of this section.

(8) A prisoner shall not be restricted in regard to whom he may have as a visitor, unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:

- 1. Represents a clear and present danger to security;
- 2. Has a past history of disruptive conduct at the center;
- 3. Is under the influence of alcohol or drugs;
- 4. Refuses to submit to a search; or
- 5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (6) of this section, jail personnel may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail. (1) The jailer shall have a written policy and procedure for receiving and sending mail that:

- (a) Protects prisoners' personal rights; and
- (b) Provides for security practices consistent with the operation of the center.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate any state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. The jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner. After being opened and inspected in the presence of the prisoner, mail received from the court, an attorney of record, or a public official may be provided to the prisoner via an electronic copy through a secure, personal account.

(4) Measures to prevent receipt of prisoner mail containing intoxicants, including fabricated legal mail shall be permitted.

Section 3. Telephone. (1) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(2) If calls are monitored, the prisoner shall be notified.

(3) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Each prisoner shall be:

- (a) Granted the right to practice his religion within limits necessary to maintain institutional order and security; and
- (b) Afforded an opportunity to participate in religious services and receive religious counseling within the center.

(2) A prisoner shall not be required to attend or participate in any religious service or discussion.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, if the security and order of the center are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

- (1) A response to each written grievance within ten (10) days;
- (2) Equal access for each prisoner;
- (3) A guarantee against reprisal; and
- (4) Resolution[Resolving] of legitimate complaints.

Section 7. Disciplinary Rights. Each center shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.501 KAR 7:140. Prisoner rights.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes procedures to ensure the rights of prisoners in restricted custody centers.

(b) The necessity of this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum standards for prisoner's rights in restricted custody centers.

(2) If 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 statute citation for authority and enlarges the authorization language. It adds language for electronic provision of records and confidential access to the prisoner's attorney in compliance with statute changes in KRS 441.055(1)(a)2.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies with the requirement to adopt jail standards in KRS 441.055(1)(a), (b).

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity to the regulation language and adds statutory changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and

approximately 1,500 inmates in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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: Jail staff will have to comply with the confidential access to the prisoner's counsel and may provide electronic copies of records.

(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): It allows compliance with statutory changes.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 7:150. Training.

RELATES TO: KRS 441.045, 441.055, 441.115

STATUTORY AUTHORITY: KRS 196.035, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes 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 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners and KRS 441.115 sets requirements to obtain training allowances. This administrative regulation establishes minimum training requirements for jail personnel.

Section 1. Information System. A jail shall maintain cumulative records on the types and hours of training completed annually by jail personnel. The records shall be maintained in a manner so that all of the records for a specific jail employee may be readily retrieved and shall be entered into the department training records management system.

(1) If the training is conducted by the department, the department shall enter and maintain records of the training for the jail personnel in the department's training records management system.

(2) If the training is conducted by someone other than the department, jail personnel who have been trained to enter information into the department training records management system shall enter the training information. Training information shall be entered within ten (10) days of the training being completed. A jail employee shall have access to his individual record.

Section 2. Curriculum. (1) Jail personnel shall receive a minimum of sixteen (16) hours annual in-service training. The training shall be provided by the department or other instruction approved by the jailer.

(2) The training shall include:

(a) A minimum of four (4) hours of mental health training within the first year of service, and one (1) hour of additional mental health training each year thereafter. The initial four (4) hours of mental health training should be conducted by the service provider of mental health triage or mental health services to the jail, if possible;

(b) Human immunodeficiency virus infection training and acquired immunodeficiency syndrome training approved by the Cabinet for Health and Family Services;

(c) All jail personnel or health services staff who administer medications to prisoners shall be trained in the proper procedures as established~~outlined~~ in the jail's policy and procedures manual; and

(d) Jail personnel who are assigned to duties within a direct supervision area or facility shall receive forty (40) hours of pre-service training related to direct supervision. The training shall be approved by the department.

Section 3. First Aid and CPR. (1) Jail personnel shall have current training in standard first aid equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) Jail personnel shall be certified to perform CPR (cardiopulmonary resuscitation), equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative

regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 3, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation establishes training requirements for jail personnel.

(b) The necessity of this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes minimum training standards in restricted custody centers.

(2) If 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 enlarges the authorization language. It changes "outlined" to "established."

(b) The necessity of the amendment to this administrative regulation: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment revises the standards as part of the review process in KRS 441.055(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity to the regulation language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 44 county and regional restricted custody centers that house reduced custody Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 1,500 inmates in the restricted custody centers, including 853 reduced custody Class C and D felons.

(4) Provide an analysis of how the entities identified in question (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 is anticipated.

(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 regulation is clearer.

(5) Provide an estimate of how much it will cost the administrative

body to implement this administrative regulation:

(a) Initially: No additional action is anticipated.

(b) On a continuing basis: No additional action 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. The standards apply equally to all restricted custody centers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Corrections and restricted custody centers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 441.055.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? For fiscal year 2021, the department paid the local jails approximately \$105.9 million for the housing, transportation, and medical care of state inmates. Full service jails receive the largest portion of this funding. Plus, the department incurred approximately \$1,451,110 in staff salaries and administrative costs. The jails will have some staff and administrative costs, but this program is a source of revenue for them.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (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:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 14:010. Psychiatric or Forensic Psychiatric Facility Victim Notification System.

RELATES TO: KRS 202A.410, 349.3401

STATUTORY AUTHORITY: KRS 202A.410(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 202A.410 requires the Department of Corrections to promulgate an administrative regulation for [regulations governing] the notification of [a] crime victims, judges, and witnesses [victim] who request [requests] notice of when an involuntarily committed person, who is charged with or convicted of a violent crime, is discharged or escapes from a psychiatric or forensic psychiatric facility.

Section 1. Definitions. (1) "Notification" means the [telephonic] communication by telephone or email to the individual regarding the release or escape of an involuntarily committed person.

(2) "Register" means the individual seeking notice providing a telephone number or email through the VINE system [the electronic communication by the individual recording a telephone number] to be contacted when the involuntarily committed person is released or escapes.

Section 2. (1) ~~If the [The chief administrator of a] psychiatric or forensic psychiatric facility enters the involuntarily committed person's information, the victim, judge, or witness may register for notification [shall make available the name, date of birth, date of commitment, the charge, date of release or escape of the involuntarily committed individual to the Department of Corrections].~~

(2) The Department of Corrections shall provide:

(a) The ability to register for notification purposes; and

(b) The notification for which the individual has registered.

Section 3. (1) A victim, judge, or witness may register for notification by calling Victim Information and Notification Every Day (VINE) at (800) 511-1670 or visiting www.VINELink.com and register an email or telephone number for notification of the release of the involuntarily committed person[and providing his name, address, and telephone number].

(2) ~~The victim may provide the notification information by:~~

(a) ~~Speaking to a VINE operator; or~~

(b) ~~Accessing the VINE system through the keypad on his telephone.]~~

Section 4. ~~If the Department of Corrections provides the psychiatric or forensic psychiatric facility with a secure Web-based service to enter the involuntarily committed person's information for [administrator with any instrument or equipment to provide] victim notification, the Web-based account access shall be limited and [instrument or equipment shall be] secured. [The instrument or equipment shall be used only for the purposes set out in this administrative regulation, unless express written permission is obtained from the Department of Corrections.]~~

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 23, 2021

FILED WITH LRC: August 4, 2021 at 11:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on October 21, 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 October 31, 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, 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 administrative regulation provides the procedure to request notice and to notify victims, judges, and witnesses of the discharge or escape from a psychiatric or forensic psychiatric facility of an involuntarily committed person, who is charged with or convicted of a violent crime.

(b) The necessity of this administrative regulation: KRS 202A.410(5) requires the Department of Corrections to promulgate an administrative regulation for notice to victims, judges, and witnesses to request notification of the discharge or escape from a psychiatric or forensic psychiatric facility of an involuntarily committed person, who is charged with or convicted of a violent crime.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation provides the procedure to request notice and to notify victims, judges, and witnesses of the discharge or escape from a psychiatric or forensic psychiatric facility of an involuntarily committed person, who is charged with or convicted of a violent crime.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the process for victims, judges, and witnesses to request notification of the discharge or escape from a psychiatric or forensic psychiatric facility of an involuntarily committed person, who is charged with or convicted of a violent crime.

(2) If 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 statute citation for authority and enlarges the authorization language explanation. It updates the request for notification and notification procedures.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the process for victims, judges, and witnesses to request notification of the discharge or escape from a psychiatric or forensic psychiatric facility of an involuntarily committed person, who is charged with or convicted of a violent crime.

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity to those who may use the notification procedure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 3 Department of Corrections employees, six psychiatric hospitals, an unknown number of employees with the Cabinet for Health and Family Services, and the victims, judges, and witnesses who request notification.

(4) Provide an analysis of how the entities identified in question (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 is anticipated.

(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): Clarity is provided.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections.

(7) Provide an assessment of whether an 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 (DOC) and Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 202A.410, 349.3401

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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.

(b) How 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.

(c) How much will it cost to administer this program for the first year? There is no additional cost for victim notification on involuntarily committed person that have been released or escaped since notifications through VINE for offender status is already allocated in the DOC budget.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost for victim notification on involuntarily committed person that have been released or escaped since notifications through VINE for offender status is already allocated in the DOC budget.

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 Kentucky Law Enforcement Council (Amendment)

503 KAR 1:060. Definitions for 503 KAR Chapter 1.

RELATES TO: KRS 15.310, 15.315, 15.320, 15.325, 15.330, 15.334, 15.335, 15.340, 15.350, 15.360, 15.370, 15.380, 15.382, 15.384, 15.386, 15.388, 15.390, 15.391, 15.392, 15.394, 15.396, 15.397, 15.3973, 15.3975, 15.3977, 15.3979, 15.398, 15.400, 15.402, 15.404, 15.430, [15.330-] 15.450(1)

STATUTORY AUTHORITY: KRS 15.330(1)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to implement KRS 15.310 through 15.404. This administrative regulation defines terms used in 503 KAR Chapter 1.

Section 1. Definitions. (1) "Applicant" means an individual seeking certification ~~[pursuant to KRS 15.380 to 15.404]~~ from the council ~~[as a peace officer through a law enforcement agency]~~.

(2) "Approval" means the act of the council in deciding that the requirements for a law enforcement officer, school, or instructor, pursuant to KRS 15.310 to 15.515 and 15.990 to 15.992, have been met.

(3) "Certification" means:

(a) Approval by the council; and

(b) Issuance of a certificate from the council as evidence of its approval.

(4) "Council" means the Kentucky Law Enforcement Council as established pursuant to KRS 15.315;

(5)[(4)] "DOCJT" means the Department of Criminal Justice Training.

(6)(5) "Fund" means the Law Enforcement Foundation Program Fund of the Kentucky Justice and Public Safety Cabinet as established in KRS 15.430.

(7)(6) "Fund administrator" means the person responsible for administering the Law Enforcement Foundation Program Fund.

(8)(7) "In-service" means a training course that is available to a certified officer who has previously completed a KLEC approved basic training academy.

(9)(8) "KLEC[POPS]" means the Kentucky Law Enforcement Council as established pursuant to KRS 15.315~~Executive Director of the Office of Peace Officer Professional Standards, an administrative branch of the council, located at the Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102~~.

(10)(9) "KLEC office" means the Office of Kentucky Law Enforcement Council Support as created by Executive Order 2016-0902 and confirmed by 2017 Kentucky Acts ch. 38, § 3.

(11) "Recognized school" means a school that has not been certified by the council (for example, an out-of-state school), but is considered to provide training equal to or greater than similar training offered by the department.

(12)(10) "Recruit" means a person attending a basic training course approved by the KLEC ~~conducted by the basic training section of the Department of Criminal Justice Training~~.

(13)(11) "Significant life change" means divorce, change in employment, death of a family member, change of residence, bankruptcy or other economic hardship, or other modification which has substantial impact on an individual.

(14)(12) "Submit" means transmission by mail, [transmit by] facsimile, or [transmit via] electronic means, and is completed upon receipt by the person to whom it was directed.

(15)(13) "Trainee" means a person attending a law enforcement training course (other than the law enforcement basic training course), as approved by the KLEC~~conducted by a training section of the Department of Criminal Justice Training~~.

MICHAEL "SPIKE" JONES, Chair

APPROVED BY AGENCY: August 5, 2021

FILED WITH LRC: August 10, 2021 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on October 21, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. 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 October 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: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the meaning of the commonly used terms found in 503 KAR Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance on terms found in 503 KAR Chapter 1.

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

statute by providing guidance to the promulgated regulations implementing KRS 15.310 to 15.404.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statutes by removing ambiguity from the regulations found within this Chapter.

(2) If 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 definitions of "council," "KLEC," and "KLEC office" and revises other definitions to acknowledge law enforcement training academies other than the one operated by the Department of Criminal Justice Training.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to include definitions of "council," "KLEC," and "KLEC office," and to acknowledge other law enforcement training academies.

(c) How the amendment conforms to the content of the authorizing statutes: This is a definition section that defines terms within 503 KAR Chapter 1, which assists in the implementation of KRS 15.310 through 15.404.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies terms used in other regulations concerning KLEC, which is statutorily charged with approve law enforcement training courses and certifying law-enforcement officers, telecommunicators, and court security officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC; the five certified law enforcement training facilities; the approximately 10,000 certified peace officers, telecommunicators, and court security officers throughout the state; the approximately 400 law enforcement agencies in the state; and the approximately 500 law enforcement, telecommunicator, and court security trainees annually seeking certification pursuant to KRS 15.380 to 15.404.

(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 new actions must be taken on behalf of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: The amendment provides additional guidance to the regulated entities.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the Council or for any regulated entity. Generally, the Council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an 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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this regulation does not establish any new fees or increase any current fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not applied 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? KLEC, law enforcement training facilities, and law enforcement trainees seeking certification pursuant to KRS 15.380 to 15.404.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(h)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? 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? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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: None.

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:080. Certification of schools.

RELATES TO: KRS 15.330(1)(a), (e), (g)

STATUTORY AUTHORITY: KRS 15.330(1)(a), (e), (g), (h)

NECESSITY, FUNCTION AND CONFORMITY: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for approval and continuation of approval of schools which conduct law enforcement training courses required under KRS 15.310 to 15.510 and 15.990 to 15.992. KRS 15.330(1)(e) authorizes the council to issue certificates to a law enforcement training school. This administrative regulation establishes standards and procedures for approval and certification.

Section 1. Application Procedures. (1) Any agency, group, or individual may apply to the council to establish:

- (a) A certified basic training school;
- (b) A certified in-service training school; or
- (c) Both.

(2) The application shall:

(a) Be in writing on a KLEC Form 3, School Certification Application; and

(b) Include information regarding the:

- 1. Curriculum;
- 2. Instructors;
- 3. Facilities; and
- 4. Equipment.

Section 2. Review of Application. (1) Upon receiving a properly completed application for certification of a school, the council or the KLEC office acting on behalf of the Council shall:

(a) Conduct an on-site inspection of the facility and equipment; and

(b) Thoroughly examine the curriculum and instructors of the applying school.

(2) ~~[In the course of its inspection,]~~ [t]he council shall determine whether the applying school offers training at least equal to the equivalent training provided by the department based upon the following criteria:

(a) Staff:

- 1. Adequate administrative and support staffing;
- 2. Number of fulltime instructors;
- 3. Number of part-time instructors; and
- 4. KLEC c[G]ertification of all instructors, including guest instructors;

(b) Curriculum:

- 1. Type of training to be offered; and
- 2. Certification of all curricula;

(c) Training aids:

- 1. Use of ~~[a]~~ outlines, study guides, handouts, electronic presentations, textbooks, or ~~[and]~~ similar class materials; and
- 2. Availability of training aids, which may include ~~[including]~~:
 - a. Chalk or white board;
 - b. Flip chart and easel;
 - c. Charts;
 - d. Enlarged photographs;
 - e. Scale models;
 - f. ~~[Thirty-five (35) millimeter slide projector;~~
 - g. ~~[Screen;~~
 - g. ~~[h. Video]~~ P[p]rojector;
 - h. ~~[i.] Monitors;~~
 - i. Internet capability;
 - j. Satellite dish capability; and
 - k. Distance learning capability; and
- (d) Hours and capacity:
 - 1. Number of students that can be trained annually;
 - 2. Number of times annually that a course is offered;
 - 3. Maximum number of students per class; and
 - 4. Hours of operation.

(3) The council shall determine whether the applying school's personnel, facilities, and procedures meet minimum standards for safety and quality based upon the following criteria:

(a) Physical facilities:

- 1. Type and age of buildings;
- 2. Number of classrooms;
- 3. Adequate heating, air conditioning, and ventilation;
- 4. Adequate lighting;
- 5. Adequate furniture;
- 6. Available library with adequate number of copies of standard reference material necessary for subject matter taught; and
- 7. Available physical training facilities; and
- (b) Firearms range:
 - 1. Location;
 - 2. Distance from classroom;
 - 3. Travel time from classroom to range;
 - 4. Available transportation to range;
 - 5. Types of courses available (bullseye, silhouette, combat, or other practical shooting course);
 - 6. Range rules posted and enforced;
 - 7. Certified firearms instructor present at all training sessions;
 - 8. Established and enforced safety precautions for loading and storing of ammunition; and
 - 9. Backstop which will contain slugs and prevent ricochets.

(4) An applying school shall not be certified if found to be deficient in any of the areas established in subsections (2) and (3) of this section.

Section 3. Approval Procedure. The council, at its first regular meeting after the evaluation has been completed, shall vote whether to approve the applying school.

Section 4. Notification of Council Action; Certification. (1) The council or the KLEC office acting on behalf of the council shall notify the applying school and fund administrator within thirty (30) days of the council's action whether the school is approved.

(2) If an applying school is approved, the council shall issue a certificate stating:

- (a) That the school has been certified; and
- (b) That the school offers:
 - 1. Basic training;
 - 2. In-service training; or
 - 3. Both.

Section 5. Inspections. A school certified by the council shall be subject to inspection by the council or the KLEC office acting on behalf of the Council to determine if the school is maintaining the standards required for certification.

Section 6. Revocation of Certification. (1) A school's certification shall be revoked by the council if a school has been found not to have maintained the standards required for certification.

(2) If certification is revoked, the school and the fund administrator shall be notified of the revocation by the council or the KLEC office acting on behalf of the Council within fifteen (15) days. The council shall not recertify a school until the deficiency has been corrected.

Section 7. Incorporation by Reference. (1) KLEC Form 3 "School Certification Application", 2021[June–2014] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, 4449 Kit Carson Drive [Funderburk Building, Eastern Kentucky University, 521 Lancaster Avenue], Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Council's website at <https://klecs.ky.gov/>.

MICHAEL "SPIKE" JONES, Chair

APPROVED BY AGENCY: August 5, 2021

FILED WITH LRC: August 10, 2021 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on October 21, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. 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 October 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: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for a law enforcement training academy to apply for and maintain certification by the KLEC.

(b) The necessity of this administrative regulation: This regulation is necessary for the KLEC to carry out its duty under KRS 15.330(1)(a) to prescribe standards for the approval and continuation of approval of schools at which law enforcement and telecommunications training courses required under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.992 shall be conducted, including but not limited to minimum standards for facilities, faculty, curriculum, and hours of attendance related thereto. This regulation is also necessary for the KLEC to carry out its duty to issue or revoke certificates for schools, under KRS 15.330(1)(e), and to inspect and evaluate schools under KRS 15.330(1)(g).

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This regulation conforms to the authorizing statute by laying out the procedures to be followed by the KLEC and law enforcement schools in the certification and maintenance-of-certification process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statutes by providing the process to be followed by both the KLEC and law enforcement schools in the certification and maintenance-of-certification process.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises the requirements for schools seeking certification by including modern technology, such as the internet, that is used in the contemporary law-enforcement education environment, and removes requirements for obsolete technology. The amendment also clarifies that the Office of Kentucky Law Enforcement Council Support may carry out certain administrative functions on behalf of the KLEC.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary so that schools seeking certification are not required to have obsolete technology (such as 35mm slide projectors) to become certified, and to clarify that the Office of Kentucky Law Enforcement Council Support may carry out certain administrative functions on behalf of the KLEC.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating and clarifying the procedures to be followed by the KLEC and law enforcement schools in the certification and maintenance-of-certification process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by updating and clarifying the procedures to be followed by the KLEC and law enforcement schools in the certification and maintenance-of-certification process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC and the five certified law enforcement training facilities.

(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 new actions must be taken on behalf of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: The amendment provides additional guidance to the regulated entities.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the Council or for any regulated entity. Generally, the Council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an 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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this regulation does not establish any new fees or increase any current fees, directly or indirectly.

(9) TIERING: Is tiering applied? Explain why or why not. No. Tiering was not applied because the administrative regulation

applies equally to all those 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? KLEC, law enforcement training facilities, and law enforcement trainees seeking certification pursuant to KRS 15.380 to 15.404.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(a), (e), (g), (h).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? 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? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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: None.

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:090. Approval of course curriculums.

RELATES TO: KRS 15.330(1)(a), (g), (h), 15.440

STATUTORY AUTHORITY: KRS 15.330(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for the approval and continuation of approval of schools which conduct law enforcement and telecommunications training courses ~~[required by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund]~~, including minimum standards for curriculums for courses. This administrative regulation establishes standards and procedures for approval of curriculum for courses.

Section 1. Submission Requirements. ~~[In order for]~~ For the council to adequately determine the merits of a proposed course curriculum or proposed revision [curriculum amendment] to a previously approved curriculum, the [a] proposed curriculum or proposed revision [amendment to a previously approved curriculum] shall:

(1) Be submitted to [received by] the council at least forty-five (45) [thirty (30)] days prior to the date of anticipated review;

(2) Be submitted [taught] by a school certified by the council or a recognized school ~~[instructors or instructors whose certification has been waived];~~

(3) Be taught [submitted] by one or more [a] certified instructors or instructors whose certification has been waived by the Kentucky Law Enforcement Council [school];

(4) Be submitted with a completed KLEC Form 31 to the

Kentucky Law Enforcement Council, ~~Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102;~~

(5) Include a specific learning objective for every portion of the course;

(6) Include a course description;

(7) Include a description of the method of student learning evaluation;

(8) Include a bibliography;

(9) Include a schedule indicating the number of hours for each block of instruction; and

(10) Indicate and justify a "passing" performance level on all student learning evaluations.

Section 2. School Endorsement. A proposed course curriculum or proposed curriculum revision [amendment] submitted by a school shall be endorsed by the director of the school or the director's designee.

Section 3. Approval Procedure. Upon review of the merits of a proposed course curriculum or proposed curriculum revision [amendment] in accordance with Section 1 of this administrative regulation, the council shall vote whether to approve, approve with stipulations [subject to stated conditions], or disapprove. Course curriculum approval shall last for only three (3) years. Curriculums that [which] are to be continued shall be resubmitted for approval at least forty-five (45) [thirty (30)] days before the council meeting that [which] occurs last before the expiration of the three (3) year period.

Section 4. Notification of Council Action. Within sixty (60) days of the council's vote, the council shall complete KLEC Form 33 and notify in writing the school that [which] submitted the curriculum, whether the curriculum or curriculum revision [amendment] was approved.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KLEC Form 31, "Curriculum Development Form", 2021[June 2014]; and

(b) KLEC Form 33, "Curriculum Development Approval Form", 2021[June 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, 4449 Kit Carson Drive [Funderburk Building, 521 Lancaster Avenue], Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Council's Web site at <https://klecs.ky.gov/>.

MICHAEL "SPIKE" JONES, Chair

APPROVED BY AGENCY: August 5, 2021

FILED WITH LRC: August 10, 2021 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on October 21, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. 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 October 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: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the standards and procedures for approval of the curriculum submitted by schools that conduct law enforcement and telecommunicator training courses.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance on the approval procedures for curriculums submitted by a law enforcement training school, as required by the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by prescribing standards and procedures for the approval and continuation of approval of law enforcement training curriculums.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in providing guidance on the necessary procedures that must be followed prior to obtaining KLEC approval of a proposed curriculum.

(2) If 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 more clearly establishes the standards and procedures for both in-state and out-of-state law enforcement training facilities; clarifies terminology, including as to revision of curriculums and stipulations on curriculum approvals; and increases the time before a Council meeting that forms must be submitted to 45 days.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to more clearly define the existing process.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation continues to conform to the authorizing statute by prescribing standards for the approval and law enforcement and telecommunicator training curriculums.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides necessary guidance to law enforcement training facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KLEC, and the five schools in Kentucky that conduct law enforcement and telecommunicator training courses approved by the KLEC.

(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: Forms must be submitted at least 45 days before they are to be considered, instead of 30 days. Otherwise, no new actions must be taken on behalf of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: The regulation continues to provide guidance to the regulated entities and refers them to the appropriate application form.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the Council or for any regulated entity. Generally, the Council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an 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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this regulation does not establish any new fees or increase any current fees, directly or indirectly.

(9) TIERING: Is tiering applied? Explain why or why not. No. Tiering was not applied 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 KLEC and schools that conduct law enforcement and telecommunicator training courses.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(a), (h)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? 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? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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: None.

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:100. Certification of instructors.

RELATES TO: KRS 15.330(1)(a), (b), (e), (h)

STATUTORY AUTHORITY: KRS 15.330(1)(a), (b), (e), (h)

NECESSITY, FUNCTION AND CONFORMITY: KRS 15.330(1)(a), (b), and (e) authorize the Kentucky Law Enforcement Council to certify instructors at certified schools and to revoke certifications. This administrative regulation establishes standards and procedures for certification of instructors and revocation of instructor certifications.

Section 1. Application for Certification. (1) Applications for instructor certification, additional certification, and ~~[for]~~ certification renewal shall be made to the council.

(2) An ~~The~~ application for instructor certification form, KLEC Form 1; ~~the~~ application for additional certification, KLEC Form 6; or ~~[and the]~~ application for certification renewal, KLEC Form 5, shall be submitted to the Kentucky Law Enforcement Council at least forty-five (45) days prior to the date of the anticipated review. ~~[, Funderburk Building, 521 Lancaster Avenue, Richmond,~~

Kentucky 40475-3102.]

(3) To become certified, an applicant shall meet the following requirements:

(a) Have at least three (3) years of law enforcement experience or experience in the specific field, subject matter, or academic discipline to be taught;

(b) Have earned a high school diploma or its equivalent as determined by the council; and

(c) Have successfully completed an instructors' course approved by the council.

Section 2. Waivers. The council may waive any training requirements for instructors who are licensed as professionals, including attorneys, physicians, or nurses. The council may also waive any training requirements for other experts if the reasons for waiver and the individual's qualifications are supported by a current resume or curriculum vitae and stated in the council's minutes. The application for waiver, KLEC Form [form] 8, shall be submitted to the Kentucky Law Enforcement Council at least forty-five (45) days prior to the date of the anticipated review, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102].

Section 3. Application Process. Applications for instructor certification, additional certification, [application for] waivers, and renewal of certification shall be reviewed by the council. The council, at its first regular meeting after the review has been completed, shall vote whether to approve the application.

Section 4. Granting of Certification. If the council grants certification to an applicant, the council shall notify the applicant in writing within fifteen (15) days of the council's action.

Section 5. Instructor Certificate. (1) Instructor certificates shall be issued to instructors only upon initial certification.

(2) Upon approval of an application, [t]he council shall issue an instructor [a] certificate stating that the [instructor [person]] has been approved to instruct.

Section 6. Denial, Revocation, and Reinstatement of Certification. The council shall deny certification to an applicant who fails to meet the requirements and shall revoke certification for demonstrated incompetence, immoral conduct, or other good cause, as determined by the council. Any instructor who fails to instruct during the five (5) year period of certification shall be required to request reinstatement of certification by submitting a completed KLEC Form 5 to the council and supplying a current KLEC monitor evaluation. [in writing.] When the council denies certification to an applicant, [or] revokes certification, or denies recertification or reinstatement of certification to an instructor, the council shall notify the person of the council's action in writing within fifteen (15) days.

Section 7. Length of Certification. Certification shall be for a period of five (5) years. At the end of the five (5) year period, certification may be renewed by the council if the instructor has instructed for a minimum of five (5) hours in an approved course provided by a certified school during that five (5) year period and [if] the instructor is [has been] recommended by the director of [that [the]] certified school. The instructor shall provide a report certifying that he or she has been monitored by a KLEC monitor.

Section 8. Monitoring of Instructors. The council may monitor each instructor during the first year of certification and biennially thereafter to determine if the instructor is teaching to the stated goals and objectives of the course and is meeting generally accepted standards of the teaching profession.

Section 9. Instructor Directory. Each certified instructor shall be listed in an official directory of the council which shall identify each subject that the instructor has been certified to instruct. The directory shall be published [in the form of a notebook], allowing for changes through the use of supplements. The council shall publish annual supplements to the directory within fifteen (15) days after

each quarterly council meeting, [by December 31 of each year] and the supplements shall include all certification changes, including additions, deletions, and renewals[.] for the year. The council shall provide each certified school [and the fund administrator] with a copy of the directory.

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

(a) KLEC Form 1, "Application for Instructor Certification", 2021 [June 2014];

(b) KLEC Form 5, "Instructor - Continued Certification", 2021 [June 2014];

(c) KLEC Form 6, "Request for Additional Certification", 2021 [June 2014]; and

(d) KLEC Form 8, "Request for Waiver", 2021 [June 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council, 4449 Kit Carson Drive [Funderburk Building, 521 Lancaster Avenue], Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Council's website at <https://klecs.ky.gov/>.

MICHAEL "SPIKE" JONES, Chair

APPROVED BY AGENCY: August 5, 2021

FILED WITH LRC: August 10, 2021 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on October 21, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. 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 October 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: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the standards and procedures for instructor certification.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance on the requirements for instructor certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by prescribing the qualifications for instructors at law enforcement training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statute by clearly outlining the requirements for instructor 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: The amendment reflects primarily minor changes, including the clarification of processes performed by the Kentucky Law Enforcement Council's staff. It also requires that instructor forms be filed at least 45 days before the Council meeting at which

they will be considered, provides for issuance of an instructor certificate only upon the initial approval of an instructor, requires that instructors seeking renewal of their certification certify that they have been monitored by the Council's staff, and requires that the Council update its instructor directory quarterly.

(b) The necessity of the amendment to this administrative regulation: The revisions are necessary to clarify procedures performed while processing applications for instructor certification.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by prescribing the qualifications for instructors at law enforcement training schools.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the procedures implemented by those who process certification requests.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC, the five certified law enforcement training schools, and the approximately 600 certified law enforcement instructors.

(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: Instructors seeking renewal of their certification will have to certify that they have been monitored by the Council; applicants will have to file their forms no later than 45 days before they are to be considered by the Council; and the Council will have to update its instructor directory quarterly. Otherwise, no new actions must be taken on behalf of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: The amendment provides additional guidance to the regulated entities.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the Council or for any regulated entity. Generally, the Council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an 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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this regulation does not establish any new fees or increase any current fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not applied 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? KLEC and certified law enforcement training schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(a), (b), (e), (h)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? 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? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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: None.

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:110. Department of Criminal Justice Training Basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(4), 15.440(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course, which meets the requirements[required] for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund, and for maintenance of basic training records.

Section 1. Peace Officer Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

(1) Successfully complete a minimum of 800 hours of training, based upon the curriculum approved by the Kentucky Law Enforcement Council [(KLEC)] in accordance with KRS 15.330 and 503 KAR 1:090;

(2) Pass [Attain a minimum passing score on] all assessments or examinations as outlined in the current KLEC-approved curriculum; and

(3) Successfully complete all other assignments, exercises, and projects included in the course. Afterhours assignments may be required, and shall be successfully completed in order to pass the training segment for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section.

(1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall be tested, at a minimum, in all physical training areas set forth in 503 KAR 1:140 Section 4(4)(a), as instructed and evaluated by qualified department instructors; and the evaluation standards for those tests shall meet or exceed the standards required for peace officer precertification status under

~~KRS 15.386~~[in the following events, in the order listed, as instructed and evaluated by qualified department instructors:

1. Bench press;
2. Situps;
3. 300 meter run;
4. Pushups; and
5. One and five-tenths (1.5) mile run.

~~(b) A recruit shall pass the physical training entry requirements if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in paragraph (a) of this subsection:~~

1. Bench Press, based upon a percentage of the recruit's body weight:

- a. 9 points — Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- b. 9.5 points — Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
- c. 10 points — Recruit shall bench press at least sixty-four (64) percent of body weight;
- d. 10.5 points — Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- e. 11 points — Recruit shall bench press at least seventy-three (73) percent or more of body weight;

2. Situps:

- a. 9 points — Recruit shall complete at least thirteen (13) repetitions in one (1) minute;

- b. 9.5 points — Recruit shall complete at least sixteen (16) repetitions in one (1) minute;

- c. 10 points — Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and

- d. 11 points — Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

3. 300 meter run:

- a. 9 points — Recruit shall complete in sixty-eight (68) seconds or less;

- b. 9.5 points — Recruit shall complete in sixty-seven (67) seconds or less;

- c. 10 points — Recruit shall complete in sixty-five (65) seconds; and

- d. 11 points — Recruit shall complete in less than sixty-five (65) seconds;

4. Pushups:

- a. 9 points — Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;

- b. 9.5 points — Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;

- c. 10 points — Recruit shall complete at least twenty (20) repetitions in two (2) minutes;

- d. 10.5 points — Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and

- e. 11 points — Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

5. One and five-tenths (1.5) mile run:

- a. 9 points — Recruit shall complete in 1,076 seconds (17:56) or less;

- b. 9.5 points — Recruit shall complete in 1,054 seconds (17:34) or less;

- c. 10 points — Recruit shall complete in 1,032 seconds (17:12) or less;

- d. 10.5 points — Recruit shall complete in 1,004 seconds (16:44) or less; and

- e. 11 points — Recruit shall complete in 975 seconds (16:15) or less.

(c) A recruit shall:

1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events; and

2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:

- a. A total score of fifty (50) points; or

- b. Nine (9) points on any one (1) physical training event.

(b)(d) Retest.

1. A recruit that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be

granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, except that a retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

2. A recruit that obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.

3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.

4. All failed events shall be retested on the same date.

5. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the [physical training] entry requirements.

6. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements. (a) ~~To~~ [In order to] graduate, the recruit shall successfully complete [each of] the [following] physical ability requirements in 503 KAR 1:140 Section 4(4)(b) within ten (10) [five (5)] days of graduation from law enforcement basic training, which, except for the entry test score requirements in subsection (1)(a) [(b)] of this administrative regulation, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols, incorporated by reference in 503 KAR 1:140, as instructed and evaluated by qualified department instructors.]:

1. Bench press. ~~One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;~~

2. Situps. ~~Eighteen (18) situps in one (1) minute;~~

3. 300 meter run in ~~sixty-five (65) seconds;~~

4. Pushups. ~~Twenty-five (25) pushups; and~~

5. ~~One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.]~~

- (b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.

- (c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

2. All failed events shall be retested on the same date;

3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall fail basic training.

- (3) A physical training midpoint assessment[test] shall be administered to the recruits at the midpoint of the basic training course for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Removal and Repetition of Basic Training. (1) Failure of Training.

- (a) A recruit that is removed from basic training due to a training segment failure pursuant to Section 5 of this administrative regulation shall:

1. Be removed from the basic training class;

2. Reenter basic training in a subsequent class that has the first available vacancy;

3. Start the training at the beginning of the training segment that the recruit did not successfully complete; and

4. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

- (b) Upon the recruit's return, the recruit shall attend and participate at the beginning of the segment failed.

1. In accordance with 503 KAR 3:030, Section 6(2), the

recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training segment which was failed. The hiring agency may recover these costs of repeating the training segment from its recruit; and

2. If the training segment is successfully completed, the recruit shall continue with the remainder of the basic training course.

(c) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

1. Be required to repeat basic training in its entirety; and

2. Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:

(a) Shall not graduate with the recruit's basic training class;

(b) Shall be permitted to retest with the very next basic training class; and

(c) Upon successful completion, may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and

(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. (1) The basic training curriculum shall consist of training segments and topics listed in the current KLEC-approved curriculum. Each training segment shall at a minimum include one (1) or more of the topics listed in subsection (2) of this section. All topics listed in subsection (2) of this section shall be covered to qualify for graduation.

(2) Basic Training Topics.

(a) Legal subjects;

(b) Physical training;

(c) Defensive tactics;

(d) Patrol;

(e) Vehicle operations;

(f) Firearms;

(g) Criminal investigation;

(h) D.U.I./Field sobriety testing;

(i) Breath testing; or

(j) Practical evaluation/testing.

Section 5. Practical Test and Examinations.~~[Assessments.]~~ (1) Scheduled practical tests and/or examinations~~[assessments]~~ shall be administered to recruits at the completion of each segment of basic training identified in the law enforcement basic training curriculum that is currently approved by the Kentucky Law Enforcement Council. Each segment shall include at a minimum one (1) or more of the topics listed in Section 4 of this administrative regulation.

(2) A recruit shall be permitted one (1) re-test~~[reassessment]~~ per practical tests and/or examinations~~[assessment]~~ failed during basic training, but shall not exceed a total of two (2) re-tests~~[reassessments]~~ during basic training.

(3) A recruit who fails a practical test and/or examination~~[an assessment]~~ shall not be re-tested~~[reassessed]~~:

(a) Earlier than forty-eight (48) hours from the original test or examination; or

(b) Later than:

1. Five (5) days after the original test or examination. A recruit may submit a written request to the training director or his designee for an additional five (5) days in which to re-take~~[take]~~ the practical tests and/or examinations~~[reassessment]~~; and

2. The last scheduled day of the basic training course.

(4) A recruit shall fail basic training if the recruit fails:

(a) A practical test and/or examination~~[An assessment]~~ and fails to complete the re-take~~[take a reassessment]~~ as authorized by this section;

(b) A practical test and/or examination re-take~~[reassessment]~~; or

(c) A practical test and/or examination~~[An assessment]~~ after

taking two (2) re-takes~~[reassessments]~~ in accordance with subsection (2) of this section.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

(2) An excused absence from the course which causes a recruit to miss any of the required hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the council.

(2) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(3) All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 17.

MICHAEL "SPIKE" JONES, Chair

APPROVED BY AGENCY: August 5, 2021

FILED WITH LRC: August 10, 2021 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 AM on October 21, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. 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 October 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: Katherine George, Staff Attorney, 4449 Kit

Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the standards and procedures for attendance at and graduation from the Department of Criminal Justice Training academy.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance on the requirements for attendance at and graduation from the Department of Criminal Justice Training academy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by providing guidance on the requirements for attendance at and graduation from the Department of Criminal Justice Training academy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statutes by outlining the requirements for attendance at and graduation from the Department of Criminal Justice Training academy.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that DOCJT trainees must pass assessments and examinations, and removes redundant physical training qualifications that are addressed in 503 KAR 1:140.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to avoid possible inconsistency in physical training requirements and conflict with 503 KAR 1:140, and to outline the requirements for attendance at and graduation from the Department of Criminal Justice Training academy.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by outlining the requirements for attendance at and graduation from the Department of Criminal Justice Training academy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment removes redundant language that is addressed in 503 KAR 1:140 and avoids potential conflicts with 503 KAR 1:140.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC, the Department of Criminal Justice Training, the approximately 400 law enforcement agencies whose officers are trained at the Department of Criminal Justice Training, and the approximately 240 law enforcement trainees who attend the basic training academy at the Department of Criminal Justice Training each 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: No new actions must be taken on behalf of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: The amendment provides additional guidance to the regulated entities.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

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

This amendment is not anticipated to increase implementation or enforcement costs for the Council or for any regulated entity. Generally, the Council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an 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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this regulation does not establish any new fees or increase any current fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not applied 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? KLEC, the Department of Criminal Justice Training, and law enforcement agencies whose officers are trained by Department of Criminal Justice Training.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(c), (f), (h), 15.334(4), 15.440(1)(d)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? 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? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

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: None.

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:120. Professional development in-service training: graduation requirements; recognized courses; records.

RELATES TO: KRS 15.330(1)(f), 15.404(2), 15.440(1)(e)

STATUTORY AUTHORITY: KRS 15.330(1)(h)

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 15.440(1)(e) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all police officers to successfully complete at least forty (40) hours of in-service training each calendar year at a school certified or recognized by the council.] KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to implement KRS 15.310 through 15.404. KRS 15.404(2) requires all peace officers with active certification status to successfully complete forty (40) hours of annual in-service training certified or recognized by the council. KRS 15.440(1)(e) requires local units of government participating in the Law Enforcement Foundation Program Fund to require all

police officers to successfully complete at least forty (40) hours of in-service training each calendar year at a school certified or recognized by the council. This administrative regulation establishes requirements for graduation from an in-service training course, maintenance of in-service training records, procedures for recognizing training at noncertified schools, and procedures for receiving in-service training credit for completion of college courses.

Section 1. In-service Training Graduation Requirements. (1) A trainee in an in-service training course:

(a) Shall participate in the minimum hours prescribed for the course; and

(b) May have excused absences from the course with approval of the director of the certified school or his or her designee.

(2) An excused absence which causes a trainee to miss any of the required hours of in-service training shall be made up through an additional training assignment. A trainee shall not be allowed excused absences from more than ten (10) percent of the hours of an in-service course.

(3) To successfully complete an in-service training course, a trainee shall:

(a) Participate in at least the minimum hours prescribed for the training course;

(b) Successfully complete a graded exercise, or pass the final examination or a reexamination;

(c) Successfully complete all graded training areas and all other assignments, exercises, and projects included in the course; and

(d) Comply with all rules and administrative regulations of the certified school, the fund, and the council.

(4) Final examinations.

(a) In a course that requires a final examination as a part of the curriculum, if a trainee fails to attain a minimum score of seventy (70) percent on a final examination in an in-service course, the trainee may request a second examination.

(b) The request for the second examination shall be made within seven (7) calendar days from the date a notice of failure was mailed to the trainee.

(c) The second examination shall:

1. Contain a completely different set of questions from the first examination;

2. Be administered within twenty-one (21) days from the date of the request; and

3. Be administered at a time and location designated by the supervisor of the in-service program.

(d) A failure of a trainee to meet the minimum reexamination requirements shall constitute a course failure.

Section 2. In-service Training Courses at Recognized Schools.

(1) The council may recognize schools providing in-service training that [which] are not certified by the council.

(2) ~~[A trainee who desires to attend an in-service training course at a school that is not certified shall make a request to the council at least thirty (30) days prior to the first day of the course.]~~

~~(3) The council may grant a request made after the course has been attended only if the request is submitted before the next quarterly meeting of the council. [, but failure to submit the request at least thirty (30) days in advance of the course shall be justification for not recognizing the course.]~~

~~(3) [(4)]~~ The council shall review the request and determine whether the school and the course shall be recognized based upon the following:

(a) The quality and reputation of the training school or institution;

(b) The relationship of the course to the officer's rank and responsibility; and

(c) The unavailability of the course at a certified school.

~~(4) Upon determining [(5) If, upon review of the request, the council determines] that the trainee may attend an in-service training course at a school or institution that is not certified, the council shall notify the trainee's agency and the fund administrator of its action.~~

~~(5) [(6)]~~ A trainee who fails to meet requirements established by the council for attendance at the recognized course (which shall not be less than those prescribed herein for certified schools) shall not have met the requirements of KRS 15.440(1)(e).

Section 3. In-Service Training Credit for Completion of College Courses. ~~The [To enhance the professional development of law enforcement officers in the Commonwealth, the council recognizes the benefit that college courses offer in verbal and written skills, and advancement of general knowledge. Therefore, the] council shall recognize a completed college course as in-service training upon a showing that [if] the conditions established in this section have been [are] met.~~

(1) The course shall be completed at an accredited college or university.

(2) The course shall be a minimum of three (3) semester credit hours.

(3) The officer shall successfully complete the course and receive a passing grade that is the equivalent of a seventy (70) percent or a letter grade of "C", or higher.

(4) The officer shall be an active fund participant or in active peace officer professional standards certification status as defined in KRS 15.386(2) while enrolled in the college course.

(5) The cost of the college course shall be the responsibility of the officer or his or her agency, and shall not be paid through the fund.

(6) An officer shall receive approval from his or her agency head prior to submitting an application to receive in-service training credit pursuant to this section. The agency head shall confirm his or her approval by signing Form 68-2, Application for In-service Training Credit for College Courses.

(7) An officer shall be eligible to receive in-service training credit pursuant to this section once every three (3) years.

(8) An officer who meets all requirements as established in this section shall receive forty (40) hours of in-service training designated with a "pass" score for the year in which the college course was completed.

(9) The receipt of in-service credit pursuant to this section shall not relieve an officer of mandatory training requirements pursuant to federal, state, or local law.

(10) The completed Form 68-2, Application for In-service Training Credit for College Courses shall be sent to the KLEC Executive Director, who shall forward a copy to the fund administrator and the DOCJT Records Section Supervisor.

Section 4. Maintenance of Records. (1) Each trainee who has successfully completed an in-service course conducted by a school recognized or certified by the council (other than the Department of Criminal Justice Training) shall, at the conclusion of the course, have the school complete Form 68-1, Application for Training Credit.

(2) The forms shall be sent to the council for verification and retention. ~~[After verification by the council, one (1) copy of the form shall be sent to the:~~

~~(a) Fund administrator; and~~

~~(b) Trainee's agency.~~

~~(3) All training records required for fund purposes shall be retained by the certified school and a copy shall be sent to the fund administrator.]~~

~~(3) [(4)]~~ All training records shall be available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes.

~~(4) [(5)]~~ All records shall be maintained in accordance with the state records retention and disposal schedules, incorporated by reference in 725 KAR Chapter 1.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 68-1, "Application for Training Credit", 2021~~[June 2014]~~; and

(b) Form 68-2, "Application for In-service Training Credit for College Courses", 2021~~[June 2014]~~.

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Department of Criminal Justice Training, 4449 Kit Carson Drive~~[521 Lancaster Avenue]~~, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Council's website at <https://klecs.ky.gov/>.

MICHAEL "SPIKE" JONES, Chair

APPROVED BY AGENCY: August 5, 2021

FILED WITH LRC: August 10, 2021 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on October 21, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. 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 October 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: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for graduation from an in-service training course, maintenance of in-service training records, procedures for recognizing training at noncertified schools, and procedures for receiving in-service training credit for completion of college courses.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedures for mandatory in-service training.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statutes by establishing the procedures to approve law enforcement officers, telecommunicators, and other persons as having met requirements under the applicable law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the administration of the applicable statutes by detailing the requirements necessary to complete in-service training.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that passing final examinations scores are based on a percentage, clarifies that requests for approval of in-service training from non-certified schools may be made less than 30 days before the course is attended but must be made before the next Council meeting; clarifies language concerning in-service credit for college course by removing surplus language; and removes the requirement that verification forms be sent to the KLEFPF administrator and the trainee's employing agency, since those records are electronically available.

(b) The necessity of the amendment to this administrative regulation: The amendment assists in clarifying the language of the regulation, and provide further guidance for interpretation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment continues to conform to the content of the authorizing statutes by establishing the procedures

to approve law enforcement officers, telecommunicators, and other persons as having met requirements under the applicable law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in making the administrative regulation's language more clear and in removing obsolete requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KLEC and staff; the approximately 10,000 certified peace officers, telecommunicators, and court security officers in Kentucky; and the five law enforcement training facilities.

(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 new action must be taken on behalf of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: The revisions provide additional guidance to the regulated entities.

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the Council or for any regulated entity. Generally, the Council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an 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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this regulation does not establish any new fees or increase any current fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not applied 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 KLEC and staff, law enforcement training facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330(1)(f), 15.404(2), 15.440(1)(e)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? 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? Nothing.

(d) How much will it cost to administer this program for

subsequent years? Nothing.

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: None.

**JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)**

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.3971, 15.400(1), 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council [(KLEC)] to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. KRS 15.440 authorizes the Council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing. (1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q, and a copy of the proposed job task analysis. The agency shall supply:

- (a) The name of the entity that completed the analysis;
 - (b) The date on which the analysis was completed;
 - (c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and
 - (d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.
- (2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

- (a) Credentials and history of the entity conducting the analysis.
 1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.
 2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.
 3. Number and quality of job task analyses completed.
- (b) Methodological approach.
 1. Reasonable, standardized format of the study and the report.
 2. Relative reliability and validity of the study's sampling techniques and practice.
 3. Other considerations that reflect sound practice of the scientific method.
 4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office notify ~~[shall mail a notification to]~~ the agency that either:

1. The application has been received and is complete; or
2. The application is incomplete. The notice that an application is incomplete shall identify [and] the specific information to [which

shall] be supplemented in order to process the application. The agency shall submit ~~[The KLEC office shall receive]~~ the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned, and the agency shall resubmit an application for consideration of its job task analysis and associated agency testing.

(b) The KLEC office Recommendation. Within thirty (30) days of receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests, and the specific reasons supporting a recommendation to reject.

(c) KLEC Review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

1. The reasons for the finding; and
2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures. (1) Each agency participating in certification shall submit ~~[The KLEC office shall receive]~~ a completed KLEC Form Q or KLEC Form tele-Q to the KLEC office ~~[from each agency participating in certification]~~ prior to any applicant testing. ~~[If an agency initiates participation in certification, KLEC Form Q or KLEC Form tele-Q shall be submitted to the KLEC office.]~~ The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall notify ~~[mail a notification to]~~ the agency that the form:

- (a) Has been received and is complete; or
- (b) Is incomplete. The notice that an application is incomplete shall identify [and] the specific information to [which shall] be supplemented in order to process the form. The agency shall submit ~~[The KLEC office shall receive]~~ the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall notify ~~[mail a notice to]~~ the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC, along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC ~~[Peace Officer]~~ Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

(5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet; and
 2. Within thirty (30) days of receipt of the notice of rejection.
- (b) The notice of appeal shall be submitted:
1. In writing ~~[On KLEC Form S]~~; and

2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall also be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunicators, and court security officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.[]

~~(5) An agency may request certification for a peace officer that has completed a non-DOCJT law enforcement basic training by submitting KLEC Form B -- Basic Training Previously Completed (non-DOCJT) to the KLEC Office.[]~~

Section 4. Suitability Minimum Requirements: The minimum requirements and procedures established for KLEC testing by this section shall be followed. (1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, using the KLEC Form H-1 Background Investigation and personal history questionnaire: [~~Form H-2 Personal History Statement~~].

- (a) Biographical history;
- (b) Family history;
- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Criminal history including domestic violence protective orders; and
- (g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

~~(a) The applicant shall be fingerprinted by [The agency shall submit one (1) completed FD-258 FBI Fingerprint Card to] the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.~~

~~(b) The KSP shall forward the results of state and FBI records check to the employing agency.~~

~~(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.~~

~~(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.~~

~~(3) Psychological screening as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d) shall consist of the minimum requirements established by this subsection.~~

~~(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:~~

- 1. Cognitive abilities;
- 2. Personality characteristics; and
- 3. Related constructs, including:
 - a. Integrity;
 - b. Conscientiousness; [~~and~~

~~e. Vocational preference;]~~

~~(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;~~

~~(c) 1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer;~~

~~2. The summary statement shall classify applicants as:~~

~~a. Essentially suitable; ["Suitable";]~~

~~b. May be unsuitable; ["Not suitable";] or~~

~~c. Borderline suitability; and~~

~~3. If an applicant is classified as "borderline suitability" or "may be unsuitable" [not-suitable], the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency; and~~

~~(d) Screening shall be administered in accordance with the "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014 .~~

~~(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.~~

~~(a) Precertification status.~~

~~1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:~~

- a. Bench press;
- b. Sit-ups;
- c. 300 meter run;
- d. Push-ups; and
- e. One and five-tenths (1.5) mile run.

~~2. An applicant shall pass the physical ability test for precertification status if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:~~

~~a. Bench press, based upon a percentage of the recruit's body weight:~~

~~(i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;~~

~~(ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;~~

~~(iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;~~

~~(iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and~~

~~(v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;~~

~~b. Sit-ups:~~

~~(i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;~~

~~(ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;~~

~~(iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and~~

~~(iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;~~

~~c. 300 meter run:~~

~~(i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;~~

~~(ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;~~

~~(iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and~~

~~(iv) 11 points - Recruit shall complete in less than sixty-five~~

- (65) seconds;
- d. Push-ups:
- (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
 - (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
 - (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
 - (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
 - (v) 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and
- e. One and five-tenths (1.5) mile run:
- (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
 - (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
 - (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
 - (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
 - (v) 11 points - Recruit shall complete in ~~less than~~ 975 seconds (16:15) or less ~~[seconds]~~.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve at least nine (9) points on each physical training event.

5. At the sole discretion of the hiring agency, an applicant that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain an overall score of fifty (50), the examinee may attempt the test battery again, in its entirety. This shall be considered a second test administration and not be considered a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status in its entirety.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within ten (10) ~~[five-(5)]~~ days of graduation from law enforcement basic training, which, except for the precertification test score requirements, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;

b. Sit-ups. Nineteen (19) ~~[Eighteen-(18)]~~ sit-ups in one (1) minute;

c. 300 meter run in less than sixty-five (65) seconds;

d. Push-ups. Twenty-five (25) push-ups; and

e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status during the [] training graduation test:

a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;

b. All failed events shall be retested on the same date; and

c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to the physician, nurse practitioner or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician, nurse practitioner or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.

(c) The physician, nurse practitioner or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened and if necessary confirmed using the guidelines as outlined in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 82 Fed. Reg. 7920-1 (Jan. 23, 2017). The screening and confirmatory cutoff concentrations are as follows:

SCREENING	
Marijuana metabolites	50 ng/mL
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL
Codeine / Morphine	2,000 ng/mL
Hydrocodone / Hydromorphone	300 ng/mL
Oxycodone / Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine / Methamphetamine	500 ng/mL
MDMA / MDA	500 ng/mL

CONFIRMATION	
THC/THCA	15 ng/mL
Benzoyllecgonine	100 ng/mL
Codeine	2,000 ng/mL
Morphine	2,000 ng/mL
Hydrocodone	100 ng/mL
Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine	250 ng/mL
Methamphetamine	250 ng/mL
MDMA	250 ng/mL
MDA	250 ng/mL

[using gas chromatography/mass spectrometry (G.C.M.S.) for the following drugs and thresholds for positive indications:

1. THC (marijuana), 20 ng/mL, 5 GC/MS;
2. Amphetamines, ~~to include Methamphetamine and Methylenedioxymethamphetamine~~, 300 ng/mL, 100 GC/MS;
3. Cocaine, 150 ng/mL, 50 GC/MS;
4. Opiates, 300 ng/mL, 150 GC/MS;
5. Barbiturates, 200 ng/mL, 100 GC/MS;
6. Phencyclidine (PCP), 25 ng/mL, 25 GC/MS;
7. Methadone, 300 ng/mL, 100 GC/MS;
8. Oxycodone (Oxycontin), 100 ng/mL, 100 GC/MS;
9. Benzodiazepines, 200 ng/mL, 100 GC/MS; and
10. Propoxyphene, 300 ng/mL, 200 GC/MS;]

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of

Custody.

(7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant~~[using the questions in the KLEC Form I-3, Pre-employment Polygraph Background/Criminal Questions]~~.

(8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.

(9) High school diploma.

(a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall also submit a completed Applicant Education Verification form [affidavit or documentary proof of compliance upon request of the KLEC].

(b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall publish online or otherwise make available [mail] to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC. (1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status: results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening: results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant that leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency. (1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

(a) Passes or fails the test; or

(b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Sixty-five (65) dollars for each psychological screening;

(b) \$100 for each polygraph examination; and

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. The actual approved budget of the governmental unit for the current and the preceding year;

2. The number of certification applicants for the current and preceding year;

3. The actual revenue receipts of the governmental unit for the current and the preceding year; and

4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that either:

1. The application has been received and is complete; or

2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Professional Standards~~[Certification]~~ shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail, ~~to the following address, Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3402.~~

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOJT.

Section 9. Employment Changes. (1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, military, and federal law enforcement and telecommunications basic training. (1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for

Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the Office of Kentucky Law Enforcement Support [KLEC];

(b) The basic training course or academy is a single, stand alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

1. The twenty-four (24) hour legal update Penal Code course;

2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

a. Basic officer skills;

b. Orientation for new police chiefs; or

c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy;

(c) The basic training course or academy is a single, stand alone course; and

~~(d) [A basic training credit of fifty (50) hours for each year of his full-time, peace officer service together with the basic training course hours allows compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and~~

~~(e) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in subsection (2)(a) of this section.~~

(3) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a) 1. The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the Office of Kentucky Law Enforcement Support [KLEC]; or

2. If the basic training course or academy did not correspond with or exceed the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, a basic training credit of fifty (50) hours for each year of his or her full-time, peace officer service together with the basic training course hours shall be granted to allow compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and

(b) The basic training course or academy was a single, stand-alone course.

(4) An applicant to a Kentucky law enforcement agency who

has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

- (a) Federal Bureau of Investigation;
- (b) Bureau of Alcohol, Tobacco, and Firearms;
- (c) Drug Enforcement Administration; or
- (d) United States Secret Service.

(5) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6) An agency may request certification for a peace officer that has completed an out-of-state law enforcement basic training by submitting for the applicant:

(a) A [His] certificate of completion or other official documentation showing completion of basic training;

(b) A [His] transcript of classes for basic training with individual class hours specified; and

(c) Letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying, or other official documentation showing, that the applicant was employed in a full-time capacity as a peace officer for:

1. At least one (1) year; or

2. For three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy.

(7) An applicant to a Kentucky law enforcement or telecommunications agency seeking certification under this section shall not be certified unless he or she has worked in a full-time capacity as a peace officer within five (5) years of applying for certification in Kentucky.

Section 11. Records. (1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. In order to properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall:

(a) Keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority; and

(b) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Suitability Screener~~[Psychological Examination]~~ Approval, indicating that the following testing procedures have been completed:

1. Polygraph;
2. Suitability screening;
3. Drug screen; and
4. Medical examination or history statement.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:

a. A controlled substance as prescribed by a physician; or

b. Any other medication, whether prescribed or not; and

2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

~~(4) The KLEC shall notify [A copy of KLEC Form R shall be mailed to]~~ the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing.~~]~~ The notice shall state the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 13. Compliance. (1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;

(b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", 2021~~[June 2014]~~;

(c) "KLEC Form C - Grandfather Information", 2021~~[July 2006]~~;

(d) "KLEC Form D - All Standards Met", 2021~~[June 2014]~~;

(e) "KLEC Form D-1 – All Standards Met – Inactive to Active Status", 2021~~[June 2014]~~;

(f) "KLEC Form E - Request for Certification for Exempt Officers, March 1, 1999;

(g) "KLEC Form F - Status Update", 2021~~[June 2014]~~;

(h) "KLEC Form G-1 - Medical Examination Report", 2021~~[June 2014]~~;

(i) "KLEC Form G-2 - Medical History Statement", 2021~~[June 2014]~~;

2014];
 (j) "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", 2021[June-2014];
 (k) "KLEC Form H-1 - Background Investigation", 2021[June 2004];
 (l) "~~KLEC Form H-2 - Personal History Statement~~", January 19, 1999;
 (m) "KLEC Form I-1 - Consent for Pre-employment Polygraph Examination", 2021[June-2014];
 (n) "~~KLEC Form I-2 - Pre-employment Polygraph Questionnaire~~", 2021[June-2014];
 (o) "~~KLEC Form I-3 - Pre-employment Polygraph Background/Criminal Questions~~", October 11, 2005;
 (p) "KLEC Form J - JTA Submission", January 19, 1999;
 (q) "~~KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form~~", 2021[July-2006];
 (r) "~~KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form~~", 2021[July-2006];
 (s) "~~KLEC Form L-1 - Code of Ethics~~", 2021[June-2014];
 (t) "~~KLEC Form L-2 - Canon of Ethics~~", 2021[June-2014];
 (u) "~~KLEC Form Q - Agency Submission Form~~", 2021[October-2006];
 (v) "~~KLEC Form Q-3 - Drug Screening Approval~~", 2021[July 2006];
 (w) "~~KLEC Form Q-4 - Polygraph Approval~~", 2021[July 2006];
 (x) "~~KLEC Form Q-5 - Suitability Screener[Psychological Examination] Approval~~", 2021[July-2006];
 (y) "~~KLEC Form tele-Q - Agency Submission Form~~", 2021[June-2014];
 (z) "~~KLEC Form R - Removal from Testing~~", January 19, 1999;
 (aa) "~~KLEC POPS Form S - Notice of Appeal~~", January 19, 1999;
 (x) "~~KLEC Form T-1 - Medical Release - Phase I Testing~~", 2021[June-2014];
 (v) "~~KLEC Form T-1a - Physician's Medical Release Form~~", 2021[June-2014];
 (z) "~~KLEC Form T-2 - Liability Waiver - Phase I Testing~~", 2021[July-2004];
 (aa) "~~POPS Form PT-1 - Physical Agility Test Session Report~~", 2021[January-2003];
 (bb) "~~POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures~~", July 2004;
 (cc) "~~KLEC Physical Fitness Testing Protocols~~", 2021[December-2009]; and
 (dd) "~~KLEC Education Form - Applicant Education Verification~~", 2021[July-2017].
 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council, 4449 Kit Carson Drive [Office—Funderburk Building; Eastern Kentucky University], Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Council's website at <https://klecs.ky.gov/>.

MICHAEL "SPIKE" JONES, Chair

APPROVED BY AGENCY: August 5, 2021

FILED WITH LRC: August 10, 2021 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m.. on October 21, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. 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 October 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: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes approval requirements to show compliance with professional standards to meet certification requirements for law enforcement officers and telecommunicators employed by law enforcement agencies, and court security officers.

(b) The necessity of this administrative regulation: KRS 15.330 requires the Kentucky Law Enforcement Council to set minimum standards for training for certification and approving law enforcement officers and telecommunicators who have met the requirements for certification. This regulation establishes the minimum standards and approval process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330 authorizes the Council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.330(1)(h) and KRS 15.590 authorize the Council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and concerning training, in-service training, and telecommunications practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation gives staff and applicants for certification guidance on the requirements to be approved by the Council.

(2) If 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 various notice requirements and processes; eliminates obsolete forms and practices; updates processes to reflect current terminology and to permit use of current technology for fingerprinting; updates drug-testing processes to reflect contemporary testing practices and cutoff levels; and updates the reciprocity process for officers and telecommunicators coming from other states by removing the basic training service credit for non-military trained persons and allowing reciprocity after three years of full-time law-enforcement work, adding the basic-training service credit for military-trained officers, and setting a five (5) year cap on the number of years out of full-time service for reciprocity.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary due to changes in technology, terminology, and practices, and to assist law enforcement and telecommunication agencies in replacing staff from retirements or being hired by other agencies to meet coverage issues in the community.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330 authorizes the Kentucky Law Enforcement Council to approve law enforcement officers, telecommunicators, and court security officers as having met requirements under KRS 15.310 to 15.510 and 15.530 to 15.590. KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.440 allows the Council to promulgate administrative regulations for approval of basic training credit for out of state basic training and work experience. The amendment addresses the areas authorized by statute over which the Council has authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist individuals in becoming certified peace officers or telecommunicators, and will assist agencies in hiring new staff and replacing staff who retire or are hired by other agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC, the approximately 400 law-enforcement agencies in the Commonwealth, the approximately

10,000 law enforcement, telecommunications, and court security personnel who are required to be certified in the Commonwealth, and any individuals seeking certification as law enforcement, telecommunications or and court security 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: Because many of the changes simply clarify existing practices or remove obsolete practices and forms, no actions will be necessary to comply with the amendment. In terms of reciprocity, law enforcement agencies can choose whether to take advantage of the reciprocity opportunities to hire out of state officers to fill vacancies without having the time constraints for new full basic academy training; to be reciprocally certified, individuals will need to have completed the training or service requirements imposed by the administrative regulation and submit the required forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the reciprocity part of the amendment will result in reduced training costs in terms of salary and benefits paid while the officer would have been attending a full basic training course. Compliance with the remaining amendments should not add any cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The reciprocity amendment will allow agencies to have their officers compliant with professional standards and certification requirements with reduced time and training costs. The remaining parts of the amendments should benefit the law-enforcement and telecommunications agencies, and individual officers by clarifying and modernizing the certification process.

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

(a) Initially: No additional costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the Council or for any regulated entity. Generally, the Council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

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

(9) TIERING: Is tiering applied? No. Tiering was not applied 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 Kentucky Law Enforcement Council and various law enforcement and telecommunications agencies whose employees must be certified.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330, 15.380, 15.590, 15.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(c) How much will it cost to administer this program for the first year? This amendment is not anticipated to increase costs.

(d) How much will it cost to administer this program for subsequent years? This amendment is not anticipated to increase costs.

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:

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:170. Career Development Program.

RELATES TO: KRS 15.310

STATUTORY AUTHORITY: KRS 15.330(1)(d), (h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(d) authorizes the Kentucky Law Enforcement Council [KLEC] to establish and prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and telecommunications (public safety dispatchers). This administrative regulation establishes a Career Development Program for Kentucky certified peace officers and telecommunications (public safety dispatchers).

Section 1. Definitions. (1) "Chief executive" means the highest level position in a law enforcement agency with direct operational and administrative responsibility for the policies and performance of the agency.

(2) "Conceptual skills course" means a course that emphasizes planning, organization, goal setting abilities, strategic orientation, or provides material related to higher order abstractions that force conceptual thinking.

(3) "Executive" means a position in the immediate line of authority under the chief executive who has the delegated responsibility for operational and administrative functions of the agency or division.

(4) "Human skills course" means a course relating to cultural diversity, problem solving, leadership, interpersonal communication, group communication, or training abilities.

(5) "KLEC" means the Kentucky Law Enforcement Council.

(6) "Manager" means a position within law enforcement or public safety dispatch:

(a) Between the executive and supervisor positions; and

(b) Which is responsible for the supervision of supervisory employees, and possibly involving planning, organization, public relations, discipline, or general administrative work.

(7) "Public Safety Dispatch" means telecommunications as described in KRS 15.530-15.590.

(8) "Public Safety Dispatcher" means a telecommunicator as described in KRS 15.530-15.590.

(9) "Supervisor" means a position which is responsible:

(a) For the direct supervision of nonsupervisory personnel; and

(b) Possibly for line duties in law enforcement or public safety dispatch.

(10) "Technical skills course" means a course relating to operational or tactical abilities.

Section 2. Skill Area Determination. (1) Based on the

definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or public safety dispatch course is categorized as a:

- (a) Conceptual skills course;
- (b) Human skills course; or
- (c) Technical skills course.

(2) If a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.

(3) A law enforcement or public safety dispatch course may be categorized in up to two (2) different categories.

Section 3. Application for Career Development Program. A peace officer or public safety dispatcher who wishes to apply for a particular career step certificate shall:

(1) Complete a "Form 1 Participant Commitment Form", which shall include the following:

- (a) Applicant's name and agency;
- (b) Social Security number and date of birth;
- (c) Current rank and full time employee status;
- (d) The program to which the applicant wishes to commit;
- (e) Signature of the applicant; and
- (f) Signature of the applicant's agency head;

(2) Submit one (1) of the following application forms for the specific career development step for which the participant wishes to apply:

- (a) Intermediate Law Enforcement Officer;
- (b) Advanced Law Enforcement Officer;
- (c) Law Enforcement Officer Investigator;
- (d) Law Enforcement Traffic Officer;
- (e) ~~Advanced Deputy Sheriff;~~
- (f) ~~Law Enforcement Supervisor;~~
- (g) ~~Law Enforcement Manager;~~
- (h) ~~Law Enforcement Executive;~~
- (i) ~~Intermediate Public Safety Dispatcher;~~
- (j) ~~Advanced Public Safety Dispatcher;~~
- (k) ~~Public Safety Dispatcher Supervisor;~~
- (l) ~~Public Safety Dispatcher Manager/Director;~~
- (m) ~~Law Enforcement Chief Executive;~~
- (n) ~~Law Enforcement Training Officer;~~
- (o) ~~Law Enforcement Officer Advanced Investigator;~~
- (p) ~~Crime Scene Processing Officer;~~
- (q) ~~Communications Training Officer; [er]~~
- (r) ~~Crime Scene Technician;~~
- (s) ~~School Resource Officer I;~~
- (t) ~~School Resource Officer II;~~
- (u) ~~School Resource Officer III;~~
- (v) ~~Law Enforcement Tactical Officer;~~
- (w) ~~Law Enforcement Canine Officer;~~
- (x) ~~Sheriff Supervisor;~~
- (y) ~~Sheriff Manager;~~
- (z) ~~Sheriff Executive;~~
- (aa) ~~Sheriff Chief Executive; or~~
- (ab) ~~Investigative Public Safety Dispatcher.~~

(3) Include the following information on the application form:

- (a) Applicant's name and agency;
- (b) Social Security number and date of birth;
- (c) Date of employment with current agency;
- (d) Current rank or title and date of promotion to that position;
- (e) Employment history;
- (f) Training history;
- (g) Educational history;
- (h) Signature of program applicant; and
- (i) College and training credit hours applied to the requirements of the particular program to which the applicant wishes to apply; and

(4) Submit an official copy of a transcript or other documentation showing that the applicant has successfully completed the required:

- (a) KLEC-approved or recognized courses; and
- (b) College courses.

Section 4. In-service Training, College, Out-of-state Work Experience, Retroactive Credit.

(1) The KLEC shall approve in-service training before it is applied toward a career development step.

(2) A program participant shall not receive more than one (1) program credit for an in-service training course.

(3) Retroactivity. Participants in the Career Development Program may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.

(4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.

(5) A program participant may apply out-of-state work experience toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5. Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

- (a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and
- (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

- (a) Two (2) years of experience and a bachelor's degree;
- (b) Four (4) years of experience and an associate's degree;
- (c) Four (4) years of experience and ninety-five (95) hours of college credit;
- (d) Five (5) years of experience and eighty (80) hours of college credit;
- (e) Six (6) years of experience and sixty-five (65) hours of college credit;
- (f) Seven (7) years of experience and fifty (50) hours of college credit; or
- (g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:

(1) Complete the Intermediate Law Enforcement Career Step;

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

- (a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;
- (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
- (c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

- (a) Four (4) years of experience and a master's degree;
- (b) Six (6) years of experience and a bachelor's degree;
- (c) Eight (8) years of experience and an associate's degree;
- (d) Eight (8) years of experience and 110 hours of college credit;
- (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
- (f) Ten (10) years of experience and eighty (80) hours of college credit;
- (g) Eleven (11) years of experience and sixty-five (65) hours of

college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 7. Law Enforcement Supervisor Certificate. To demonstrate proficiency in the Law Enforcement Supervisor Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:

(a) Forty (40) hours of technical skills development courses;

(b) Forty (40) hours of conceptual skills development courses; and

(c) Eighty (80) hours in one (1) of the following options of courses:

1. Academy of Police Supervision;

2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or

3. A KLEC-approved or recognized equivalent course; and

(3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a master's degree;

(b) Four (4) years of experience and a bachelor's degree;

(c) Six (6) years of experience and an associate's degree;

(d) Six (6) years of experience and ninety-five (95) hours of college credit;

(e) Seven (7) years of experience and eighty (80) hours of college credit;

(f) Eight (8) years of experience and sixty-five (65) hours of college credit; or

(g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 8. Law Enforcement Manager Certificate. To demonstrate proficiency in the Law Enforcement Manager Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete the:

(a) ~~[Department of Criminal Justice Training]~~ Criminal Justice Executive Development Course;

(b) ~~[Department of Criminal Justice Training]~~ School for Strategic Leadership;

(c) Federal Bureau of Investigation (FBI) National Academy;

(d) University of Louisville Southern Police Institute Administrative Officers Course;

(e) Northwestern University School of Police Staff and Command;

(f) Police Executive Leadership College; or

(g) Another management leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and

(3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a master's degree;

(b) Four (4) years of experience and a bachelor's degree;

(c) Six (6) years of experience and an associate's degree;

(d) Six (6) years of experience and ninety-five (95) hours of college credit;

(e) Seven (7) years of experience and eighty (80) hours of college credit;

(f) Eight (8) years of experience and sixty-five (65) hours of college credit; or

(g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 9. Law Enforcement Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Executive Career

Step, a peace officer shall:

(a) Have active peace officer certification in accordance with KRS 15.386(2);

(b) Successfully complete:

1. Orientation for New Chiefs~~[- offered by the Department of Criminal Justice Training];~~

2. Mandatory Duties of the Sheriff~~[- offered by the Department of Criminal Justice Training];~~

3. ~~[Department of Criminal Justice Training]~~ School for Strategic Leadership;

4. Three (3) Police Executive Command courses~~[- offered by the Department of Criminal Justice Training];~~

5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or

6. Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the courses listed in subparagraphs 1 through 5 of this paragraph;

(c) Successfully complete one (1) of the following:

1. 120 hours of training in conceptual or human skills development; or

2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and

(d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

1. Two (2) years of experience and a bachelor's degree;

2. Three (3) years of experience and sixty (60) hours of college credit; or

3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 10. Law Enforcement Chief Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Chief Executive Career Step, a peace officer shall:

(a) Successfully complete:

1. Orientation for New Chiefs~~[- offered by the Department of Criminal Justice Training];~~

2. Mandatory Duties of the Sheriff~~[- offered by the Department of Criminal Justice Training];~~

3. ~~[Department of Criminal Justice Training]~~ School for Strategic Leadership;

4. Three (3) Police Executive Command courses~~[- offered by the Department of Criminal Justice Training];~~

5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or

6. Another executive leadership course recognized by the KLEC as equal to one (1) of the courses listed in subparagraphs 1 through 5 of this paragraph;

(b) Successfully complete one (1) of the following:

1. 120 hours of training in conceptual or human skills development; or

2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and

(c) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

1. Two (2) years of experience and a bachelor's degree;

2. Three (3) years of experience and sixty (60) hours of college credit; or

3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Chief Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:

(a) Eighty (80) hour Criminal Investigations I course or KLEC-approved or recognized equivalent; and

(b) 120 training hours in investigative courses identified by the KLEC; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Eight (8) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of in-service training, consisting of:

(a) Forty (40) hour Collision Investigation Techniques course or a KLEC-approved equivalent; and

(b) 160 training hours in traffic courses identified by the KLEC; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Eight (8) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. ~~[Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall:~~

~~(1) Have active peace officer certification in accordance with KRS 15.386(2);~~

~~(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:~~

~~(a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;~~

~~(b) Forty (40) hours shall be in technical skills development; and~~

~~(c) Forty (40) hours shall be in human skills development; and~~

~~(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:~~

~~(a) Four (4) years of experience and a master's degree;~~

~~(b) Six (6) years of experience and a bachelor's degree;~~

~~(c) Eight (8) years of experience and an associate's degree;~~

~~(d) Eight (8) years of experience and 110 hours of college credit;~~

~~(e) Nine (9) years of experience and ninety-five (95) hours of college credit;~~

~~(f) Ten (10) years of experience and eighty (80) hours of college credit;~~

~~(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or~~

~~(h) Twelve (12) years of experience and fifty (50) hours of college credit.~~

Section 14.] Communications Training Officer Certificate. To demonstrate proficiency in the Communications Training Officer Career Step, a person shall:

(1) Have active certification as a:

(a) CJS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJS telecommunicator in accordance with KRS 15.560;

(2) Complete the following courses:

(a) Forty (40) hour Communications Training Officer course;

(b) Sixteen (16) hour Communications Training Officer:

Developing a Training Program course;

(c) Eight (8) hour Ethics course; and

(d) A sixteen (16) hour Cultural Awareness course; and

(3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

~~(a) Two (2) years of experience and a bachelor's degree;~~

~~(b) Three (3) years of experience and either twenty (20) hours of college credit or an associate's degree;~~

~~(c) Four (4) years of experience and fifteen (15)[forty-five (45)] hours of college credit;~~

~~(d)[(b)] Five (5) years of experience and ten (10)[forty (40)] hours of college credit;~~

~~(e)[(c)] Six (6) years of experience and five (5)[thirty-five (35)] hours of college credit; or~~

~~(d) Seven (7) years of experience and thirty (30) hours of college credit;~~

~~(e) Eight (8) years of experience and twenty-five (25) hours of college credit; or~~

~~(f) Nine (9) years of experience and twenty (20) hours of college credit].~~

Section 14[Section 15.] Intermediate Public Safety Dispatcher Certificate. To demonstrate proficiency in the Intermediate Public Safety Dispatcher Career Step, a person shall:

(1) Have active certification as a:

~~(a) CJS telecommunicator in accordance with KRS 15.560 or KRS 15.565; [or~~

~~(b) Non-CJS telecommunicator in accordance with KRS 15.560;]~~

(2) Complete fifty-six (56) hours of KLEC-approved public safety dispatch courses; and

(3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

~~(a) Two (2) years of experience and a bachelor's degree;~~

~~(b) Three (3) years of experience and either twenty (20) [thirty (30)] hours of college credit or an associate's degree;~~

~~(c) [(b)] Four (4) years of experience and ten (10) [twenty-five (25)] hours of college credit;~~

~~(d) [(c)] Five (5) years of experience and five (5) [twenty (20)] hours of college credit;]~~

~~(d) Six (6) years of experience and fifteen (15) hours of college credit;~~

~~(e) Seven (7) years of experience and ten (10) hours of college credit; or~~

~~(f) Eight (8) hours of experience and five (5) hours of college credit].~~

Section 15.[Section 16.] Advanced Public Safety Dispatcher

Certificate. To demonstrate proficiency in the Advanced Public Safety Dispatcher Career Step, a person shall:

(1) Have active certification as a[
~~(a) CJS~~ telecommunicator in accordance with KRS 15.560 or

KRS 15.565[; or
~~(b) Non-CJS telecommunicator in accordance with KRS 15.560;~~

(2) Complete the Intermediate Public Safety Dispatcher Career Step;
(3) Complete fifty-six (56) hours of KLEC-approved public safety dispatch courses; and

(4) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree;

(b) Three (3) years of experience and either twenty (20) hours of college credit or an associate's degree;

(c) Four (4) years of experience and fifteen (15) [forty-five (45)] hours of college credit;

(d) [~~(b)~~] Five (5) years of experience and ten (10) [forty (40)] hours of college credit;

(e) [~~(c)~~] Six (6) years of experience and five (5) [thirty-five (35)] hours of college credit[; or

(d) ~~Seven (7) years of experience and thirty (30) hours of college credit;~~

(e) ~~Eight (8) years of experience and twenty-five (25) hours of college credit; or~~

(f) ~~Nine (9) years of experience and twenty (20) hours of college credit].~~

Section 16.[~~Section 17.~~] Public Safety Dispatcher Supervisor Certificate. To demonstrate proficiency in the Public Safety Dispatcher Supervisor Career Step, a person shall:

(1) Have active certification as a[
~~(a) CJS~~ telecommunicator in accordance with KRS 15.560 or

KRS 15.565; [or
~~(b) Non-CJS telecommunicator in accordance with KRS 15.560;~~

(2) Complete the Advanced Public Safety Dispatcher Career Step;
(3) Successfully complete [Leadership 944 or] eighty (80) hours of KLEC-approved public safety dispatch leadership courses; and

(4) Have one (1) of the following combinations of full-time public safety dispatch experience in a supervisory position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree [an associate's degree];

(b) Three (3) years of experience and either twenty-five (25) [fifty-five (55)] hours of college credit or an associate's degree;

(c) Four (4) years of experience and twenty (20) [fifty (50)] hours of college credit;

(d) Five (5) years of experience and fifteen (15) [forty-five (45)] hours of college credit;

(e) Six (6) years of experience and ten (10) [forty (40)] hours of college credit;

(f) Seven (7) years of experience and five (5) [thirty-five (35)] hours of college credit[; or

(g) ~~Eight (8) years of experience and thirty (30) hours of college credit].~~

Section 17.[~~Section 18.~~] Public Safety Dispatcher Manager/Director Certificate. To demonstrate proficiency in the Public Safety Dispatcher Manager/Director Career Step, a person shall:

(1) Have active certification as a[
~~(a) CJS~~ telecommunicator in accordance with KRS 15.560 or

KRS 15.565; [or
~~(b) Non-CJS telecommunicator in accordance with KRS 15.560;~~

(2) Obtain the Public Safety Dispatcher Supervisor Certificate;

(3) Successfully complete [Telecommunications] Executive Development I, II, and III or eighty (80)[120] hours of KLEC-approved public safety dispatch leadership courses; and

(4) Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree;

(b) Three (3) [Four (4)] years of experience and either twenty-five (25) hours of college credit or an associate's degree;

(c) Four (4) years of experience and twenty (20) hours of college credit;

(d) Five (5) years of experience and fifteen (15) [sixty (60)] hours of college credit;

(e) [~~(d)~~] Six (6) years of experience and ten (10) [fifty-five (55)] hours of college credit;

(f) [~~(e)~~] Seven (7) years of experience and five (5) [fifty (50)] hours of college credit[; or

(f) ~~Eight (8) years of experience and forty-five (45) hours of college credit;~~

(g) ~~Nine (9) years of experience and forty (40) hours of college credit; or~~

(h) ~~Ten (10) years of experience and thirty-five (35) hours of college credit].~~

Section 18.[~~Section 19.~~] Law Enforcement Training Officer. To demonstrate proficiency in the Law Enforcement Training Career Step, a peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Have successfully completed the following:

(a) Intermediate Law Enforcement Officer Certificate;

(b) Advanced Law Enforcement Officer Certificate; and

(c) 120 hours of in-service training, which shall include:

1. Police Training Officer course;

2. Field Instructor course; and

3. Crisis Intervention Training or Law Enforcement Response to Special Needs Population; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Eight (8) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 19.[~~Section 20.~~] Law Enforcement Officer Advanced Investigator. To demonstrate proficiency in the Law Enforcement Officer Advanced Investigator Career Step, a peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Successfully completed the following:

(a) Law Enforcement Officer Investigator Certificate; and

(b) 160 hours of electives in investigations courses approved or recognized by the Kentucky Law Enforcement Council; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Eight (8) years of experience and an associate's degree;

- (d) Eight (8) years of experience and 110 hours of college credit;
- (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
- (f) Ten (10) years of experience and eighty (80) hours of college credit;
- (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
- (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 20.~~[Section 21.]~~ Crime Scene Processing Officer. To demonstrate proficiency in the Crime Scene Processing Officer career step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Successfully completed the Kentucky Criminalistics Academy or the National Forensic Academy; and
- (3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
 - (a) Four (4) years of experience and a master's degree;
 - (b) Six (6) years of experience and a bachelor's degree;
 - (c) Eight (8) years of experience and an associate's degree;
 - (d) Eight (8) years of experience and 110 hours of college credit;
 - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
 - (f) Ten (10) years of experience and eighty (80) hours of college credit;
 - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
 - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 21.~~[Section 22.]~~ Crime Scene Technician. To demonstrate proficiency in the Crime Scene Technician career step, a peace officer shall have:

- (1) Active peace officer certification in accordance with KRS 15.386(2);
- (2) Successfully completed the Crime Scene Technician portion of the Kentucky Criminalistics Academy or have completed any of the following courses to equal not less than 200 hours:
 - (a) Bloodstain Pattern Recognition;
 - (b) Forensic Mapping;
 - (c) CAD Zone;
 - (d) Fingerprint Pattern Recognition and Comparison Techniques;
 - (e) Digital Photography;
 - (f) Advanced Latent Fingerprints;
 - (g) Crime Scene Investigation; or
 - (h) Any KLEC-approved course equivalents; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
 - (a) Four (4) years of experience and a master's degree;
 - (b) Six (6) years of experience and a bachelor's degree;
 - (c) Eight (8) years of experience and an associate's degree;
 - (d) Eight (8) years of experience and 110 hours of college credit;
 - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
 - (f) Ten (10) years of experience and eighty (80) hours of college credit;
 - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
 - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 22. School Resource Officer I Certificate. To demonstrate proficiency in the School Resource Officer I Career

Step, a peace officer shall:

- (1) Have active peace officer certification in accordance with KRS 15.386(2) and active school resource officer I certification in accordance with KRS 158.4414;
- (2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
 - (a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and
 - (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
- (3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
 - (a) Two (2) years of experience and a bachelor's degree;
 - (b) Four (4) years of experience and an associate's degree;
 - (c) Four (4) years of experience and ninety-five (95) hours of college credit;
 - (d) Five (5) years of experience and eighty (80) hours of college credit;
 - (e) Six (6) years of experience and sixty-five (65) hours of college credit;
 - (f) Seven (7) years of experience and fifty (50) hours of college credit; or
 - (g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 23. School Resource Officer II Certificate. To demonstrate proficiency in the School Resource Officer II Career Step, a peace officer shall:

- (1) Complete the School Resource Officer I Career Step;
- (2) Have active certification in accordance with KRS 15.386(2) and active school resource officer I and II certification in accordance with KRS 158.4414;
- (3) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
 - (a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;
 - (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and
 - (c) Twenty (20) percent (thirty-two (32) hours) shall be in conceptual skills development; and
- (4) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
 - (a) Four (4) years of experience and a master's degree;
 - (b) Six (6) years of experience and a bachelor's degree;
 - (c) Eight (8) years of experience and an associate's degree;
 - (d) Eight (8) years of experience and 110 hours of college credit;
 - (e) Nine (9) years of experience and ninety-five (95) hours of college credit;
 - (f) Ten (10) years of experience and eighty (80) hours of college credit;
 - (g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
 - (h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 24. School Resource Officer III Certificate. To demonstrate proficiency in the School Resource Officer III Career Step, a peace officer shall:

- (1) Complete the School Resource Officer I and II Career Step;
- (2) Have active certification in accordance with KRS 15.386(2) and active school resource officer I, II and III certification in accordance with KRS 158.4414;
- (3) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:
 - (a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;
 - (b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and

(4) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Eight (8) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 25. Law Enforcement Tactical Officer Certificate. To demonstrate proficiency in the Law Enforcement Tactical Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of in-service training, consisting of KLEC approved tactical courses;

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Eight (8) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 26. Law Enforcement Canine Officer Certificate. To demonstrate proficiency in the Law Enforcement Canine Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of in-service training, consisting of KLEC recognized canine courses;

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Eight (8) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 27. Sheriff Supervisor Certificate. To demonstrate proficiency in the Sheriff Supervisor Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:

(a) Forty (40) hours of technical skills development courses;

(b) Forty (40) hours of conceptual skills development courses; and

(c) Eighty (80) hours in one (1) of the following options of courses:

1. Duties of the Sheriff's Office;

2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or

3. A KLEC-approved or recognized equivalent course; and

(3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a master's degree;

(b) Four (4) years of experience and a bachelor's degree;

(c) Six (6) years of experience and an associate's degree;

(d) Six (6) years of experience and ninety-five (95) hours of college credit;

(e) Seven (7) years of experience and eighty (80) hours of college credit;

(f) Eight (8) years of experience and sixty-five (65) hours of college credit; or

(g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 28. Sheriff Manager Certificate. To demonstrate proficiency in the Sheriff Manager Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete the:

(a) Criminal Justice Executive Development Course; or

(b) School for Strategic Leadership; or

(c) Sheriff's Executive Command Course; or

(d) Federal Bureau of Investigation (FBI) National Academy;

(e) University of Louisville Southern Police Institute Administrative Officers Course;

(f) Northwestern University School of Police Staff and Command;

(g) Police Executive Leadership College; or

(h) Another management leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and

(3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a master's degree;

(b) Four (4) years of experience and a bachelor's degree;

(c) Six (6) years of experience and an associate's degree;

(d) Six (6) years of experience and ninety-five (95) hours of college credit;

(e) Seven (7) years of experience and eighty (80) hours of college credit;

(f) Eight (8) years of experience and sixty-five (65) hours of college credit; or

(g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 29. Sheriff Executive Certificate. To demonstrate proficiency in the Sheriff Executive Career Step a peace officer shall:

(a) Have active peace officer certification in accordance with KRS 15.386(2);

(b) Successfully complete:

1. Orientation for New Chiefs-Sheriffs,

2. Mandatory Duties of the Sheriff,

3 School for Strategic Leadership;

4. Three (3) Police Executive Command courses or three (3)

Sheriff's Executive Command courses;

5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or

6. Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the courses listed in subparagraphs 1 through 5 of this paragraph;

(c) Successfully complete one (1) of the following:

1. 120 hours of training in conceptual or human skills development; or

2. Law Enforcement or Sheriff Management Career Step, plus forty (40) hours training in conceptual or human skills development; and

(d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

1. Two (2) years of experience and a bachelor's degree;

2. Three (3) years of experience and sixty (60) hours of college credit; or

3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Sheriff Executive Career Step.

Section 30. Sheriff Chief Executive Certificate. (1) To demonstrate proficiency in the Sheriff Chief Executive Career Step, a peace officer shall:

(a) Have active peace officer certification in accordance with KRS 15.386(2);

(b) Successfully complete:

1. Orientation for New Chiefs;

2. Mandatory Duties of the Sheriff;

3. School for Strategic Leadership;

4. Three (3) Police Executive Command courses;

5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or

6. Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the courses listed in subparagraphs 1 through 5 of this paragraph;

(c) Successfully complete one (1) of the following:

1. 120 hours of training in conceptual or human skills development; or

2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and

(d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

1. Two (2) years of experience and a bachelor's degree;

2. Three (3) years of experience and sixty (60) hours of college credit; or

3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Sheriff Chief Executive Career Step.

Section 31. Investigative Public Safety Dispatcher Certificate. To demonstrate proficiency in the Investigative Public Safety Dispatcher Career Step, a dispatcher shall:

(1) Have active telecommunications certification in accordance with KRS 15.565 or 15.560;

(2) Have earned the Intermediate and Advanced Public Safety Dispatcher certificates; and

(a) Thirty-two (32) hours of KLEC approved public safety dispatch investigative courses.

(3) Have one (1) of the following combinations of full-time dispatch experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree;

(b) Three (3) years of experience and an associate's degree;

(c) Three (3) years of experience and twenty (20) hours of college credit;

(d) Five (5) years of experience and ten (10) hours of college credit;

(e) Six (6) years of experience and five (5) hours of college credit.

Section 32 [23]. Certificate of Completion. The KLEC shall issue a certificate and uniform lapel pin to a peace officer or telecommunicator upon completion of a career development step.

Section 33[24]. Maintenance of Records. All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

Section 34[25]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Career Development Program Participant Commitment Form," Form 1, 2021[February-2013];

(b) "Intermediate Law Enforcement Officer", Form 2, 2021[February-2013];

(c) "Advanced Law Enforcement Officer", Form 3, 2021[February-2013];

(d) "Law Enforcement Officer Investigator", Form 4, 2021[February-2013];

(e) "Law Enforcement Traffic Officer", Form 5, 2021[February-2013];

(f) ["Advanced Deputy Sheriff", Form 6, February-2013];

(g) "Law Enforcement Supervisor", Form 7, 2021[February-2013];

(g) ["Law Enforcement Manager", Form 8, 2021[February-2013];

(h) ["Law Enforcement Executive", Form 9, 2021[February-2013];

(i) ["Intermediate Public Safety Dispatcher", Form 11, 2021[February-2013];

(j) ["Advanced Public Safety Dispatcher", Form 12, 2021[February-2013];

(k) ["Public Safety Dispatcher Supervisor", Form 13, 2021[February-2013];

(l) ["Public Safety Dispatcher Manager/Director", Form 14, 2021[February-2013];

(m) ["Law Enforcement Chief Executive", Form 15, 2021[February-2013];

(n) ["Law Enforcement Training Officer", Form 16, 2021[February-2013];

(o) ["Law Enforcement Officer Advanced Investigator", Form 17, 2021[February-2013];

(p) ["Crime Scene Processing Officer", Form 18, 2021[February-2013];

(q) ["Communications Training Officer", Form 19, 2021[February-2013]; [and]

(r) ["Crime Scene Technician", Form 20, 2021[February-2013];

(s) "School Resource Officer I", Form 21, 2021;

(t) "School Resource Officer II", Form 22, 2021;

(u) "School Resource Officer III", Form 23, 2021;

(v) "Law Enforcement Tactical Officer", Form 24, 2021;

(w) "Law Enforcement Canine Officer", Form 25, 2021;

(x) "Sheriff Supervisor", Form 28, 2021;

(y) "Sheriff Manager", Form 29, 2021;

(z) "Sheriff Executive", Form 30, 2021;

(aa) "Sheriff Chief Executive", Form 31, 2021; and

(bb) "Investigative Public Safety Dispatcher", Form 32, 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Law Enforcement Council [Department of Criminal Justice Training], Funderburk Building, Suite 401, 4449 Kit Carson Drive [Eastern Kentucky University, 521 Lancaster Road], Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Council's website at <https://klecs.ky.gov/>.

MICHAEL "SPIKE" JONES, Chair

APPROVED BY AGENCY: August 5, 2021

FILED WITH LRC: August 10, 2021 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on October 21, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. 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 October 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: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email katie.george@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the standards and qualifications for the voluntary career development program for certified peace officers and telecommunicators (public safety dispatchers) authorized by KRS 5.330(1)(d), and establishes the process through which certified peace officers and telecommunicators (public safety dispatchers) may participate in and seek career development certificates.

(b) The necessity of this administrative regulation: KRS 15.330(1)(d) vests the Kentucky Law Enforcement Council with the authority to prescribe minimum standards and qualifications for the voluntary career development program for certified peace officers and telecommunicators, including minimum standards for experience, education, and training, and to issue certificates to those meeting the minimum standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the voluntary career development program for certified peace officers and telecommunicators, as authorized by KRS 15.330(1)(d).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the requirements for the voluntary career development program and certificates for certified peace officers and telecommunicators, as authorized by KRS 15.330(1)(d).

(2) If 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 an obsolete career-development category, adds several new career-development categories related to school resource officers, deputy sheriffs, and other law-enforcement personnel, revises existing career development categories to reduce the required experience and education, and removes language that would limit some educational programs to those offered by the Department of Criminal Justice Training.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect new and emerging categories of career options in law enforcement and to provide guidance, under KRS 15.330(1)(d), on career development.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes new certificate categories in the voluntary career development program for certified peace officers and telecommunicators, as authorized by

KRS 15.330(1)(d).

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation gives staff and applicants guidance on obtaining voluntary career development certificates under existing and new certification categories.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It affects the approximately 9,400 law enforcement officers and telecommunicators who may seek career development 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: To obtain a career-development certificate under this administrative regulation and amendment, individuals will have to meet the experience and educational requirements and file the required forms with the Council.

(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): Individuals will be able to obtain certificates in their chosen career development program areas.

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

(a) Initially: No additional costs are anticipated.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the Council or for any regulated entity. Generally, the Council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an 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 applied because this 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 Kentucky Law Enforcement Council and law-enforcement agencies whose employees take advantage of the career development program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330.

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

(a) How much 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 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? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? This amendment is not anticipated to increase costs.

(d) How much will it cost to administer this program for

subsequent years? This amendment is not anticipated to increase costs.

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: none

**KENTUCKY BOARD OF EDUCATION
Department of Education
(Amendment)**

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160~~[159.160]~~ requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. Daily Attendance. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil entry and exit log at each school.

(2) Daily attendance of pupils in middle and high schools shall be determined by taking attendance by class period and maintaining a pupil entry and exit log at each school.

(3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils who are signed out, the pupil entry and exit log shall also include a signature of:

- (a) A parent;
- (b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A pupil may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive, at a minimum, the instruction required pursuant to KRS 157.270;

(e) The pupil has been court ordered to receive educational

services in a setting other than the classroom. A pupil being served through a court order shall receive at a minimum, the instruction required pursuant to paragraph (d) of this subsection;

(f) The pupil has an individual education program (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 7 and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305. A pupil may be counted in attendance for performance-based credit for a class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7; [or]

(h) The pupil participates in a school that is authorized by the commissioner to design and deliver an educational program so that all graduation requirements are based on pupil proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 7[-]; or

(i) For school year 2021-2022, the pupil is in quarantine due to documented possible exposure to COVID-19 or isolation due to COVID-19 infection, in accordance with Centers for Disease Control and Kentucky Department for Public Health guidelines, and is receiving at least the minimum amount of daily instruction required pursuant to KRS 158.060.

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

Section 3. Shortened School Day. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. The time a pupil is in attendance shall be included in calculating the district's average daily attendance.

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school and part of the pupil's education under the direction and control of another public or nonpublic school. The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.

Section 5. Private School Placement. If a local school district, under the provisions of KRS 157.360(7), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of Pupil. (1) If a local school district enrolls in the entry level program a pupil who will not be five (5) years of age

on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(2) If a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.

(3)(a) The local board of education shall have determined that the pupil is eligible for enrollment in the appropriate level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of pupil work samples, including evidence of pupil self-reflection; and
3. Standardized test results.

(b) The team shall be comprised of three (3) members who have knowledge of the pupil's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists.

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.

(d) If a pupil is recommended by the local board of education for accelerated placement into the entry or second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(4) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 7. Due Dates for Certain Reports. (1) The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9) shall be submitted to the department through the statewide student information system within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department through the statewide student information system by June 30 of each year.

Section 8. Nonresident Pupils. (1)(a) A written agreement executed by local boards of education for enrollment of nonresident pupils as provided by KRS 157.350(4)(a) shall be filed in both the attending district and the resident district no later than October 1 of the school year prior to the school year to which it will apply.

(b) The written agreement shall include the specific terms to which the districts have agreed.

(c) A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year covered by the agreement.

(d) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district

and the resident district no later than June 30 of each year.

(2) A list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(c)(b)] and who are not covered by the nonresident agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year.

(3)(a) If an agreement cannot be reached for the enrollment of nonresident pupils as provided in KRS 157.350(4)(a), a local board of education may file an appeal to the commissioner no later than October 15 of the school year prior to the school year to which an agreement would apply.

(b) A local board of education shall file its appeal to the commissioner in person or by mail at the following address: Commissioner of Education; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601. A local board of education filing an appeal to the commissioner shall include written arguments and documents in support of its position.

(c) Upon receipt of an appeal pursuant to KRS 157.350(4)(a), the commissioner shall notify the local boards of education involved in the dispute and provide a deadline not to exceed twenty (20) calendar days for the responding local board of education to file written arguments and documents supporting its position. The commissioner shall issue a written decision settling the dispute within thirty (30) calendar days following the deadline for the responding local board of education to file written arguments and documents supporting its position.

(4)(a) A local board of education may appeal the commissioner's written decision to the state board of education by filing a notice of appeal and request for hearing no later than fifteen (15) calendar days following issuance of the commissioner's written decision.

(b) A notice of appeal and request for hearing from a local board of education shall include:

1. The name of the school district filing the notice of appeal and request for hearing;
2. The case number, if any, assigned to the commissioner's written decision;
3. The date of the commissioner's written decision;
4. A statement of the issues which form a basis for the notice of appeal and request for hearing; and
5. The signature of the local board of education chair or counsel authorized to act on behalf of the local board of education.

(c) A local board of education shall file its notice of appeal and request for hearing in person or by mail at the following address: Kentucky Board of Education; General Counsel; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601.

(5)(a) Upon receipt of a notice of appeal and request for hearing, a notice of hearing pursuant to KRS 13B.050 shall be issued and a hearing officer shall be assigned pursuant to KRS 13B.030.

(b) Following issuance of a notice of hearing and assignment of a hearing officer as set forth in subsection (5)(a) of this section, the hearing officer shall preside over the matter and schedule an administrative hearing pursuant to KRS Chapter 13B to conclude no later than sixty (60) calendar days following the notice of hearing described in subsection (5)(a) of this section.

(c) Following conclusion of administrative hearings not conducted before a quorum of the state board, the hearing officer shall issue a recommended order to the state board of education pursuant to KRS 13B.110.

(d) Parties may file exceptions to the hearing officer's recommended order pursuant to KRS 13B.110.

(e) Following receipt of the hearing officer's recommended order and any exceptions filed by the parties, or following conclusion of the administrative hearing if conducted before a quorum of the state board of education, the state board of education shall issue a final order pursuant to KRS 13B.120.

Section 9. Weather-related Low Attendance Days. (1) The SAAR may:

(a) Substitute the prior year's average daily attendance for up to ten (10) designated weather-related low attendance days; and

(b) Shall constitute certification that the low attendance was due to inclement weather, in accordance with KRS 157.320(17).

(2) Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 10. Nontraditional Instruction Program Health and Safety Closings. (1) The SAAR may:

(a) Substitute the prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(10); and

(b) Shall constitute certification that the low attendance was due to health and safety reasons.

(2) Documentation that the low attendance was due to health and safety reasons shall be retained at the central office.

(3) Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.

Section 11. Original Source of Attendance Data. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, pupil entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W07, W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge, or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(9) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;

(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil is too ill to participate in regular school attendance, local homebound instructional services or hospital

setting instructional services, or if the pupil has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(12) W08 - A pupil withdrawn due to death;

(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(14) W17 - An entry level pupil in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;

(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(17) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil records has been received or enrollment has been substantiated;

(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated or failed to attend on the first day of school in a district but thereafter enrolled in the district;

(20) W25 - A pupil who is at least eighteen (18) years of age and has withdrawn from public school;

(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(22) W27 - A pupil who has withdrawn from school and subsequently received a GED;

(23) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma;

(24) W29 - A pupil who has moved out of state or out of the United States;

(25) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;

(26) C01 - A pupil who completes the school year in the school of the most current enrollment;

(27) G01 - A pupil who graduates in less than four (4) years;

(28) G02 - A pupil who graduates in four (4) years;

(29) G03 - A pupil who graduates in five (5) or more years;

(30) G04 - A pupil who graduates in six (6) or more years; and

(31) NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. Suspension. (1) For a pupil who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial Category Codes. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

(1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(2) Black or African American - A person having origins in any

of the black racial groups of Africa;

(3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

(4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America), who maintains cultural identification through tribal affiliation or community attachment; and

(5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and Transfer Records. (1) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's permanent file.

Section 17. Incorporation by Reference. (1) "Home/Hospital Program Form", October 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner & Chief Learner
LU YOUNG, Chairperson

APPROVED BY AGENCY: August 9, 2021

FILED WITH LRC: August 11, 2021 at 3:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 26, 2021, at 10am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2021. CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed regulation amendment creates an attendance option for public school students in quarantine or isolation due to COVID-19 during the 2021-2022 school year. Under existing regulation, local school districts do not have a mechanism to provide instructional services to and receive funding for students in quarantine or isolation due to the COVID-19 pandemic. Students under quarantine or isolation are simply considered absent under the regulation prior to amendment. 702 KAR 7:125 generally requires in-person attendance in order for students to be included in a district's Average Daily Attendance (ADA) for Support Education Excellence in Kentucky (SEEK) funding purposes. The current regulation contains several exceptions to the in-person attendance requirement. The proposed regulation amendment establishes an exception to the in-person attendance requirement for students in quarantine or isolation due to the COVID-19 pandemic. The

proposed amendment would permit districts to provide instructional services to students in quarantine or isolation and include those students in district Average Daily Attendance (ADA).

(b) The necessity of this administrative regulation: As the 2021-2022 school year quickly approaches and with COVID-19 rates increasing, school districts are expecting a significant number of students to be subject to quarantine or isolation due to exposure or infection throughout the 2021-2022 school year. Currently, students under quarantine or isolation due to the COVID-19 pandemic would be recorded as an excused absence. As such, they are not counted in district ADA, do not receive instructional services, and must make-up missed work. This regulation amendment will allow districts to provide educational services and include those students in the ADA. Given that quarantine may last fourteen days or longer, this amendment seeks to ameliorate lost instructional time and funding for districts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation for school year 2021-2022 provides for an exception to in-person attendance for students subject to quarantine and isolation due to the COVID-19 pandemic when districts provide instructional services in accordance with KRS 158.060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform method of recording pupil attendance.

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

(a) How the amendment will change this existing administrative regulation: For school year 2021-2022 only, this administrative regulation provides for an exception to in-person attendance for students subject to quarantine or isolation due to the COVID-19 pandemic when districts provide instructional services in accordance with KRS 158.060. Under current law, such students would be considered absent and receive no instructional services and districts would lose funding for these students.

(b) The necessity of the amendment to this administrative regulation: As the 2021-2022 school year quickly approaches and with COVID-19 rates increasing, school districts are expecting a significant number of students to be subject to quarantine or isolation due to exposure or infection. Data indicates a significant rise in the number of COVID-19 cases among Kentuckians age 17 and under. Currently, students under quarantine or isolation due to the COVID-19 pandemic are an excused absence. As such, they do not receive instructional services and must make-up missed work. This regulation will allow districts to provide educational services and include those students in the ADA. Given that quarantine may last fourteen days or longer, this amendment seeks to ameliorate lost instructional time and funding for districts.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation for school year 2021-2022 provides for an exception to in-person attendance for students subject to quarantine and isolation due to the COVID-19 pandemic when districts provide instructional services in accordance with KRS 158.060.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes a uniform method of recording pupil attendance.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For school year 2021-2022, this administrative regulation permits school districts to provide instructional services to and receive funding for students subject to quarantine and isolation due to the COVID-19 pandemic. Such students would otherwise be considered absent and not receive instructional services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts would incur some indeterminable cost in providing educational services to students. Costs would be dependent on the number of quarantined or isolated students and how the district chooses to deliver instruction to those students. However, districts would include such students in the district's ADA and receive funding for providing instruction.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts that provide instruction to students in quarantine or isolation due to the COVID-19 pandemic will include such students in the district's ADA and receive funding. These students would otherwise be considered absent. Absent students do not generate funding for a school district.

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

(a) Initially: The cost of the program will depend on the numbers of students placed in quarantine or isolation due to the COVID-19 pandemic as well as whether districts choose to provide educational services. If districts do not provide educational services, they will not be eligible to count the student in ADA. For districts that provide educational services, costs will depend on how the district chooses to deliver instruction.

(b) On a continuing basis: This regulation is only applicable to the 2021-2022 school year and is in response to the COVID-19 pandemic.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 additional fees or funding are anticipated to implement this regulation. However, costs are largely dependent on the number of COVID-19 quarantined or isolated students in school year 2021-2022 and the costs to districts in providing instructional services to those students.

(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 regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies uniformly to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 157.320, 158.060 and 158.070

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

the first full year the administrative regulation is to be in effect. This amendment will permit local school districts to receive funding for students in quarantine or isolation due to the COVID-19 pandemic when they provide educational services to those students. Without this amendment, districts would not receive funding for these type of absent students.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue to a local school district is indeterminable. Revenue will depend on the number on the numbers of students placed in quarantine or isolation due to the COVID-19 pandemic as well as whether districts choose to provide educational services. For districts that provide educational services, costs will depend on how the district chooses to deliver instruction.

(b) How 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 only applicable to the 2021-2022 school year.

(c) How much will it cost to administer this program for the first year? The cost to administer this program during school year 2021-2022 is indeterminable. Without the proposed amendment, students in quarantine or isolation would not receive instructional services and would not be included in ADA. As a result, SEEK funding to districts would decrease. The department anticipates this amendment will result in SEEK being more stable to school districts who provide instructional services during quarantine/isolation.

(d) How much will it cost to administer this program for subsequent years? This amendment is only applicable to the 2021-2022 school year.

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

Revenues (+/-): N/A

Expenditures (+/-): Unknown

Other Explanation: Specific dollar estimates cannot be determined. The cost of the program is indeterminable and will depend on the numbers of students placed in COVID-19 quarantine or isolation during the 2021-2022 school year, as well as, whether and how districts provide educational services to such students.

Education and Workforce Development Cabinet Department of Workforce Investment Office of Vocational Rehabilitation (Amendment)

781 KAR 1:010. Office of Vocational Rehabilitation [Department of Vocational Rehabilitation] appeal procedures.

RELATES TO: KRS 151B.190, 151B.200, 34 C.F.R. Part 361, 29 U.S.C. 722

STATUTORY AUTHORITY: KRS 13B.170, 151B.195(1), 29 U.S.C. 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. 29 U.S.C. 722(c) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation services. Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner to promulgate administrative regulations for the department. This administrative regulation establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

Section 1. Definitions. (1) "Administrative hearing" has the same meaning as KRS 13B.010(2).

(2) "Administrative review" means an informal process through

which the office conducts a review of an office decision to ensure the decision complies with office policy. The review shall be conducted by office personnel not involved in the initial decision.

(3) "Appellant" means an applicant, potentially eligible, or eligible individual who requests an appeal of an office decision in accordance with this section.

(4) "Applicant" means an individual who submits an application for vocational rehabilitation services.

(5) "Branch manager" means the office staff who is responsible for the operations of an office branch.

(6) "Case Record" means the official written record of the vocational rehabilitation case of an applicant, potentially eligible, or eligible individual.

(7) "Competitive integrated employment" has the same meaning as 34 C.F.R. 361.5(c)(9).

(8)[(2)] "Eligible individual" means an applicant for vocational rehabilitation services who the office determines is an individual with a disability who requires vocational rehabilitation services to prepare for, secure, retain or regain employment.

(9)[(3)] "Executive director" means the Executive Director of the Office of Vocational Rehabilitation.

(10) "Hearing officer" is an individual who meets the qualifications set forth in KRS 13B.010(7) and who has knowledge of the laws applicable to the office.

(11)[(4)] "Office" means the Office of Vocational Rehabilitation[and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement].

(12) "Office Appeal Form" is the office form used by an applicant, potentially eligible, or eligible individual to request an appeal of an office decision.

(13) "Potentially eligible individual" means an individual who may be eligible for vocational rehabilitation services, but whose eligibility has not yet been determined.

(14) "Secretary" means the Secretary of the Education and Workforce Development Cabinet.

Section 2. Right to Appeal[Hearing Officer]. (1) The office shall notify every applicant, potentially eligible individual, or eligible individual that the individual has the right to appeal any determination made by the office that affects the provision, denial, reduction, suspension, or cessation of that individual's vocational rehabilitation services.]

(1) To conduct a hearing under this administrative regulation, a hearing officer shall not:

(a) Be an employee of a public agency, other than an administrative law judge, hearing examiner, or employee of an institution of higher education;

(b) Be a member of the Vocational Rehabilitation Council;

(c) Have been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; or

(d) Have personal or financial interest that would be in conflict with the objectivity of the individual.]

(2) The office shall provide to every applicant, potentially eligible individual, or eligible individual:

(a) The procedure for requesting an appeal, including the name and address of office staff to whom a request for appeal shall be submitted; and

(b) The Office Appeal Form.]

(2) To conduct a hearing under this administrative regulation, a hearing officer shall:

(a) Have knowledge of the delivery of vocational rehabilitation services, the federal and state laws and the administrative regulations governing the provision of vocational rehabilitation services; and

(b) Have training with respect to the performance of official duties.]

(3) A request for appeal shall be submitted using the Office Appeal Form and shall be submitted to the office within fourteen (14) days of receipt of written notice of an office decision, or receipt of verbal notice of an office decision, as determined by the date in the case record.

(4) An appellant shall have the right to be represented by an

advocate or attorney at all appellate proceedings, and the appellant shall bear all cost for such representation.

(5) Upon receipt of a request for an administrative hearing, the office shall:

(a) Conduct an administrative review of the decision on appeal prior to the administrative hearing; and

(b) Convene an administrative hearing within sixty (60) days, except that a time extension, not to exceed one year, shall be granted upon agreement by both parties.

(6) During an appeal, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained through:

1. Misrepresentation;

2. Fraud;

3. Collusion;

4. Criminal conduct; or

(b) The appellant requests the action.

Section 3. Administrative Review. (1) Upon receipt of a notice of appeal, the office shall conduct an informal administrative review of the decision.[An applicant or eligible individual may request an informal administrative review conducted by an office staff member from the director of program services or a designee.]

(2) The director or designee shall select a[an] branch manager[administrator from a district] not involved in the action in question who shall conduct the administrative review of the decision within ten (10) days.

(3) The [administrator shall conduct the] administrative review shall be conducted either in person or by teleconference, and the appellant shall be invited to participate.

(4) The branch manager[administrator] shall issue a written a determination within five (5) business days[make a determination] and notify[forward a copy to] the appellant via electronic mail or U.S. Mail[individual and the office within five (5) days of the administrative review].

(5) The applicant or eligible individual shall attend the administrative review and may be represented by an advocate or counsel.]

Section 4. Mediation. (1) The appellant shall have the right to participate in mediation before an administrative hearing is convened[office and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation].

(2) The office shall maintain a list of qualified mediators.

(3) If mediation is requested, the office shall:

(a) Choose a mediator from the list and schedule the mediation for a date prior to an administrative hearing;

(b) Convene the mediation in a location convenient to the office and the appellant, and provide reasonable accommodations if requested;

(c) Bear the cost of mediation; and

(d) Send a representative of the office to the mediation who is authorized to bind the office to an agreement.[The Director of Program Services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.

(4) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation.]

(4)[(5)] The appellant[applicant or eligible individual] shall attend the mediation.

(5)[(6)] Discussions or agreements arising from the mediation[process] shall be confidential and shall not be used as evidence in any subsequent administrative hearing or civil proceeding.

(6) An agreement reached by the parties through mediation shall be documented in writing, signed by both parties prior to the conclusion of the mediation, and a copy shall be issued to both parties.

Section 5. Administrative Hearing[Right of Appeal and Information]. (1) The office shall conduct an administrative hearing in accordance with KRS 13B and Section 2 when the appellant

elects not to participate in mediation, or the mediation did not result in an agreement. ~~[An applicant or eligible individual may appeal to the Director of Program Services determinations made by the office affecting:~~

~~(a) Furnishing of vocational rehabilitation benefits; or
(b) Denial, reduction, suspension, or cessation of vocational rehabilitation services.~~

~~(2) An applicant or eligible individual shall:~~

~~(a) Be informed of the:~~

- ~~1. Entitlements available under this administrative regulation;~~
- ~~2. Right to appeal;~~
- ~~3. Right to be represented by an advocate or counsel; and~~
- ~~4. Names and addresses of office individuals with whom an appeal shall be filed.~~

~~(b) Request an appeal:~~

- ~~1. In writing;~~
- ~~2. By telephone through direct contact with the Director of Program Services or a designee; or~~
- ~~3. On tape, except that a voice mail message shall not constitute a request for a hearing.~~

~~(3) The director of program services or a designee shall convene a hearing within sixty (60) days of a request made pursuant to subsection (1) of this section. Reasonable time extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:~~

~~(a) KRS Chapter 13B; and~~

~~(b) This administrative regulation.~~

~~(4) Pending a final determination of a hearing or other final resolution, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:~~

~~(a) It has evidence that the service was obtained by an applicant or eligible individual through:~~

- ~~1. Misrepresentation;~~
- ~~2. Fraud;~~
- ~~3. Collusion; or~~
- ~~4. Criminal conduct; or~~

~~(b) The applicant or eligible individual, or an authorized representative, requests this action.]~~

Section 6. Client Assistance Program. The office shall advise an applicant, potentially eligible individual, or eligible individual of:

(1) The existence of the Client Assistance Program[created by KRS 151B.225];

(2) The services provided by the program; and

(3) How to contact a program representative.

~~Section 7. Appeal Time and Hearing Procedures. (1) An applicant or eligible individual shall file an appeal:~~

~~(a) Within sixty (60) days of becoming aware, through the exercise of due diligence, of an office determination affecting the provision or denial of vocational rehabilitation services.~~

~~(b) By contacting the Director of Program Services.~~

~~(2) An applicant or eligible individual shall, at the time of requesting a hearing:~~

~~(a) Identify accommodations required; and~~

~~(b) Submit an issue statement for the hearing.~~

~~(3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the office and Statewide Council for Vocational Rehabilitation.]~~

Section 8. Findings and Decision. (1) The hearing officer shall issue a recommended order in accordance with KRS 13B.110.~~[complete and submit to both parties and the Secretary of the Education Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension].~~

(2) Either party shall have the right to submit exceptions to the recommended order to the Secretary as set forth in KRS 13B.110.~~[twenty (20) days from the date the recommended order is mailed within which to file exceptions to the Secretary of the~~

~~Education Cabinet.]~~

~~(3) The Secretary or designee [of the Education Cabinet] shall [consider the record, including the recommended order and any timely exceptions filed to the recommended order.]~~issue the final order in accordance with KRS 13B.120.

~~(4) The Secretary of the Education Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions.]~~

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend at least five workdays prior to the hearing. 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 October 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.

The Kentucky Office of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation ACT of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Office will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all aspects of the meeting. If an interpreter or other auxiliary aid or service is needed, contact Susie Edwards at the address below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the appeal rights guaranteed to vocational rehabilitation applicants and consumers as required by 34 C.F.R. § 361.57.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the appeal rights required by 34 C.F.R. § 361.57.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for vocational rehabilitation applicants and consumers to know their appeal rights and how to exercise those rights. It also provides guidance to OVR staff on how to respond to requests for appeal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the appeal procedures required by federal law.

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

(a) How the amendment will change this existing administrative

regulation: The proposed amendment is made to ensure the regulation strictly complies with federal law, to clarify the agency's use of the administrative hearing process set forth in KRS 13B, and to bring clarity to the multiple options for review of an agency decision.

(b) The necessity of the amendment to this administrative regulation: The changes made to the regulation were needed to comply with federal law and to more clearly define the appeal process.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the appeals process.

(d) How the amendment will assist in the effective administration of the statutes: This provides clarification for staff on the agencies obligations during the process, including the specific timelines as required in federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual with a disability that applies for or receives vocational services, and all vocational rehabilitation staff statewide.

(4) Provide an analysis of how the entities identified in question (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: Vocational rehabilitation applicants or consumers who wish to appeal an agency decision will be required to follow the procedures set forth in the regulation. The agency staff will also be required to follow the procedures set forth when a request for appeal is received.

(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 staff or individuals with disabilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and vocational rehabilitation consumers will have a better understanding of their rights to appeal and the process for asserting those rights. Agency staff will have better guidance on their responsibilities during the appeal process.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

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

regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. § 701 *et seq.*, 29 U.S.C. § 721(a)(5), 34 C.F.R. §§ 361.36, 361.54.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Education and Workforce Development Cabinet Department of Workforce Investment Office of Vocational Rehabilitation (Amendment)

781 KAR 1:020. General provisions for operation of the Office of Vocational Rehabilitation.

RELATES TO: KRS 151B.185, 151B.190, 151B.200, 34 C.F.R. 361.42, 361.49, 29 U.S.C. 722, 723

STATUTORY AUTHORITY: KRS 151B.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 accepts and agrees to comply with federal acts relating to vocational rehabilitation when these acts apply to joint state and federally funded vocational rehabilitation programs. KRS 151B.195(1) requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation establishes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that purpose.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

(2) "Eligible individual" means an individual with a disability who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(3) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

(4) "Office" means the Office of Vocational Rehabilitation and its staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(5) "Relative" means an individual related to another individual by lineage, marriage, or adoption and includes a:

(a) Spouse;

(b) Parent;

(c) Grandparent;

(d) Brother;

(e) Sister;

(f) Son;

- (g) Daughter;
- (h) Grandchild;
- (i) Aunt;
- (j) Uncle;
- (k) Niece;
- (l) Nephew; and
- (m) First cousin.].

~~(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment.]~~

Section 2. Employees' Request for Services.

(1) An employee of the office who wishes to request rehabilitation services shall advise the Director of Field[Program] Services or a designee.

(2) The Director of Field[Program] Services or a designee and the employee shall select a counselor to take the request for services. If practicable, the counselor shall be located in an adjacent district to the district in which the employee resides.

Section 3. Employees' Relatives' Request for Services.

(1) An employee of the office shall not take a request for services or provide vocational rehabilitation services to a relative.

(2) The relative shall be referred to the Director of Field[Program] Services or a designee.

(3) The Director of Field [Program] Services or a designee and the individual shall identify a staff member who is not a relative to take the request for services and to provide services as deemed appropriate.

Section 4. Legal Fees. The office shall not be responsible for any fees incurred by an applicant or eligible individual for legal services.

Section 5. Payment Rates for Purchased Services.

(1) A service vendor shall not charge or accept from the applicant, eligible individual or a relative payment for services unless the amount of the charge or payment is first presented to the office.

(2) Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services shall be provided.

Section 6. Potentially Terminal Illness. Services shall not be provided to individuals with a potentially terminal illness unless:

- (1) There is a favorable medical prognosis for recovery; or
- (2) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(a) If surgery, chemotherapy, nuclear medical treatment, or similar ancillary medical service is expected to cure the condition, it may be provided as with another medical problem.

(b) If the attending physician feels the prognosis is guarded, the office shall request a letter indicating the individual's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

Section 7. Second Opinions.

(1) The office may seek a second opinion from a qualified practitioner before determining eligibility or before authorizing services.

(2) If the office determines that eligibility is not met or does not authorize services, an individual may utilize the appeals process established in 782 KAR 1:010.

Section 8. Self-employment Enterprises. The requirements established in this section shall be met prior to planning for self-employment for an eligible individual.

(1) An eligible individual shall undergo an assessment to determine work skills[potential, including mental and physical abilities, and] interests, interpersonal skills, related functional capacities[aptitudes, personality traits] and other pertinent characteristics as prescribed by the office.

(2) An eligible individual shall participate in prevocational and small business training as prescribed by the office.

(3) An eligible individual shall obtain any required license, permit, certificate, or lease, and be in conformity with all federal and state laws and local ordinances to commence an enterprise.

(4) An eligible individual seeking to develop a self-employment[self-employment] enterprise requiring start up costs of more than \$1,000 shall:

- (a) Complete a feasibility study; and
- (b) Submit a business plan and have it approved by the office prior to provision of services. The business plan shall consist of the following:

- 1. Executive summary;
- 2. Description of product or service;
- 3. Assessment of available consumers to be served;
- 4. Competitors currently in operation in the industry;
- 5. Marketing plan;
- 6. Costs of production;
- 7. Management details and structure; and
- 8. Detailed financial analysis.

(5) The office shall not be the sole source of capitalization for a self-employment enterprise with start up costs of \$5,000 or more.

(a) In addition to requirements under subsection (4), an eligible individual seeking financial assistance with start up costs of \$5000 to \$10,000 shall contribute fifty (50) percent of the cost in excess of \$5,000 either in capital or documented value of existing equipment used in the daily operation of the business[in-kind resources] and ninety (95) percent of the cost in excess of \$10,000.

(b) An eligible individual shall provide documentation that the assets necessary for the required financial participation are in place prior to provision of services by the office.

(6) The total office expenditures toward the start up costs for a self-employment[self-employment] enterprise shall not exceed \$10,000 unless:

- (a) All provisions of subsections (1) through (5) of this section are met; and
- (b)1. The nature of the individual's vocational rehabilitation needs make it necessary that the service be provided;
- 2. The denial of the service will prohibit the individual from achieving the vocational goal; or
- 3. The provision of the service will result in a cost savings to the office.

Section 9. Sex Change. Office funds shall not be used to pay for sex change surgery.

Section 10. Tools and Equipment. The eligible individual shall return tools, equipment, and supplies to the office when no longer used for the employment outcome.

Section 11. Training. Postsecondary training shall be provided for an eligible individual pursuant to this section.

(1) Except as provided in subsections (3) and (4) of this section, tuition and initial registration fees provided to the training facility of the eligible individual's choice shall not exceed those of the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation. If there is no similar program in the state, the amount of support is determined by the current fee for service memo.

(2) The Director of Field[Program] Services or a designee may make exceptions to the limitations provided by subsection (1) if it is clearly demonstrated that exceptions are necessary to achieve the employment outcome as defined in 34 C.F.R. 361.5(b)(16).

(3) The office shall provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services including:

- (a) Interpreting services;
- (b) Note-taking services; and
- (c) Tutoring services.

(4) Other postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services shall be used if the total cost of attendance does not exceed the

total cost of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

(5) Training shall be purchased only from training facilities that are accredited or licensed by accrediting or licensing bodies and which comply with all applicable state and federal requirements.[]

~~(6) Training shall be provided only to attain entry level of the employment outcome.[]~~

~~(6)[7]) An eligible individual planning to attend a postsecondary training facility shall apply for all financial assistance available through the training facility.~~

(7)(a) An eligible post-secondary student shall:

1. Maintain full-time status as defined by the institution;

2. Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; or

3. Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year;

4. All coursework shall facilitate the achievement of positive outcomes.

5. By the end of the second term or semester and throughout each subsequent term or semester, the student shall achieve the higher or:

(a) An overall "C" grade average; or

(b) Standing required for admission, licensure, or certification.

6. An exception to a requirement established in subsection (1) or (4) of this section shall:

(a) Be granted if the student:

1. Has a need or circumstance that renders him unable to meet the requirement; and

2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.

(b) Not be granted for the requirements established in subsection (5) of this section for a period beyond one (1) semester.

(7) The student shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

(8) If the student does not maintain the standards of this section, the counselor shall:

(a) Terminate service at the institution of higher education; and

(b) Simultaneously notify the student of the appeal procedure established in KRS 138.170.

(9) A service terminated under subsection (12) of this section shall be reinstituted if the student:

(a) Successfully appeals the counselor's decision, in accordance with KRS 138.170; or

(b) Subsequently meets the standard under which the service was terminated.

Section 12. Computer Hardware and Software Purchases.

(1) Except as provided in subsection (2) of this section or in Section 13 of this administrative regulation, the office shall not purchase a computer, microcomputer, other hardware or software for the personal use of an applicant or eligible individual.

(2) The office shall consider the provision or upgrade or replacement of computer hardware and software if:

(a) 1. The equipment is essential to compensate for the limitations caused by the disability; or

2. The equipment is required for the eligible individual to achieve or maintain a vocational objective of competitive employment; and

(b) One (1) of the following criteria are met:

1. The equipment is required for vocational preparation;

2. The equipment is required to perform the job and no provision is made by the employer to supply the equipment; or

3. The equipment enables an eligible individual to become competitive with nondisabled employees performing the same duties.[]

~~Section 13. Second Time Upgrades or Replacements. (1) Except as provided in subsection (2) of this section, the office shall~~

~~not provide more than one (1) computer upgrade or replacement per individual.~~

~~(2) The office shall approve a second time upgrade or replacement if:~~

~~(a) The eligible individual has demonstrated a two (2) year continuous work history; and~~

~~(b) The eligible individual's employer attests that the upgrade or replacement is needed to maintain employment.[]~~

Section 13[14]. Medical treatment [Transplants or Implants]. A medical treatment or [transplant or implant] procedure which is experimental or which does not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the office.

Section 14[15]. Vehicle Purchase. The office shall not purchase a vehicle unless the occupation of the eligible individual requires a vehicle as occupational equipment.[]

~~Section 16. Visual Impairments. An eligible individual with a secondary disability of visual impairment shall be served if another impairment, other than visual, results in a more substantial impediment to employment.[]~~

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend at least five workdays prior to the hearing. 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 October 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.

The Kentucky Office of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation ACT of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Office will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all aspects of the meeting. If an interpreter or other auxiliary aid or service is needed, contact Susie Edwards at the address below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians by establishing general criteria for the provision of these services. These services are specifically the provision of services mandated by Section 723 of the Rehabilitation

Act and regulation, 34 C.F.R. § 361.49(b)(1).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of Section 723 of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49(b)(1).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of self-employment services as set out in, and mandated by, Section 723 of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49(b)(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of self-employment services to applicants and eligible individuals with disabilities as required by Section 723 of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49(b)(1).

(2) If 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 are made to adapt the regulations to provide better guidance to individuals with disabilities and to provide for more efficient use of limited agency resources. The revisions enhance and more clearly set out expectations and requirements that individuals with disabilities have regarding provision of self-employment services.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Self-employment services are a vital part of vocational rehabilitation services and the agency has found that its resources are increasingly limited for this program. The changes made to the regulation were needed to more clearly define what can be provided to each applicant and eligible individual with disabilities and when it could be provided.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing self-employment services to applicants or eligible individuals as necessary for the achievement of the employment outcome.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to individuals with disabilities on what is required to obtain self-employment services, when those services can be provided, and what continuing obligations the consumer may have.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual with a disability seeking vocational rehabilitation self-employment services to assist in the achievement of an employment outcome, all vocational rehabilitation staff statewide that assist disabled individuals with disabilities seeking self-employment 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: Agency staff will only have to apply the regulations as written, ensuring that the monetary limits are applied correctly. Applicants or eligible individuals with disabilities may be required to provide for more financial resources as the cost the self-employment service increases as a result of this amendment. The amendments also provide more specific guidance to clear up any ambiguities and to ensure that resources are used efficiently.

(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 the staff affected. Applicants or consumers with disabilities will be required to provide more of the funding for self-employment services that exceed \$5,000.00.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated that agency staff will be able to provide self-employment services to a larger pool of

applicants and consumers. Applicants and eligible individuals with disabilities will have a better understanding of the requirements for obtaining self-employment services and what is expected of them because the amended regulations provide more specific guidance than what previously existed.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What 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 and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. § 701 et seq., 29 U.S.C. § 723(b)(1), 34 C.F.R. § 361.49.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**Education and Workforce Development Cabinet
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)**

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 C.F.R. 361.36, 361.53, 361.54, 29 U.S.C. 721(a)(5), (15), (21)(A)

STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 29 U.S.C. 709(c), 34 C.F.R. 361.36, 361.54

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195(1) requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. 34 C.F.R. 361.36(c) requires the office to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 C.F.R. 361.36(d) establishes federal guidelines for the imposition of an order of selection. 34 C.F.R. 361.54(b) authorizes the office to consider an individual's financial need for vocational rehabilitation services. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions. (1) "Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services.

(2) "Executive director" means Executive Director of the Office of Vocational Rehabilitation.

(3) "Individual with a most significant disability" means an individual who has a [significant] disability that limits two or more areas of functional capacity~~[and who:~~

~~(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or~~

~~(b) Has serious limitations in four (4) or more functional capacities in terms of an employment outcome].~~

(4) "Functional capacity" means the capacity to perform tasks required in employment including:

- (a) Mobility;
- (b) Communication;
- (c) Self-care;
- (d) Self-direction;
- (e) Interpersonal skills;
- (f) Work tolerance; or
- (g) Work skills.

(5) "Office" means the Office of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(5) "Non-significant disability" means a disability that does not limit a functional capacity.

Section 2. Economic Need. (1) Economic need shall be considered in determining whether to grant vocational rehabilitation services.

(2) The executive director shall exempt services from the economic needs test if the office is able to provide services to all eligible individuals with significant disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 34 C.F.R. 361.53.

(3) An economic needs test as established in subsection (5) of this section shall be applied as a condition for furnishing the following vocational rehabilitation services:

- (a) Physical and mental restoration services;
- (b) Tuition and registration fees for vocational or college training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) Occupational licenses, tools, equipment, or initial stock (including livestock) or supplies;

(g) Postemployment services except as provided in subsection (4)(a)-(m) of this section;

(h) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of employment outcomes;

(i) Initial vehicle and property modifications in excess of \$10,000;

(j) Second or subsequent vehicle modifications regardless of cost;

(k) Vehicle modification repair or upgrades; or

(l) Hearing aid in excess of \$1,000.

(4) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance;

(c) Placement;

(d) Services provided by staff at state-owned and operated rehabilitation facilities;

(e) Rehabilitation technology except as specifically provided in subsection (3) of this section;

(f) Communication assistance in the individual's native language;

(g) Books, supplies, tools, or equipment for vocational or other training;

(h) Supported employment;

(i) Interpreter services for the deaf;

(j) Reader services for the blind;

(k) Personal assistance services;

(l) Tutors, note takers, or assistive technology education aids; or

(m) Other training, including driver training, on-the-job training, job coaching, job development, or job training.

(5) The office's economic needs test shall be based on the most current Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce. If the individual has a monthly income that exceeds 100 percent of the most current median gross income, the individual shall apply the excess income to rehabilitation services necessary to achieve the employment goal except as provided for in 34 C.F.R. 361.54.

Section 3. Order of Selection. If the executive director determines that the office shall be unable to provide services to all eligible applicants, the office shall implement the order of selection on a state-wide basis. (1) An eligible individual previously declared eligible for and receiving vocational rehabilitation services under an individualized plan for employment shall not be affected if the office implements an order of selection.

(2) The order of selection shall not regulate the provision of information or referral services.

(3) On implementation of the order of selection, the office shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) An applicant shall be declared eligible or ineligible as appropriate.

(6)(a) An eligible individual entering accepted status after implementation of the order of selection shall be assigned to a priority category.

(b) If the priority category is open, the individual shall be served.

(c) If the priority category is closed, the individual's case shall be held on a waitlist in accepted status until the priority category assigned is opened or the order of selection is lifted.

(7) The order of selection shall permit immediate

reclassification into a higher priority category if circumstances justify the reclassification.

(8) If the office is unable to provide services to all eligible individuals with significant disabilities, the office shall serve eligible individuals with a most significant disability first and then serve eligible individuals with a significant disability on a first-applied, first-served basis, as established by the date of application within a category. If funds become available, the executive director and Statewide Council for Vocational Rehabilitation shall adjust the priority categories to be served as appropriate to provide services to as many consumers as funds allow.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection shall have ~~[five-(5)]~~ priority categories as follows:

(a) Priority Category I - eligible individuals with a most significant disability that limits three (3) or more functional capacities;

(b) Priority Category II - eligible individuals with a most significant disability that limits two (2) functional capacities~~[who have serious limitations in three (3) functional capacities]~~;

(c) Priority Category III - eligible individuals with a most significant disability that limits (1) one functional capacity~~[who have serious limitations in two (2) functional capacities]~~;

(d) Priority Category IV - Eligible individuals with a non-significant~~[significant]~~ disability~~[who have serious limitations in one (1) functional capacity; or~~

~~(e) Priority Category V -- eligible individuals with a nonsignificant disability]~~.

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky.

Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend at least five workdays prior to the hearing. 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 October 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.

The Kentucky Office of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation ACT of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Office will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all aspects of the meeting. If an interpreter or other auxiliary aid or service is needed, contact Susie Edwards at the address below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the order of selection of services and financial need provided for in Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.36, 361.54.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.36, 361.54.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of rehabilitation services as set out in, and mandated by, Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.36, 361.54.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitation services that establish eligibility priorities, order of selection and economic needs test to applicants and eligible individuals with disabilities as required by Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.36, 361.54.

(2) If 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 is made to align the regulation from the recent merger of the Office of the Blind and the Office for Vocational Rehabilitation. This includes changes to the priority order for eligibility, reducing the number of priority categories which will enhance eligibility for individuals with disabilities in terms of order of selection. This will provide better guidance to individuals with disabilities and clarify the provision of services for more efficient use of limited agency resources.

(b) The necessity of the amendment to this administrative regulation: The changes made to the regulation were needed to more clearly define the order of selection procedures and eligibility requirements for receiving services.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of eligibility and order of selection for providing rehabilitation services to applicants or eligible individuals as necessary for the achievement of a competitive integrated employment outcome.

(d) How the amendment will assist in the effective administration of the statutes: This provides clarification for staff to determine eligibility for individuals with a disability. This amendment provides more specific guidance to individuals with disabilities on what is required to be eligible and obtain vocational rehabilitation services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual with a disability that applies for vocational services to assist in the achievement of a competitive integrated employment outcome, and all vocational rehabilitation staff statewide that assist disabled individuals with 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: Agency staff will not have any additional requirements as a result of this amendment. Individuals with a disability will have no different expectations or requirements when applying for services.

(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 staff or individuals with disabilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both agency staff and applicants and eligible individuals with disabilities will have a better understanding of the requirements for eligibility for obtaining rehabilitation services to achieve a competitive integrated employment outcome.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. § 701 et seq., 29 U.S.C. § 721(a)(5), 34 C.F.R. §§ 361.36, 361.54.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Vocational Rehabilitation (Amendment)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723, 34 C.F.R. 361.5(b)(11), 361.42, 361.45, 361.46

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation prescribes the requirements for the provision of rehabilitation technology services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions.

(1) "Certified driver rehabilitation specialist" means a driver rehabilitation specialist who has obtained certification to provide services from the Association for Driver Rehabilitation Specialists.

(2) "Driver evaluation" means a clinical and behind-the-wheel evaluation by a certified driver rehabilitation specialist to identify an eligible individual's driver rehabilitation needs to allow that person to drive independently.

(3) "Driver rehabilitation specialist" means an individual who plans, develops, coordinates, and implements driver rehabilitation services for individuals with disabilities.

(4) "Driver training" means behind-the-wheel instruction required to teach an individual with a disability to drive with or without vehicle modifications.

(5) "Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(6) "Extended driver evaluation" means additional evaluation necessary in those cases where an individual's ability to drive cannot be determined after a driver evaluation.

(7) "Family" means spouse, children, parents, grandparents, or siblings.

(8) "Individualized plan for employment" means a written plan for a specific employment outcome as required by 34 C.F.R. 361.46.

(9) "Office" means the Office of Vocational Rehabilitation and its staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(10) "Rehabilitation technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.

(11) "Structural addition" means any improvement to real property that would increase the square footage or footprint of the property.

Section 2. Driver Rehabilitation Technology Services.

(1) Driver rehabilitation technology services may be provided if:

(a) Personal transportation is required to meet the job goals specified on the individualized plan for employment;

~~[(b) Other modes of transportation that would enable the eligible individual to effectively meet the vocational goal as stated in the individualized plan of employment, such as public transportation, are not available];~~

~~[(b)]~~[(c)] The individual meets the economic need qualifications established in 781 KAR 1:030; and

~~[(c)]~~[(d)] The individual is within a category that is presently being served in the Order of Selection as established in 781 KAR 1:030.

(2) Driver training and extended driver evaluation may be provided if:

(a) The services are recommended by a certified driver rehabilitation specialist;

(b) If vehicle modification is required, the applicant or eligible individual meets the criteria for vehicle modification, as established in Section 3 of this administrative regulation; and

(c) The applicant or eligible individual agrees to obtain additional practice as recommended by a certified driver rehabilitation specialist.

(d) The applicant or eligible individual must currently own or have access to an appropriate vehicle upon completion of driver's training.

(3) Driver rehabilitation technology services may be provided to an applicant or eligible individual who does not meet the requirements of subsection (2) of this section if the Director of Field Services~~[Program Services]~~ or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 3. Vehicle Modification Services.

(1) Modification of a private vehicle shall be authorized if the eligible individual:

(a) Completes a driver evaluation and vehicle modification assessment by a rehabilitation technology specialist; and

(b) Obtains a vehicle modification prescription from a certified driver rehabilitation specialist.

(2) Modification of a private vehicle shall be provided on the most cost-effective vehicle necessary for the individual's personal transportation for employment, using the most cost-effective means of modification.

(3) Recoverable, nonpermanent modifications shall be provided for private vehicles if available and cost-effective.

(4) A vehicle modification shall not be performed on a vehicle other than that recommended by a certified driver rehabilitation specialist, unless:

(a) The vehicle can be modified to meet the individual's needs; and

(b) The individual assumes all costs associated with the modification of the vehicle in excess of the cost of modification of the recommended vehicle.

(5) An eligible individual shall obtain a valid Kentucky operator's license before a vehicle modification to allow the individual to drive the vehicle will be approved.

(6) A vehicle modification costing in excess of \$5,000 shall not be delivered to the eligible individual unless the eligible individual provides proof of insurance for the replacement cost of the vehicle and vehicle modifications.

(7) A vehicle modification costing in excess of \$10,000 shall not be provided unless the eligible individual:

(a) Has a vocational objective of competitive employment;

(b) Is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months; and

(c) The Director of Field Services~~[Program Services]~~ or designee determines that the modification has a direct relationship to the employment objective and that failure to provide the modification would prevent the successful achievement of the employment objective.

(8) Vehicle modifications in excess of \$10,000 shall not be provided on a used vehicle unless:

(a) The vehicle is no more than two (2) years old;

(b) The odometer on the vehicle reads no more than 50,000 miles; and

(c) A rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification.

(9) Vehicle modifications shall not be performed on a leased vehicle unless:

(a) A rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification;

(b) Written permission for the specific modification is obtained from the leasing company; and

(c) Recoverable, nonpermanent equipment is used.

(10) The eligible individual shall be solely responsible for providing maintenance, repair, and upkeep to the modifications as specified in any relevant warranties.

(11) The eligible individual shall pay for any maintenance, service, and repairs for modifications not under warranty except as provided in Section 4(2) of this administrative regulation.

Section 4. Upgrade and Repair of Vehicle Modifications.

(1) An upgrade to a vehicle modification shall not be provided unless:

(a) The upgrade is required due to a medically documented change in status or function that necessitates a change in driving equipment or vehicle chassis; and

(b) The eligible individual is employed in a competitive integrated employment setting.

(2) If the vehicle upgrade involves the purchase of a driving system, the vehicle shall be inspected by a rehabilitation technology specialist and found:

(a) To be appropriate for the proposed modification; and

(b) To meet all manufacture requirements for the proposed driving system.

(3) A repair to a vehicle modification shall be provided if:

(a) The eligible individual is currently competitively employed in an integrated setting, as defined in 34 C.F.R. 361.5(b)(11);

(b) The repair is not required as a result of the eligible individual's negligence, misuse, abuse of the equipment, or failure to provide proper maintenance of the equipment;

(c) The eligible individual provides the office with maintenance records for the vehicle and vehicle modifications; and

(d) A rehabilitation technology specialist:

1. Inspects the maintenance records of the vehicle and vehicle modifications;

2. Determines that the maintenance has met manufacturer requirements;

3. Inspects the vehicle and modifications; and

4. Determines that is reasonable to repair the modification.

(4) An upgrade or repair to a vehicle modification costing in excess of \$10,000 shall not be provided unless the Director of Field Services~~[Program Services]~~ or designee determines that failure to provide the update or repair would prevent the successful maintenance of competitive employment or would result in a significant cost savings to the office.

(5) An upgrade or repair may be provided to an eligible individual who does not meet the requirements of this section if the Director of Field Services~~[Program Services]~~ or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 5. Repeat Vehicle Modifications.

(1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.

(2) The office shall provide a repeat vehicle modification if:

(a) The eligible individual is currently working in an integrated competitive employment setting~~[competitively employed]~~, as defined in 34 C.F.R. 361.5(b)(11);

(b) The eligible individual has a five (5) year work history since the last modification and has been working consistently for a minimum of two (2) years;

(c) The previously modified vehicle has at least 105,000 additional miles on it since the last modification;

(d) A rehabilitation technology specialist inspects the vehicle and modifications and recommends replacement of the vehicle or modifications;

(e) The eligible individual provides the office with a maintenance record for the vehicle and modifications that demonstrates that the maintenance has been provided according to manufacturer requirements;

(f) The eligible individual completes a driver evaluation by a

rehabilitation technology specialist and obtains a vehicle modification prescription from the specialist; and

(g) The Director of Field [Program] Services or designee determines that failure to provide the repeat modification will prevent successful maintenance of competitive integrated employment or would result in a significant cost savings for the office.

Section 6. Property Modification.

(1) Permanent, nonrecoverable modification to a private home, business, or property may be provided if:

(a) A qualified rehabilitation counselor determines it is essential to achieve the employment objective of the eligible individual;

(b) The eligible individual meets economic needs qualifications established in 781 KAR 1:030;

(c) A qualified rehabilitation counselor determines that failure to provide the modification will preclude the successful achievement of the employment goal;

(d) A property modification assessment is completed by a rehabilitation technology specialist;

(e) The eligible individual or family member owns the property to be modified and is current on any mortgage payments;

(f) The eligible individual has not received permanent, nonrecoverable modifications to a home from the office in the past; and

(g) The eligible individual is within a category that is presently being served in the order of selection as established in 781 KAR 1:030.

(2) Property modifications in excess of \$30,000 or twenty (20) percent of the Property Value Administrator (PVA) assessment value of the home or property, whichever is less, shall not be provided.

(3) Property modifications shall be limited to the most cost effective means of safely addressing the disability needs of the eligible individual as required for employment and shall:

(a) Be recoverable, nonpermanent modifications, if possible;

(b) Be cost effective;

(c) Provide access to one (1) entrance to and exit from the home, business, or property;

(d) Provide access to entrance to and exit from one (1) bathroom area and use of the facilities in that bathroom;

(e) Provide access to entrance to and exit from one (1) bedroom area; and

(f) Allow access to corridors necessary to access the bathroom and entrance and exit area of the property.

(4) Property modifications shall not be provided to homes or properties purchased within the last two (2) years unless there is medical documentation to support a finding that there has been a significant change in status or function of the eligible individual that has occurred since the initial purchase of the property, and that finding could not have been anticipated when the home or property was purchased.

(5) Property modifications shall not include structural additions to existing properties or the purchase of new property.

(6) The office shall not restore modified property to its original condition or upgrade areas of the property not affected by the modification into compliance with current local building codes.

(7)(a) All changes or additions to the recommendations of the rehabilitation technology specialist shall be approved, in writing by the rehabilitation technology specialist; and

(b) The cost of all changes or additions shall be assumed by the eligible individual.

(8) The eligible individual shall provide maintenance, repair, and upkeep to the modifications as required for relevant warranties.

(9) The eligible individual shall be solely responsible for maintenance, service, and repairs for modifications not under warranty.

(10) Property modifications shall be provided to an eligible individual that does not meet all the requirements of this section if the Director of Field[Program] Services or designee determines that failure to provide the modification would prevent the successful achievement of the vocational objective or would result in a

significant cost savings to the office.

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 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.

The Kentucky Office of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Office will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all aspects of the meeting. If an interpreter or other auxiliary aid or service is needed, contact Susie Edwards at the address below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the provision of rehabilitation assistive technology services mandated by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.5(b)(49), 361.48(b).

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.5(b)(49), 361.48(b).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of rehabilitation assistive technology services as set out in, and mandated by, Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.5(b)(49), 361.48(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitation assistive technology services to disabled individuals as required by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.5(b)(49), 361.48(b).

(2) If 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 to the Administration Code are made to adapt the regulations to provide better guidance to disabled individuals and to provide for more efficient use of limited agency resources. The revisions enhance more clearly set out expectations and requirements that disabled consumers have to be eligible for rehabilitation technology for personal transportation and driver's training.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Assistive technology is a vital part of vocational rehabilitation services and the agency has found that its resources are increasingly limited for this program. The changes made to the regulation were needed to more clearly define what can be provided to each disabled consumer and when it could be provided.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing rehabilitation assistive technology services to disabled consumers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to disabled consumers on what is required to obtain vocational rehabilitation assistive technology devices, when those services can be provided, and what continuing obligations the consumer may have.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual seeking vocational rehabilitation assistive technology devices, all vocational rehabilitation staff statewide that assist disabled individuals seeking assistive technology devices.

(4) Provide an analysis of how the entities identified in question (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 staff will not have any additional requirements as a result of this amendment. The individuals with a disability will have clearer expectations for receiving technology assistance related to personal vehicles and driver's training. The amendments only provide more specific guidance to clear up any ambiguities and to ensure that resources are not wasted.

(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 the individuals, staff or businesses affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both staff and disabled individuals will have a better understanding of the requirements for obtaining rehabilitation assistive technology services because the amended regulations provide more specific guidance than what previously existed.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Department of Vocational Rehabilitation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What 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 Office for Vocational Rehabilitation, Department for Workforce Investment, Education and Workforce Development Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. §701 et seq., 29 U.S.C. §§ 705, 723, 34 C.F.R. 361.5, 34 C.F.R. 361.48.

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Education and Workforce Development Cabinet Department of Workforce Investment Office of Vocational Rehabilitation (Amendment)

781 KAR 1:050. Carl D. Perkins Vocational Training Center[~~Carl D. Perkins Comprehensive Rehabilitation Center~~].

RELATES TO: KRS 151B.190, 34 C.F.R. 361.42, 29 U.S.C. §701 et seq.[706(8)(A)]

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 directs the Executive Director, Office of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Office of Vocational Rehabilitation. This administrative regulation establishes the criteria for admission to and discharge from the Carl D. Perkins Vocational Training Center [~~Carl D. Perkins Comprehensive Rehabilitation Center~~].

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(2) "Director" means Division Director of the Carl D. Perkins Vocational Training Center (CDPVTC) [~~Carl D. Perkins~~].

Comprehensive Rehabilitation Center].

(3) "Discharge" means an individual shall:

(a) Not have a further CDPVT[C]DP[CRC] service provided; and

(b) Be transported to the home area.

(4) "Eligible individual" means an individual who has been determined by an appropriate office staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. Part 361.

Section 2. Admissions Policy. (1) An individual admitted to CDPVT[C]DP[CRC] shall:

(a) Be an applicant of the Office of Vocational Rehabilitation for whom an assessment is needed prior to making an eligibility or ineligibility decision;

(b) Be an eligible individual of the Office of Vocational Rehabilitation who requires services of the type provided by CDPVT[C]DP[CRC], in order to benefit in terms of a[an] competitive integrated employment outcome; ~~or~~

~~—(c) Have made arrangements to reimburse CDP[CRC] for the cost of services provided.]~~

(2) A prospect for admission shall provide the following:

(a) A consent for CDPVT[C]DP[CRC] to provide emergency medical care signed by:

1. The individual; or

2. If the individual is a minor or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the individual's parent or guardian, as appropriate, subject to the limitations of KRS Chapter 387;

(b) An agreement assuming responsibility for living arrangements upon the individual's discharge from CDPVT[C]DP[CRC] by:

1. The individual; or

2. If the individual is a minor or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the individual's parent or guardian, as appropriate, subject to the limitations of KRS Chapter 387; and

(c) A description of each limitation that the individual has in performing an activity of daily living.

(3) An individual shall not be admitted to a CDPVT[C]DP[CRC] program if there is evidence that a medical or behavioral condition represents a direct threat to the health or safety of self or others. The determination of whether a condition exists shall be made by a written opinion from a CDPVT[C]DP[CRC] professional with expertise concerning the identified condition, based upon documentation submitted at referral, and other information the professional shall gather as needed.

(4) When it is determined that the documentation submitted indicates the possibility that the individual's medical or behavioral condition represents a direct threat to self or others, the CDPVT[C]DP[CRC] admissions counselor shall select a CDPVT[C]DP[CRC] professional with expertise concerning the identified condition, and shall submit the documentation to that professional for an opinion.

(5) When the admissions counselor has requested an opinion from a CDPVT[C]DP[CRC] professional, the decision of the professional shall determine whether the individual shall be admitted to CDPVT[C]DP[CRC] during that referral. If the individual is referred at a later time, a new opinion shall be submitted.

(6) The admissions counselor or the admissions committee, as appropriate, shall, at the time that the individual is accepted for CDPVT[C]DP[CRC] services for evaluation or treatment and training, establish a list of recommended services for the individual and make a referral to the appropriate service area.

(7) When a decision is made to accept an individual for admission, the individual shall be notified in writing of the decision, and the date of admission, and a copy of that notification shall be sent to the referral sources, as appropriate.

(8) The individual shall agree to and abide by the terms of the signed Individualized Plan for Employment and the Individualized Behavior Management Plan, as appropriate.

(9) When a decision is made not to admit an applicant or

eligible individual to CDPVT[C]DP[CRC] the referral source shall be notified in writing of the decision with justification for that decision. The applicant or eligible individual shall be notified in writing of the decision with justification and informed of the availability of the Client Assistance Program and the right to appeal.

(10) An applicant or eligible individual may appeal the admissions decision pursuant to 781 KAR 1:010.

Section 3. Retention Policy. The decision to provide further services after an individual has completed a CDPVT[C]DP[CRC] program shall be based upon the following:

(1)(a) A further program shall be requested by the referral source; or

(b) A CDPVT[C]DP[CRC] professional shall believe that the individual requires an additional service; and

(2) The program requested for the individual shall be available ~~;~~ and

~~(3) If applicable, the individual shall have made arrangements to reimburse CDP[CRC] for the cost of services provided].~~

Section 4. Discharge Policy. (1) An individual shall be voluntarily discharged from the CDPVT[C]DP[CRC] if:

(a) The individual has completed a program of services, and is not qualified for another CDPVT[C]DP[CRC] program;

(b) The individual does not desire further services from CDPVT[C]DP[CRC];

(c) The individual's medical condition requires treatment away from the CDPVT[C]DP[CRC] for an extended period of time; or

(d) The individual wishes to leave CDPVT[C]DP[CRC] ~~[and cannot be convinced to stay].~~

(2) An individual shall be involuntarily discharged from CDPVT[C]DP[CRC] if:

(a) The individual fails to make progress in the program of services and efforts to resolve the problem have been unsuccessful;

(b) The individual is no longer qualified for the program and no other needed program is available;

(c) The individual's behavioral condition deteriorates to the point of direct threat to the safety of others;

(d) An individual shall be discharged from CDPVT[C]DP[CRC] without prior notice if necessary to prevent harm to a person or property, or to prevent serious disruption of a CDPVT[C]DP[CRC] program.

Section 5. Due Process. (1) The individual, or the parent or guardian if under eighteen (18) years of age or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the referring counselor, or representative if applicable, shall be notified in writing or other appropriate format of the intent to discharge involuntarily with justification;

(2) The individual shall be given an opportunity to present facts and views in rebuttal to the director or a designee;

(3) The director or designee shall notify the individual, in writing or other appropriate format, with justification, of the involuntary discharge decision or of intent to rescind the intent to discharge.

(4) At the time an applicant or eligible individual is informed of the involuntary discharge decision, the individual shall be also informed of the availability of the Client Assistance Program and the right to appeal.

(5) An applicant or eligible individual may appeal the discharge decision pursuant to 781 KAR 1:010.

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend at

least five workdays prior to the hearing. 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 October 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.

The Kentucky Office of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Office will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all aspects of the meeting. If an interpreter or other auxiliary aid or service is needed, contact Susie Edwards at the address below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act as amended by the Workforce Innovation and Opportunity Act (WIOA) to provide vocational rehabilitation services to Kentuckians. 29 U.S.C.S §§ 3301-3305.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of the Rehabilitation Act as amended by WIOA. 29 U.S.C.S §§ 3301-3305.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of services within its authority to implement the federal Rehabilitation Act as amended by WIOA. 29 U.S.C.S §§ 3301-3305.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of services at the comprehensive vocational center to disabled individuals.

(2) If 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 to the regulation are made to update admission requirements for applicant or eligible consumers and better reflects the vocational aspect of services. The amendment also reflects the new name for the center.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to change the admission policy to reflect that private payment for services was no longer utilized and that services were for applicants and eligible consumers of the Office of Vocational Rehabilitation. The name change also places the emphasis of services on the expectation that the goal of these comprehensive services is to assist the individuals with disabilities to reach a competitive integrated employment outcome. The changes made to the regulation were needed to more clearly define the requirements for acceptance and

discharge of services for individuals with a disability.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing comprehensive vocational services to applicants or eligible consumers of the Office of Vocational Rehabilitation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to individuals with disabilities on what is required to obtain vocational rehabilitation services at the comprehensive vocational center.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual seeking vocational rehabilitation services at the vocational rehabilitation center.

(4) Provide an analysis of how the entities identified in question (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 staff and applicants or eligible individuals will not have any additional requirements as a result of this amendment. The amendments only provide more specific guidance to clear up any ambiguities and to ensure that resources are used effectively.

(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 the individuals, staff or businesses affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both staff and disabled individuals will have a better understanding of the requirements for receiving services at the comprehensive vocational center.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Department of Vocational Rehabilitation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What 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 Office for Vocational Rehabilitation, Department for Workforce Investment, Education and Workforce Development Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. §701 et seq., 29 U.S.C. §§ 705, 723, 34 C.F.R. 361.5, 34 C.F.R. 361.48.

4. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**Education and Workforce Development Cabinet
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)**

782 KAR 1:010. Kentucky Business Enterprises.

RELATES TO: KRS 13B, 61.870-61.884, 163.470(11), 438.310, 34 C.F.R. Part 361.38, 395, 20 U.S.C. 107-107f

STATUTORY AUTHORITY: KRS 163.470(5), 34 C.F.R. 395.4, 20 U.S.C. 107b(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office to establish and implement policies and procedures for administering the program of services for the blind and visually impaired. 20 U.S.C. 107(b)(5) requires the office to promulgate administrative regulations for the operation of the vending facility program on federal properties in Kentucky. This administrative regulation establishes the operational requirements for the business enterprises program created by KRS 163.470(9) ~~[for the federal Randolph-Sheppard Vending Facility Program]~~.

Section 1. Definitions. (1) "Active participation" means an ongoing process which:

(a) Is Between the office and the State Committee of Blind Vendors for joint planning and input on program policies, standards, and procedures; and

(b) Does not supersede the office's final authority to administer the program.

(2) "Administrative Hearing" means a full evidentiary hearing as defined in KRS 13B.010 Section 2.

(3) [(2)] "Agreement" means a written contract entered into between the office and property management authorizing the establishment of a vending facility and setting forth the service obligations.

(4) [(3)] "Applicant" means an eligible individual who has been referred by a counselor to be screened for participation in the Kentucky Business Enterprises (KBE) Vendor Training Program.

(5) "Blind person" is defined by 20 U.S.C. 107e(1).

(6) "Committee" means the Kentucky Blind Vendor Committee.

(7) [(4)] "Counselor" means a vocational rehabilitation counselor in the office ~~[Office for the Blind]~~.

(8) [(5)] "Director" means the Division Director of Kentucky Business Enterprises.

(9) [(6)] "Eligible individual" means a consumer as defined at 782 KAR 1:020, Section 1(4).

(10) [(7)] "Executive director" means the Executive director of the Kentucky Office of Vocational Rehabilitation ~~[Kentucky Office for the Blind]~~.

(11) [(8)] "Kentucky Business Enterprises" or "KBE" means ~~the~~ a division of the office established by KRS 163.470(11) to administer the blind vendor program in Kentucky.

(12) [(9)] "Licensee" means an eligible individual who:

(a) Has successfully completed the KBE Vendor Training Program;

(b) Has been licensed to operate a KBE vending facility; and

(c) Is not operating a vending facility.

(13) [(10)] "Mediation" means a voluntary process through which a vendor may ~~[an informal option which allows a vendor to]~~ seek resolution of a dispute with an office action which:

(a) Arises from the operation or administration of the vending facility program; and

(b) Adversely affects the vendor.

(14) [(11)] "Office" means the Office of Vocational Rehabilitation ~~[Office for the Blind]~~ which is the state licensing agency established by KRS 163.470 to comply with 20 U.S.C. 107a(5) for the blind vendor program ~~[Randolph-Sheppard Vending Facility Program]~~ in Kentucky.

(15) [(12)] "Seniority" means the accumulated period of time during which a vendor has operated KBE vending facilities.

(16) [(13)] "Trainee" means an eligible individual who has been selected for, and is actively participating in, the KBE Vendor Training Program ~~[leading to licensure]~~.

(17) [(14)] "Vending facility" means a food sales operation within the meaning of 34 C.F.R. 395.1(x) operated on state, federal, or private property under the auspices of KBE ~~[by a vendor]~~.

(18) [(15)] "Vendor" means a licensee who is ~~[responsible for]~~ operating a vending facility under terms of a ~~[an]~~ vendor agreement, agreement, permit, or other contract that governs the operation of ~~[relating to]~~ the vending facility.

(19) [(16)] "Vendor Agreement ~~[agreement]~~" means the ~~[a]~~ written contract ~~[entered into]~~ between the office and a ~~[KBE]~~ vendor which ~~[authorizing the vendor to operate a vending facility at a specific location and setting forth the responsibilities of the parties with respect to the vending facility]~~

(a) Authorizes the vendor to operate a vending facility at a specific location; and

(b) Sets forth the terms of the operation of the vending facility.

Section 2. Training and Licensure. (1) Eligibility Criteria.

(a) An applicant shall be screened to enter the KBE vendor training program upon submission of documentation by the counselor and the eligible individual which establishes that the criteria in paragraph (b) of this subsection have been met.

(b) The applicant shall:

1. Be a ~~[Meet a visual diagnosis of]~~ blind person ~~[as defined in the federal Randolph-Sheppard Act at 20 U.S.C. 107e(1) and the definition of blind person established in 34 C.F.R. 395.1(c)]~~;

2. Be a citizen of the United States;

3. Have met ~~[Be certified that the consumer meets]~~ the general criteria of eligibility for vocational rehabilitation services from the office;

4. Have received a high school diploma or GED certification;

5. Have math skills at an eighth-grade level or above;

6. Have financial, verbal communication and public relations skills sufficient to operate ~~[for operating]~~ a vending facility ~~[business]~~;

7. Have verbal and communication skills;

8. Have public relations skills;

7. 9.] Maintain personal hygiene to meet all health codes applicable to the vending facility and adhere to a dress code appropriate for the vending facility location ~~[Have personal hygiene and appearance appropriate for meeting the public];~~

8. 10.] Be independent in performing the activities of daily living ~~[daily living activities]~~ with accommodation;

9. 11.] Have mobility skills sufficient to safely navigate the vending facility; and

10. 12.] Have reached the age of eighteen ~~(18)~~ [majority].

(2) KBE screening process for training program.

(a) The screening committee shall be composed of:

1. The ~~[KBE division]~~ director or designee;

2. The chair of the ~~Committee~~[State Committee of Blind Vendors] or designee;

3. A KBE vendor appointed by the chair of the State Committee of Blind Vendors;

4. The Director of Consumer Services or a designee; and

5. The KBE assistant division director or designee.

(b) A designee shall not be the counselor of the applicant.

(3) KBE Vendor Training Program.

(a) The KBE vendor training program shall provide on-the-job work experience and classroom instruction[leading to licensure as a KBE vendor].

(b) The curriculum and training manual for the KBE training program shall be developed with the active participation of the ~~Committee~~[State Committee of Blind Vendors] to ensure that a trainee, upon completion of the program, demonstrates proficiency in all aspects of KBE vending facility operation.

(c) ~~[Upon successful completion of the training program,]~~[T]he office shall award a vendor license to a[the] trainee who successfully completes the vendor training program.

Section 3. KBE Vendor License. (1) License Conditions.

(a) A license to operate a KBE vending facility shall be issued for an indefinite period of time.

(b) The office shall provide management services and training to assist the vendor in operating a vending facility[fulfilling the terms of the agreement].

(c) KBE shall conduct periodic management reviews, vending facility surveys, and financial audits of vending facilities and records. ~~If KBE determines~~[information is obtained that] the vendor is not meeting the operational standards established in Section 9 of this administrative regulation, remedial steps shall be identified and reviewed by KBE staff with the vendor. Specific training, if appropriate, shall be made available to remedy a deficiency. The office may require the vendor to participate in training provided by, or arranged by, KBE if operational standards established in Section 9 of this administrative regulation are not being met.

(d) The office shall terminate the license of a vendor if, after affording the vendor the opportunity for an[a] administrative[full evidentiary] hearing, the office finds that:

1. The vending facility is not being operated in accordance with this administrative regulation, the permit or agreement, or the vendor agreement, such as the filing of false set aside reports, the violation of any state or federal law regarding payment of taxes and labor requirements, and the failure to maintain insurance as required by Section 9(20) of this administrative regulation; or

2. The vendor's vision has improved so that the vendor no longer meets the definition of blind person[established in 34 C.F.R. 395.1(c) of the federal implementing regulations to the Randolph-Sheppard Act, 20 U.S.C. 107 through 107f]. In order to ensure compliance, vendors may be required to undergo an ophthalmologic examination. The office shall select and approve the exam provider and shall be responsible for the costs of the examination.

(2) Leave of absence.

(a) The office may grant a vendor a leave of absence from a vending facility of up to one (1) year for reasons of health, pregnancy, or personal reasons after a written request with justification is approved by the director.

(b) The vendor shall retain accrued seniority, but shall not accrue any seniority during the leave of absence.

(c) If the vendor is unable to return to the vending facility at the expiration of the approved leave of absence, the vendor shall:

1. Resign from that vending facility; or

2. Be subject to termination of the vendor agreement to operate the vending facility.

(3) Resignation.

(a) Resignation from a vending facility shall result in a vendor returning to licensee status with the right to bid on vending facility vacancies and retention of accrued seniority.

(b) Resignation from KBE shall result in loss of the vendor's license with retention of all accrued seniority.

(c) Reentry into KBE and eligibility to bid on a vending facility by an individual that resigned from KBE shall be allowed only upon

completion of training, if the individual that resigned did so for one (1) calendar year or more prior to their attempt to reenter KBE.

Section 4. Vendor Vacancy. (1) The office shall determine that a vendor vacancy exists if:

(a) A new vending facility is established; or

(b) An existing vending facility position is vacated.

(2) If a location becomes available that might support more than one (1) vending facility, the number and types of facilities shall be determined by the director with the active participation of the State Committee of Blind Vendors to prevent unfair competition.

Section 5. Vendor Appointment. (1) Announcement of vacancy.

(a) If a vending facility vacancy is identified, the director shall notify all licensees and vendors of the available position.

(b) Announcements of a vacancy shall be made in alternative format and shall include the closing date and time by which bids shall be received by the director.

(c) Information on the vending facility's operation requirements, previous vending facility gross sales, and arrangements for visitation of the vending facility shall be included in the announcement.

(2) Bids. Any vendor or licensee may make an application for a vacancy by submitting a completed Application for Vending Facility Vacancy Form to the director by the bid closing date. All bids shall be considered without regard to race, color, national origin, gender, religion, age, political affiliation, and disability.

(3) Selection.

(a) The director shall appoint a vendor or licensee to manage each vending facility, in accordance with this subsection.

(b) Except in cases of emergency appointment pursuant to subsection (5) of this section, the director shall solicit the active participation of three (3) representatives of the State Committee of Blind Vendors, who shall be appointed by the committee chair, on each vending facility manager appointment.

(c) The selection process shall begin with compilation of the seniority of each bidder based on currently existing KBE records. Beginning with the bidder with the most KBE seniority, the director and committee representatives shall review that bidder's business practices as documented in the KBE vending facility files in areas such as:

1. Customer relations;

2. Cooperation with property management;

3. Cooperation with KBE staff;

4. Complaints and commendations;

5. Timely and accurate submission of monthly financial reports and set-aside payments;

6. Financial management;

7. Recordkeeping;

8. Audit reports; and

9. Nonnegotiable payments to KBE or suppliers.

(d) The committee representatives shall advise the director of their first and second choice recommendations. The director shall balance the most senior bidder's documented business practices with the requirements of the specific vending facility vacancy. If the bidder's business practices are reasonably satisfactory as they relate to the specific vending facility requirements, in the judgment of the director, the bidder with the highest KBE seniority shall be offered the appointment to the vending facility vacancy.

(e) If the bidder with the most KBE seniority is not offered the appointment under the criteria of this subsection or declines the appointment, the director shall apply the criteria of this subsection to the next bidder with the highest KBE seniority until a bidder is selected and appointed by the director.

(f) If two (2) or more bidders have equal KBE seniority, each bidder's business practices as they relate to meeting the vending facility requirements shall be balanced by the director. The most qualified bidder for the specific vending facility vacancy, in the judgment of the director, shall be selected and offered the appointment by the director.

(g) Consideration of KBE licensees with no KBE seniority shall be based on the following equally weighted criteria:

1. KBE final training test score;

2. On-the-job training reports;
3. Formal education; and
4. Prior work history.

(4) Appointment.

(a) The successful bidder shall be notified of appointment to the vacancy in alternative format as necessary. All appointment letters shall be mailed by certified mail. The appointee shall respond to the director in writing, postmarked within five (5) working days after receipt of the appointment letter, to accept or reject appointment. In the absence of a written response, the offer of appointment shall be rescinded, and the director shall select a new appointee.

(b) If a vendor resigns or abandons a vending facility within six (6) months of appointment to the facility for any reason other than properly documented medical reasons, the vendor shall be ineligible to bid on another vending facility for six (6) months.

(5) Emergency appointment.

(a) The office shall make an emergency appointment of a vendor, licensee, or a nonlicensed individual to a vending facility vacancy if time does not permit adherence to the vendor appointment process. An emergency appointment may occur for a leave of absence, appointment of a vendor or licensee to another vacancy, death, abandonment, health emergency, or other similar occurrence.

(b) A licensee placed by emergency appointment shall accrue seniority for the duration of the emergency appointment period. The State Committee of Blind Vendors shall be notified in writing of an emergency appointment.

(c) An emergency appointment shall not be more than six (6) months in duration from the time the appointment is made.

Section 6. Saleable Stock Inventory Acquisition. (1)(a) If a licensee is placed in a vending facility, a saleable stock inventory shall be provided by the licensee's counselor on a one (1) time basis that is equal to three weeks of the facility's gross sales as determined by the facility's historical data, or if a new facility, the gross sales of a similar facility[not to exceed \$5,000]. This amount shall be used to reimburse:

1. The stock wholesalers;
2. The vendor exiting the vending facility; or
3. Both.

(b) The amount and type of stock necessary for the successful operation of a vending facility shall be determined by the director or designee, based on the amount and type of stock used previously at the same or similar vending facilities.

(c) Payment for additional stock[~~above the \$5,000;~~] needed for the vending facility shall be the responsibility of the licensee. If the licensee seeks financing for the additional stock, KBE may purchase the stock on the licensee's behalf after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The licensee shall make monthly payments to KBE up to the value of the stock purchases as set forth in a repayment schedule negotiated and signed by both the licensee and the office's representative.

(2)(a) If a vendor transfers, through the KBE bid process, from one (1) vending facility to another at which KBE owns an initial saleable stock inventory, the entering vendor shall purchase from KBE the initial inventory valued at wholesale costs.

(b) Except as provided in paragraph (c) of this subsection, inventory above the initial value at the vending facility shall be bought by the entering vendor from the exiting vendor at wholesale costs through an arrangement between vendors. KBE shall not be a party to that arrangement. KBE staff shall advise what type and amount of stock is needed at the vending facility, whether as the beginning inventory or additional inventory.

(c) The exiting vendor, at his discretion, may choose to dispose of the stock inventory at the vending facility which is above the KBE-owned type and amount of product considered initial stock. The entering vendor shall be responsible for additional stock purchases above the KBE-owned amount. KBE may make stock purchases on behalf of the entering vendor after KBE has been provided proof that other funding is not available from financial

institutions including the Small Business Administration or banks. The vendor shall make monthly payments to KBE up to the value of the stock purchases.

(3)(a) If an emergency appointment of a vendor is made to an existing vending facility at which the initial saleable stock inventory is owned by KBE, ownership shall be retained by KBE. KBE shall purchase needed inventory above the initial amount at the vending facility, at wholesale cost from:

1. The exiting vendor; or
2. Wholesalers.

(b) The emergency appointee shall be responsible for maintaining a stock inventory value equivalent to the KBE-owned inventory at the vending facility.

(c) If a permanent vendor appointment is made, the appointed vendor shall make arrangements to purchase the entire stock inventory from the exiting vendor or KBE.

(4) If an emergency appointment is made to a new vending facility where there is no existing stock inventory, KBE shall purchase the initial inventory.

(5) If an emergency appointment is made to a vending facility where the exiting vendor has been granted a leave-of-absence, the emergency appointee shall:

- (a) Accept responsibility for total inventory of the vending facility; and
- (b) Maintain an inventory of equal value, in either saleable stock or cash equivalent during the entire emergency assignment.

Section 7. Mediation and Administrative Hearing[Vendor Administrative Remedies and] Procedures. (1) Mediation.

(a) A vendor who is dissatisfied with an office action arising from the operation or administration of the vending facility program which adversely affects the vendor has the right to request mediation and an administrative hearing. A request shall:

1. Be submitted to the director in writing;
2. Within thirty (30) calendar days from the occurrence of an office action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation; and
3. Set forth the details of the complaint.

(b) The office shall maintain a list of qualified and impartial mediators and when a request for mediation is received, the office shall:

1. Choose a mediator, with the agreement of the vendor, from the list and schedule a mediation to be held within forty-five (45) calendar days of the receipt of the request for mediation;
2. Schedule the mediation at a field office convenient to the aggrieved vendor during regular state working hours;
3. Provide reasonable accommodations upon request;
4. Allow the Appellant to be represented by an attorney or advocate at appellant's own expense;
6. Send a representative to the mediation who is authorized to bind the office to an agreement; and
7. Not use the mediation process to deny or delay the vendor's right to pursue resolution of the dispute through an administrative hearing.

(c) If the vendor and office mutually agree to a resolution at the mediation, that agreement shall be documented in writing and signed by both parties before the mediation is concluded.

(d) Discussions arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(e) If a mutually agreeable resolution is not obtained, the vendor may submit a request for an administrative hearing.

(2) Administrative hearing

(a) If the vendor does not request mediation, or mediation does not resolve the dispute, the vendor may request an administrative hearing in accordance with the terms set forth in subsection (1):

(b) Upon receipt of a request for an administrative hearing, the office shall conduct an administrative hearing in accordance with KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final

agency decision may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13.]

(a) Participation in the mediation process shall be voluntary on the part of the vendor. The mediation process shall not be used to deny or delay the vendor's right to pursue resolution of the dispute through an evidentiary hearing.

(b)1. Within thirty (30) calendar days from the occurrence of an office action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation may be requested in writing to the director.

2. The office shall maintain a list of qualified mediators. The director, with the agreement of the vendor, shall choose a mediator from the list and schedule a mediation meeting to be concluded within forty-five (45) calendar days of the receipt of the request.

3. The mediation shall be held at a field office convenient to the aggrieved vendor during regular state working hours.

4. Reasonable accommodations shall be provided upon request.

(c) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation. The aggrieved vendor shall attend and may be represented by an advocate or counsel. If the vendor and office mutually agree to a resolution, the mediation agreement shall be signed before the mediation is concluded. Discussion or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(d) If a mutually agreeable resolution is not obtained, the vendor may submit a request for an evidentiary hearing within thirty (30) calendar days of the unresolved mediation.

(2) Evidentiary hearing:

(a) If desired, a vendor shall request an evidentiary hearing in writing to the director within thirty (30) calendar days:

1. Of an unresolved mediation; or

2. From an office action arising from the operation or administration of the vending facility program which adversely affects the vendor.

(b) The office shall conduct an evidentiary hearing requested by the vendor pursuant to KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13-].

Section 8. State Committee of Blind Vendors. The Kentucky Committee of Blind Vendors[~~State Committee of Blind Vendors~~] shall be established to actively participate with the office in the major administrative and policy decisions affecting the overall administration of the blind vendor program in Kentucky[~~Randolph-Sheppard Vending Facility Program~~] and to perform other functions consistent with 34 C.F.R. 395.14.

(1) Election procedures. The office shall provide for the biennial election of the Committee[~~State Committee of Blind Vendors~~] consistent with the bylaws drafted by the Committee[~~procedures established by the general assembly of all blind vendors in accordance with 34 C.F.R. 395.14~~].

(2) Meetings of the committee.

(a) The Committee[~~State Committee of Blind Vendors~~] shall:

1. Conduct all meetings in accordance with the Committee bylaws and the Kentucky Open Meetings Act as set forth in KRS 61.800 et. seq.

2. M[~~m~~]eet at least quarterly with the director or his designee in attendance.

(3) The office shall send t[~~t~~]he announcement of the meeting, and[~~with~~] the agenda as drafted by the committee chairperson and the director or designee, shall be sent[~~mailed~~] to the committee members, and all vendors, and licensees[~~by KBE~~] via electronic mail or U.S. Mail. [~~Mailings~~—]The documents shall be provided[~~prepared~~] in alternative format as necessary.

(b) Office[~~The KBE~~] staff shall record the official minutes of meetings and prepare and send [~~mail~~]a copy of the minutes to all vendors and licensees after approval by the committee chair via electronic mail or U.S. Mail. The minutes may be provided[~~mailed~~] in alternative format as necessary.

(c)1. The office[~~KBE~~] shall make committee meeting space available to the chairperson as necessary to conduct the[~~for~~] business of the Committee[~~State Committee of Blind Vendors~~].

2. The director and committee chair shall develop an annual committee budget.

3. Expenses incurred by the committee members in conducting the four (4) quarterly meetings shall be reimbursed from the committee's annual budget consistent with 200 KAR 2:006.

4. Additional meetings shall be eligible for reimbursement with the approval of the KBE director or office executive director, based on availability of funds and the purpose of the meeting.

(d) The Committee[~~State Committee of Blind Vendors~~] shall adopt bylaws, which shall be approved by the office.

Section 9. Vendor's Rights and Responsibilities. A vendor shall:

(1) Execute a Vendor Agreement[~~Enter into an agreement~~] with the office for the operation of a [~~Randolph-Sheppard~~] vending facility[~~under the auspices of KBE~~] prior to beginning operation of a vending facility;

(2) Operate the vending facility in accordance with accepted-business practices and in compliance with all federal, state, and local laws, administrative regulations, and ordinances applicable to the operation of the vending facility;

(3) Assure proper daily operation of the vending facility to meet the requirements of the permit or agreement and vendor agreement in a business-like manner;

(4) Maintain high-quality fresh merchandise in a quantity sufficient to satisfy customer needs;

(5) Maintain personal hygiene and vending facility sanitation sufficient to meet all health codes applicable to the vending facility, and adhere to a dress code appropriate for the vending facility location;[~~Maintain presentable personal hygiene, appearance, and vending facility sanitation to assure pleasant accommodations for all customers;~~]

(6) Provide adequate pest control and janitorial services unless otherwise specified in the vendor agreement;

(7) Post in a conspicuous place a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18) pursuant to KRS 438.310 in any vending facility where tobacco products are sold;

(8) Require proof of age from a prospective buyer or recipient of tobacco products who may be under the age of eighteen (18);

(9) Clean, fill, and service machines and equipment as often as necessary to ensure adequate stock to meet the needs of the customers at the vending facility[~~daily to assure proper functioning and report promptly to KBE any needed repair of equipment~~];

(10) Assure proper functioning of all machines and equipment and promptly report the need for equipment repairs;

(11)[~~(40)~~] Obtain prior written approval from the director before purchasing equipment for a KBE vending facility from personal funds. If approved, the vendor shall arrange and pay for repair and maintenance and removal, if necessary, of the personally owned equipment;

(12)[~~(44)~~] Employ and pay a substitute during times of vendor absence from a vending facility due to vacation or sickness unless the office has made an emergency appointment for an extended leave. Preference may be given to qualified blind or visually-impaired persons if selecting substitutes;

(13)[~~(42)~~] Cooperate with vending facility audits that may be performed periodically at KBE expense;

(14)[~~(43)~~] Pay the monthly seven (7) percent set-aside amount based on net profits of all vending facilities on schedule:

(a) The monthly set-aside payments shall be received by the office on or before the 20th of the following month by check or money order made payable to the Kentucky State Treasurer;

(b) Late set-aside payments shall result in a twelve (12) percent annual interest charge plus a five (5) percent penalty for

each thirty (30) day period or portion thereof for which the set-aside payment is in arrears, up to a maximum of twenty-five (25) percent;

(c) A twelve (12) percent annual interest charge shall be assessed for nonnegotiable checks received until the date a replacement certified check or money order is received;

(d) A ten (10) dollar service charge shall be due for a nonnegotiable check;

(e) If a nonnegotiable check is received from a vendor, all future payments made by the vendor shall be by certified check or money order;

(f) If a vendor is late in making the set aside payment to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one (1) year; and

(g) If a vendor is late in making the set aside payment to the office for ninety (90) or more calendar days, or is late in making the set aside payment to the office six (6) or more times in a calendar year, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation, the vendor shall be subject to removal from their vending facility;

~~(15)~~~~(14)~~ Pay resaleable stock suppliers promptly and retain all invoices and receipts for three (3) calendar years;

~~(16)~~~~(15)~~ Include rebates, commissions, or bonuses received by the vendor from suppliers as income of the vending facility and account for this income on the monthly vending facility financial report submitted to KBE on a completed Financial Report Form;

~~(17)~~~~(16)~~(a) Utilize office-established accounting practices and bookkeeping procedures including the establishment of a business bank account to ensure that personal and vending facility funds are not commingled; and

(b) Make available to the office upon request bank statements and other vending facility business records for audit purposes and to satisfy ongoing financial accountability standards;

~~(18)~~~~(17)~~(a) Submit a monthly vending facility financial report on a completed Financial Report Form to be received by the office on or before the 20th of the following month, with the expenses listed deducted as operating expenses on the report:

1. Expendable supplies used in the vending facility;
2. Substitutes for the vendor while the vendor is not present at the vending facility due to sick or annual leave;
3. Rental and commission fees paid to building management as stipulated in the vending facility agreement;
4. Telephone and utility expenses of the vending facility;
5. Pest control services;
6. Delivery charges paid on resaleable stock;
7. Janitorial services;
8. Liability insurance;
9. License and permits required by health departments;
10. Employee wages; and
11. Employee fringe benefits;

(b) If a vendor is late in making the monthly vending facility financial report to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one (1) year;

(c) If a vendor is late in making the monthly vending facility financial report to the office for ninety (90) or more calendar days, or is late in making the monthly vending facility financial report to the office six (6) or more times in a calendar year, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation, the vendor shall be subject to removal from their vending facility;

~~(19)~~~~(18)~~ Reimburse at wholesale cost the vending facility for merchandise taken from the vending facility for any personal use or charitable donation;

~~(20)~~~~(19)~~ Be responsible for payment of any taxes levied or assessed on the operation of the vending facility including local, state, and federal taxes;

~~(21)~~~~(20)~~(a) Obtain, maintain in effect, and pay all premiums of the following insurance coverage:

1. Comprehensive general liability insurance including personal injury, bodily injury, and product liability to meet minimum policy limits set by KBE in compliance with the terms of the vending

facility permit. The policies shall insure against any liability which may occur from the operation by the vendor of the vending facility or in connection with the premises; and

2. Pay workers' compensation, Social Security, unemployment compensation, disability insurance, and other insurance coverage required by law for both the vendor and vendor's employees;

(b) Submit proof of insurance as required by this subsection to KBE annually. All policies shall provide for notice to KBE of any cancellation, termination, or nonrenewal of coverage; and

(c) Vendors that fail to annually submit proof of insurance as required by this subsection shall be subject to termination or suspension of the vendor's license, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation;

~~(22)~~~~(24)~~ Not bind or obligate the office or represent to an entity that the vendor is a legal representative, agency, or employee of the office;

~~(23)~~~~(22)~~ Not remove or move any KBE-owned equipment located at any vending facility without approval from the director;

~~(24)~~~~(23)~~ Maintain a separate business bank account for deposit of all lottery sales and proceeds in a vending facility participating in lottery games for which the manager personally has applied and been approved for the sale of lottery tickets by the Kentucky Lottery Corporation;

~~(25)~~~~(24)~~ Adhere to the initial stock inventory requirements established in Section 6 of this administrative regulation;

~~(26)~~~~(25)~~ Cooperate with KBE staff in the ongoing supervision and monitoring of the vending facility to maximize efficiency, productivity, customer satisfaction, and market potential;

~~(27)~~~~(26)~~ Participate in training arranged and paid for by the office as required by KBE to correct identified deficiencies and to improve business skills. Vendors may request approval from the office for vending facility management training;

~~(28)~~~~(27)~~ Request access in writing, if desired, to all program and financial data of KBE as provided for by the Kentucky Open Records Law, KRS 61.870 through 61.884, and the federal Randolph-Sheppard Act, 20 U.S.C. 107 through 107f. The data may be made available in alternative format. At a vendor's request, the office shall arrange a convenient time for a staff member to assist in the interpretation of the data;

~~(29)~~~~(28)~~ Have the opportunity to read and respond to each complaint or commendation placed in a KBE file. A copy of the complaint or commendation shall be delivered to the named vendor by registered or certified mail. A response received from the vendor named in the complaint or commendation shall be filed with the complaint or commendation in the KBE file; and

~~(30)~~~~(29)~~(a) Be prohibited from bidding on a vending facility for one (1) calendar year dating from the date of the second late payment if the vendor fails to make two (2) consecutive monthly payments in any repayment schedule established pursuant to Section 6 of this administrative regulation;

(b) Be subject to removal from ~~a~~~~the~~ vending facility, after first affording the vendor an ~~opportunity to request a mediation and administrative hearing~~~~remedy~~ in accordance with Section 7 of this administrative regulation, if the vendor:

1. Fails to make a payment in any repayment schedule established pursuant to Section 6 of this administrative regulation for ninety (90) or more calendar days; or

2. Is late in making the payment to the office six (6) or more times in a calendar year.

Section 10. Office's Rights and Responsibilities. The office shall:

(1) Enter permits or agreements with property management administrators on suitable federal, state, and other property to establish vending facilities;

(2) Assist in stocking vending facilities with initial resaleable products in accordance with Section 6 of this administrative regulation;

(3) Provide new and existing vending facilities with sufficient equipment to meet the terms of the permit or agreement for operation of each vending facility. The office shall:

(a) Retain ownership of all equipment provided and paid for by

KBE in each vending facility;

(b) Repair, or cause to be repaired, replace, or maintain all vending facility equipment owned by KBE;

(c) Approve or deny vendor requests for replacement equipment if justified;

(d) Purchase additional equipment for vending facilities if sufficiently justified in terms of the vending facility potential and permit or agreement obligations. The office shall review vendor requests for additional equipment with accompanying justification for the investment. KBE shall make the final decision and notify the vendor; and

(e) Approve requests, if justified, for vendor-purchased equipment.

(4) Develop financial controls to ensure financial accountability of each vending facility;

(5) Establish a seven (7) percent set-aside amount to be paid by each vending facility manager assessed on the monthly net proceeds of the vending facility;

(6) Establish reasonable charges for delinquent monthly set-aside payments and nonnegotiable checks as established in Section 9(13) of this administrative regulation, and take disciplinary action for persistent delinquency or dishonored checks[or nonnegotiable checks], including suspension or termination of a vendor's license, after first affording the vendor the opportunity to request mediation and an administrative hearing[an administrative remedy];

(7)(a) Periodically conduct or provide for accountability reviews of vending facility financial documentation relating to the vending facility operation; or

(b) Provide, or provide for, temporary assistance or training to a vendor determined to be remiss in recordkeeping or reporting. If the temporary assistance or training does not correct the deficiency, the office may require the vendor to utilize qualified bookkeeping services;

(8) Contract for periodic audits of each vending facility at office expense;

(9) Inventory and establish the wholesale value of the on-hand saleable stock inventory if a vendor leaves a vending facility;

(10) If a vendor appointment is made, take or contract for the taking of an inventory of all on-hand resaleable stock, valued and calculated at wholesale cost;

(11) Determine the product types and quantities necessary for successful operation of a vending facility if appointing a vendor to a vending facility;

(12) Provide each licensee with a copy of this administrative regulation in alternative format as necessary;

(13) Provide each vendor with a copy of all relevant materials pertaining to the operation of the vendor's assigned vending facility in alternative format as necessary;

(14) Provide ongoing monitoring and supervision of each vending facility to ensure compliance with operating agreements, permits, laws, administrative regulations, vending facility service obligations, and generally-accepted business practices; and

(15) Provide, or provide for, ongoing training as identified by KBE staff or requested by a vendor and approved by the director, based on availability of funding and whether the director reasonably believes the requested training is warranted under the circumstances.

Section 11. Confidentiality. (1) All identifiable personal information concerning applicant, licensee, and vendors shall be confidential consistent with 34 C.F.R. 361.38. Identifiable personal information shall include documentation from an individual's vocational rehabilitation consumer file. Access to, or release of, the confidential personal information shall be governed by the provisions of 34 C.F.R. 361.38. If the personal information is released in response to a judicial order, the applicant, licensee, or vendor shall be notified by KBE within three (3) working days from receipt of the judicial order.

(2) All KBE documents and files pertaining to the operation of KBE vending facilities shall be public records pursuant to KRS Chapter 61. The KBE files shall include business records concerning the operation of vending facilities and shall be

maintained by the office consistent with its public purpose. Any information from KBE files pertaining to the operation of KBE vending facilities may be included in bids issued for vendor vacancies and may be shared with members of the State Committee of Blind Vendors to assist their active participation during vendor selection.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Vending Facility Vacancy", February 2001; and

(b) "Financial Report, Kentucky Business Enterprises", August 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office for Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort, Kentucky 40601. [Office for the Blind, 275 East Main Street, Mail Stop 2-EJ, Frankfort Kentucky 40621], Monday through Friday, 8 a.m. to 4:30 p.m. For additional information, please visit kcc.ky.gov/vocational-rehabilitation.

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 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.

The Kentucky Office of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Office will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Susie Edwards at the address below.

CONTACT PERSON: Susie Edwards, Kentucky Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor NE, Frankfort, Kentucky 40601, phone 502-564-4440, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's blind vendor program.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of 20 U.S.C. §§ 107-107f and KRS 163.470(9).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific guidelines to implement the administration of Kentucky

Business Enterprises necessary to implement the blind vendor program set forth in KRS 163.470(9).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information necessary for specific guidance and operation of the state's blind vendor by setting forth the specific rights and responsibilities of the applicants to and participants in Kentucky's blind vendor program.

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

(a) How the amendment will change this existing administrative regulation: The amendments update the language to reflect changes made when the Office for the Blind was merged with Office of Vocational Rehabilitation; clarifies the rights and responsibilities of the program participants and KBE; changes the amount provided for initial saleable stock; clarifies the appeal rights and explicitly states that the agency will utilize the administrative hearings process set forth in KRS 13B for full evidentiary hearings.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to update the regulation to the statutory merger of the Office for the Blind with the Office of Vocational Rehabilitation and clarify the rights and responsibilities of the participants and the agency.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by setting forth the specific guidance needed to implement the program as set forth in the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to the program participants and the agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 30 Blind Vendors and all future blind vendor applicants

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments will not impact the vendors because the changes merely clarify the existing rights and responsibilities of the vendors and KBE.

(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

(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 the individuals, staff or businesses affected.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Department of Vocational Rehabilitation and the set-aside fees generated by the program itself which are established in the authorizing statute pursuant to federal law.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What 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 Office for Vocational Rehabilitation, Department for Workforce Investment, Education and Workforce Development Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 61.870-61.884, 163.470(11), 438.310, 163.470(5) and (9); 20 U.S.C. 107-107f, 34 C.F.R. Part 361.38, 395,

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-): No additional revenues

Expenditures (+/-): No additional expenses

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment Office of Vocational Rehabilitation (Amendment)

782 KAR 1:070. Certified driver training program.

RELATES TO: KRS 186.480(1)(b), 186.576, 186.577(4), 186.578, 186.579, 189A.010 STATUTORY AUTHORITY: KRS 186.578(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.578(7) requires the Office of Vocational Rehabilitation [Office for the Blind] to promulgate administrative regulations setting the standards for a certified driver training program to serve persons with a visual impairment. This administrative regulation establishes standards and procedures for the certified driver training program.

Section 1. Definitions. (1) "Applicant" is defined by KRS 186.576(1).

(2) "Bioptic telescopic device" is defined by KRS 186.576(3).

(3) "Certified driver rehabilitation specialist" means a person who has met basic professional criteria, passed a written test, and maintained continuing education requirements to be certified by the Association for Driver Rehabilitation Specialists, ADED, for the purpose of evaluating, educating, and training persons with disabilities to operate or drive motor vehicles and to prepare for a driving skills test.

(4) "Office" means the Office of Vocational Rehabilitation [is defined by KRS 186.576(8)].

Section 2. Certified Driver Training Program Requirements. (1) Any person or entity may apply to the office to become a certified driver training program that satisfies the following requirements:

(a) At least one (1) instructor is a certified driver rehabilitation specialist or is supervised by a certified driver rehabilitation specialist;

(b) All instructors meet the requirements of subsection (4) of this section;

(c) Any vehicle utilized:

1. Has a valid registration;

2. Is in sound mechanical order;

3. Has one (1) operable instructor brake;

4. Has signage indicating student driver on two (2) sides and rear of vehicle; and

5. Has adaptive equipment suitable for functional limitations of students;

(d) Maintains liability coverage that meets the minimum Kentucky insurance limits; and

(e) Uses a curriculum which meets the requirements of subsection (3) of this section.

(2) The following shall be submitted to the office:

(a) Business name, address, telephone number, and office hours;

(b) Copy of the certifications and resumes of each proposed instructor;

(c) Description of the equipment, vehicles with adaptive devices, and facilities to be used in the certified driver training program;

(d) Copy of the valid vehicle registration;

(e) Copy of the liability insurance policy that includes a mandatory ten (10) day written cancellation notice by the insurer to the office;

(f) A detailed copy of the curriculum used; and

(g) The fees charged per hour, per lesson, or per course.

(3) The curriculum to be used shall consist of the following sections:

(a) A theoretical course of instruction that shall include:

1. Subject matter contained in the Kentucky Drivers Manual;

2. Safe driving practices and traffic laws;

3. The "SCAN, Identify, Predict, Decide, Execute" (SIPDE) approach to perceptive driving;

4. Signs, signals, highway markings, and highway design features required for the safe operation of a motor vehicle;

5. Driving emergencies such as brake or tire failure, skidding, stuck accelerator, and running off the roadway;

6. Potential crash locations and situations such as intersections, hydroplaning, railroad crossings, multiple vehicle types in the traffic mix, and pedestrian traffic;

7. Seatbelt usage;

8. Speeding as a major contributing factor in vehicle crashes; and

9. Driver responsibility and accident reporting.

(b) A practical course instruction that shall include:

1. Demonstration, instruction, and practice in the use of the bioptic telescopic device; and

2. Behind the wheel demonstration, instruction, and practice:

a. For a minimum of thirty (30) hours for applicants who have never had an operator's license and fifteen (15) hours for applicants who have had an operator's license; and

b. Consisting of:

(i) Stopping;

(ii) Starting;

(iii) Shifting;

(iv) Turning;

(v) Backing;

(vi) Parallel parking;

(vii) Steering; and

(viii) Driving in residential, medium city, and highway traffic.

(4) Any instructor in an approved certified driver training program shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a four (4) year college degree. Experience as a

professional driver education instructor shall substitute year-for-year for the college education if the individual is a high school graduate or equivalent;[

~~(c) Be of good moral character;~~

~~(c) [(d)]~~ Never have been convicted of a felony;

~~(d) [(e)]~~ Never have been convicted of a violation of KRS 189A.010 or its equivalent from another jurisdiction;

~~(e) [(f)]~~ Never have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in the system;

~~(f) [(g)]~~ Possess a valid driver's license and have fewer than six (6) points assigned pursuant to 601 KAR 13:025 on his driving history record;

~~(g) [(h)]~~ Not have had a suspended or terminated~~[(his)]~~ driving privilege ~~withdrawn~~ for any reason in the past five (5) years;

~~(h) [(i)]~~ ~~Enroll in and~~ Successfully~~successfully~~ complete the bioptic driving instructor training course offered by the office; and

~~(i) [(j)]~~ Obtain at least five (5) hours ~~annually~~ of continuing education in low vision rehabilitation ~~each year~~.

(5) The certified driver training program shall review the driving history record and continuing education requirements of its instructors annually.

Section 3. Certification. (1) The office shall issue a certificate to an approved certified driver training program.

(2) Each certificate shall be valid for three (3) years from the date of issue. Certificates are not transferable. If there is a change of ownership, a new application shall be submitted.

Section 4. Performance Inspections. (1) The office may conduct a random or routine performance inspection of a certified driver training program.

(2) The certified driver training program shall be notified in writing of any deficiency discovered in the performance inspection.

(3) The deficiency shall be corrected prior to the next scheduled student or the certified driver training program's approval shall be withdrawn by the office.

Section 5. Acceptance Into a Certified Driver Training Program.

(1) An eligible applicant shall:

(a) Meet the minimum visual requirements of KRS 186.578(1);

(b) Obtain the bioptic telescopic device; and

(c) Successfully complete a functional visual assessment by the office.

(2) An eligible applicant may be accepted into a certified driver training program.

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend at least five workdays prior to the hearing. 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 October 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.

The Kentucky Office of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the

Rehabilitation ACT of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Office will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all aspects of the meeting. If an interpreter or other auxiliary aid or service is needed, contact Susie Edwards at the address below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for developing and maintaining the standards for a certified driver training program to service persons with a visual impairment required by KRS 186.578(7).. Act and regulation, 34 C.F.R. § 361.49.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of Section 723(b)(1) of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's certified driver training program as set out in, and mandated by, Section 723(b)(1) of the Rehabilitation Act and regulation, 34 C.F.R. § 361.49.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's certified driver training program to serve persons with a visual impairment. .

(2) If 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 change reflects the change to the Office for Vocational Rehabilitation from the Office for the Blind due to the recent merger of the two offices. The proposed amendments are made to adapt the regulations to provide better guidance to individuals with visual disabilities and to provide for the operation of a certified driver training program..

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to move the regulation to the Office of Vocational Rehabilitation after merging with the Office for the Blind.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the standards for a certified driver training program to serve persons with a visual impairment.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific guidance to the requirements of operating a certified driver training program to serve persons with a visual impairment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: individuals with visual impairments seeking training from a certified driver training program to allow them better access to community and employment opportunities.

(4) Provide an analysis of how the entities identified in question (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: Agency will need to use this guidance to standardize and operate a certified driver training program for individuals with a visual impairment.

(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 the staff affected..

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated that agency staff will be able to maintain legislated standards for the operation of a certified driver training program for individuals with visual impairment.

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

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What 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 and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.578(7)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
(Amendment)

787 KAR 2:040. Local workforce development area governance.

RELATES TO: KRS 151B.020(6), 29 U.S.C. 3101 et seq.

STATUTORY AUTHORITY: KRS 151B.020(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.020(6) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the membership criteria and operating guidelines for local workforce development boards, requires interlocal and partnership agreements for local workforce development areas, establishes the process for the identification of regions and designation of local workforce development areas, establishes the guidelines for the hiring of staff by local workforce development boards, and requires a written agreement for entities that perform multiple functions in a local work-force development area under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq. In addition to the minimum federal requirements set forth in 29 U.S.C. 3122, this administrative regulation provides further guidance and clarification necessary for effective local implementation activities.

Section 1. Local workforce development board membership criteria and operating guidelines. Each chief local elected official in a local workforce development area shall appoint members to the local workforce development board and each local workforce development board shall operate in compliance with the Workforce Innovation and Opportunity Act (WIOA). [~~Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification, Policy Number 15-001.~~]

Section 2. Interlocal agreement. Each local elected official of a unit of general local government within a local workforce development area shall jointly execute a written interlocal agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act. [~~Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities, Policy Number 15-002.~~]

Section 3. Partnership agreement. Each chief local elected official, representing the local elected officials in a local workforce development area, and each designated chair, representing the local workforce development board, shall jointly execute a written partnership agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act. [~~Local Elected Official(s) and Local Workforce Development Board Partnership Agreement, Policy Number 15-003.~~]

Section 4. Identification of regions and designation of local workforce development areas. The process and procedures for the identification of regions and the designation of local workforce development areas within the Commonwealth of Kentucky shall be in compliance with WIOA. [~~the Identification of Regions and Designation of Local Workforce Development Areas, Policy Number 15-004.~~]

Section 5. Hiring of staff for local workforce development boards. Local workforce development boards may hire a director and other staff in accordance with WIOA. [~~Local Workforce Development Board Staff, Policy Number 17-001.~~]

Section 6. Entities performing multiple functions in a local workforce development area. Entities that have been selected or otherwise designated to perform more than one (1) function in a

local workforce development area shall develop a written agreement that, at a minimum, complies with WIOA. [~~Internal Controls and Conflicts of Interest Requirements for Entities Performing Multiple Functions, Policy Number 17-002.~~]

~~Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) The "Workforce Innovation and Opportunity Act (WIOA) – Local Workforce Development Board (LWDB) Member Nomination Guidelines, Office of Employment and Training (OET/agency) Confirmation Process and Board Certification", Policy Number 15-001, March 31, 2017;~~

~~(b) The "Workforce Innovation and Opportunity Act – Interlocal Agreements, Chief Local Elected Official and Local Elected Official Roles and Responsibilities", Policy Number 15-002, March 31, 2017;~~

~~(c) The "Workforce Innovation and Opportunity Act – Local Elected Official(s) and Local Workforce Development Board Partnership Agreement", Policy Number 15-003, October 1, 2015;~~

~~(d) The "Identification of Regions and Designation of Local Workforce Development Areas", Policy Number 15-004, May 14, 2015;~~

~~(e) The "Local Workforce Development Board Staff", Policy Number 17-001, March 31, 2017; and~~

~~(f) The "Internal Controls and Conflicts of Interest Requirements for Entities Performing Multiple Functions", Policy Number 17-002, March 31, 2017.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Employment and Training, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

MARTY HAMMONS, Commissioner

APPROVED BY AGENCY: August 12, 2021

FILED WITH LRC: August 13, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held October 14, 2021 at 10:00 a.m. (EDST) at the Education and Workforce Development Cabinet, 500 Mero Street, 4th Floor, Secretary's Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 October 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: Honor Barker, Deputy Commissioner, Department of Workforce Investment, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 782-3746, email Honor.Barker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Honor Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation directs how local Workforce Development Areas are to be governed, and adopts and implements the related provisions of the Workforce Innovation & Opportunity Act for the Commonwealth.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to assist the Secretary and Deputy Secretary of the Cabinet for Education and Workforce Development, Commissioner of the Department for Workforce Investment in carrying out their statutory duties of oversight and compliance of the local workforce development areas, as set forth in the Workforce Innovation and Opportunity

Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 20 C.F.R. § 679.300 et seq sets forth the governing regulations for how local workforce development boards are to be organized, lead and staffed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective and efficient administration for the Department of Workforce Investment in implementing the related provisions of the Workforce Innovation and Opportunity Act.

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

(a) How the amendment will change this existing administrative regulation: Removes the specific policy numbers associated with the regulatory structure.

(b) The necessity of the amendment to this administrative regulation: The regulation needed to be modified and updated in accordance with the certification letter filed by the EWDC Cabinet in February 2020, to prevent the regulation from sunseting.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation mirrors the provisions of 20 C.F.R. § 679.300 et seq the Workforce Innovation and Opportunity Act.

(d) How the amendment will assist in the effective administration of the statutes: The removal of the specific policy number and the relevant incorporation by reference will allow the Department of Workforce Investment to be more efficient. The regulation will not have to be amended if there is technical change or small update or modification to the policy that is consistent with the promulgated regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended administrative regulation affects the Education and Workforce Development Cabinet, Department of Workforce Development, Labor Cabinet, and the Career Development Office, the Kentucky Workforce Innovation Board, and local Workforce Development Areas, the local Workforce Development Boards and staff.

(4) Provide an analysis of how the entities identified in question (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: there will be no change to the current organizational structure and requirements of the Local Workforce Development Boards, as the amendment simply removes the incorporate by reference specific policies.

(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 party with these proposed modifications.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended administrative regulation enables the monitoring of the local areas to be more nimble with updates to policies, without the need to amend through the formal regulatory process.

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

(a) Initially: There will be no cost to implement the modification as the substance of the regulation has not changed.

(b) On a continuing basis: There will be no substantive changes, and thus no costs to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Work Innovation and Opportunity Act provides the funds for the Department of Workforce Investment, Division of Technical assistance to perform all compliance and monitoring of the local workforce development areas.

(7) Provide an assessment of whether an 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 no increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees impacted.

(9) TIERING: Is tiering applied? Tiering is not applied because all local areas will be subject to administrative regulation equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Workforce Investment, all local Workforce Development Area board and staff.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amended administrative regulation is authorized by 20 C.F.R. § 679.300 et seq, the provisions of the Workforce Innovation and Opportunity Act that specifically govern local workforce development board.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no change in program administration based upon these amendments.

(d) How much will it cost to administer this program for subsequent years? The cost of administration of the Workforce Innovation and Opportunity Act varies year to year based upon the formula of funds received from the United States Department of Labor, but there will be no change with this amendment.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:010. Applications, permits, and renewals.

RELATES TO: KRS 165A.330, 165A.350(3), 165A.360(1), (2), (7), (9), 367.110-367.360

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.350(3), 165A.360(2), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A. KRS 165A.350(3) and 165A.360(2) require the commission to establish forms. This administrative regulation establishes the application requirements and incorporates forms by reference.

Section 1. Initial Licensure Application and Student Protection Fund Contribution for Schools. (1) A school residing in and doing business in Kentucky shall submit:

(a) Form PE-15, Application for Resident School; and

(b) The initial contribution to the student protection fund

required by 791 KAR 1:025, Section 2.

(2) A school not residing in Kentucky, but seeking to do business in Kentucky, shall submit:

(a) Form PE-16, Application for Non-Resident School; and

(b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.

Section 2. Annual Renewal License Application for Schools. (1) The annual renewal license application for a school residing in and doing business in Kentucky shall be the Form PE-17, Application for License Renewal Resident School.

(2) The annual renewal license application for a school not residing in Kentucky, but doing business in Kentucky, shall be the Form PE-18, Application for License Renewal Non-Resident School.

(3) Each school shall:

(a) List each program for which it is approved, including the Classification of Instructional Programs (CIP) code, the number of contact or credit hours for the program, the length of the program, and the cost of the program;

(b) Provide a copy of:

1. Its enrollment agreement noting each item that is required by KRS Chapter 165A;

2. a. Its most recent audited financial statement, if the school is accredited; or

b. Its most recent financial income statement certified by an independent accountant, if the school is not accredited;

3. Its faculty and personnel handbook;

4. Its current catalog, certified, true, and correct in content;

5. Any advertising and marketing materials utilized by the school;

6. Its occupational license and current fire inspection report;

7. Its organizational chart for each school; and

8. Its certificate of accreditation, if accredited; and

(c) Submit a Form PE-11, Form for Instructional Staff and Key Administrative Personnel.

Section 3. Permit Application for Agents. The permit application for each agent of a school licensed by the commission shall be the Form PE-19, Application for Permit to Act as an Agent, to seek initial approval with the commission, and the Form PE-20, Application for Renewal of Permit to Act as an Agent, to seek renewal with the commission annually.

Section 4. Transfer of Ownership of a School. The application for recording a transfer of ownership of a school licensed by the commission shall be the Form PE-21, Application to Transfer Ownership of a School.

Section 5. Change of Name of a School. The application for approval of a change of name of a school shall be the Form PE-22, Application to Change the Name of a School.

Section 6. Change of Location of a School. The application for approval of a change of location of a school shall be the Form PE-23, Application to Change the Location of a School.

Section 7. Application to Award an Associate Degree. The application to award an associate degree shall be the Form PE-10, Application to Award an Associate Degree.

Section 8. New Program. The application for approval of a new certificate or diploma program shall be the Form PE-14, Application for a New Program.

Section 9. Request for Transcript. The request for a transcript from a closed school shall be the Form PE-28, Request for Transcript.

Section 10. Revision of an Existing Certificate, Diploma, or Associate Degree Program. (1)(a) The school shall submit written notification detailing cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a

currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period to the commission on a Form PE-12, Notification to Revise an Existing Program for Less Than 25%.

(b) A change in the name of an existing program that does not change the overall objective of the program shall not be considered in the computation of the cumulative curriculum changes.

(2)(a) A school shall submit a Form PE-13, Application to Revise an Existing Program for 25% or More, to the commission if cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period.

(b) A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.

(3) A school shall notify the commission in writing of the program name changes, course name changes, or course description changes.

Section 11. (1) Beginning in 2016 and every year thereafter, the school shall report its job placement rate per licensed program to the commission by January 15, and shall be the Form PE-39, Job Placement Reporting.

(2) The job placement rate in the field of study for the program shall be calculated as follows:

(a) Determine the total number of students who, during the immediately preceding July 1-June 30 period, graduated from the program;

(b) Of the total number determined under paragraph (a) of this subsection, determine the number of graduates who the school has documented as not available for employment due to health-related issues for individual or family member, death, active military duty, spouse or dependent of military personnel relocated due to military transfer, incarceration, visa restrictions, or continuing education at least half-time;

(c) Subtract the total number of graduates not available for employment in paragraph (b) of this subsection from the total number of graduates under paragraph (a) of this subsection. This difference shall be the denominator for the equation;

(d) Of the total number determined under paragraph (c) of this subsection, determine the number of graduates who obtained job placement in a position in the field of study, in accordance with subsections (10) and (11) of this section. This shall be the numerator for the equation; and

(e) Divide the number of students determined under paragraph (d) of this subsection by the difference found in paragraph (c) of this subsection. This quotient converted to a percentage shall be the job placement rate.

(3) For purposes of the job placement rate calculation, the school shall obtain the placement data by contacting employers or graduates to obtain the relevant information under the definitions in subsections (10) and (11) of this section. This contact and information shall be documented in writing, and shall include:

(a) Name of the employer;

(b) Name of the graduate;

(c) Addresses and telephone numbers of graduate and employer;

(d) Title of employment;

(e) Duties of employment;

(f) Length of employment;

(g) Total hours worked per pay period;

(h) Name and title of the person(s) providing the information to the school;

(i) Name and title of the person(s) at the school who received and recorded the information;

(j) The date the information was provided; and

(k) Statement whether the school designated the graduate as placed in field or not.

(4) If the school obtains the relevant information by telephone or personal contact, as opposed to a written document, the school shall send a confirming letter to the provider of the information setting forth in specific detail the information provided and the date

it was provided. The school shall maintain a copy of the confirming letter and evidence it was sent.

(5) All data and information used by a school to support the job placement rate, including any information that the graduate is not available for employment, shall be reliable, verifiable, and documented in writing.

(6) Documentation supporting job placement rates for each applicable period for each program shall be maintained by the school in a retrievable and well-organized manner.

(7) The job placement rates calculated by the school and the underlying documentation shall be subject to review and audit by the commission, and the school shall pay any costs for a review and audit. This may include requiring the school to:

(a) Submit graduate data to the Kentucky Center for ~~[Education and Workforce]~~ Statistics to include a graduate's name, date of birth, Social Security number, gender, ethnicity, residency at point of graduation, and the CIP code and level of the program from which the student graduated; and

(b) Have a certified public accountant report on the school's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

(8) Another state agency shall not be prevented from investigating, reviewing, or auditing the underlying documentation and the rates provided. ~~[, pursuant to 791 KAR Chapter 1, KRS Chapter 165A, or the Kentucky Consumer Protection Act, KRS 367.110-367.360.]~~

(9) A school that operates a program that is intended to and only provides continuing education courses to attendees for the purpose of the attendee maintaining current licensure shall so certify to the commission. The school shall also obtain written statements from all attendees affirming that the person's purpose in attending courses offered by the school is to maintain current licensure. The school's certification to the commission and underlying written affirmations shall suffice for the calculation of job placement rates for that continuing education program.

(10) The conditions described in this subsection shall be required to qualify as job placement in a position in field of study.

(a) Within 180 days of graduating from the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study and the school shall document this employment.

(b) If a license or certification is required or generally requested for positions in the occupation, then within 180 days after the results are available from the first exam that the graduate would have been able to take after completing the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study.

(c) In addition to paragraph (a) or (b) of this subsection, for a part-time position in the field of study to be considered job placement, the school shall possess a handwritten statement from the graduate at time of completion that part-time employment is the graduate's objective for employment including a general explanation for this objective.

(d) For self-employment to be considered as job placement, the school shall possess a handwritten statement from the graduate describing:

1. The work and demonstrating that it is in a position in the field of study;

2. That the graduate has received compensation in return for services provided in connection with the self-employment; and

3. That the graduate has completed at least 675 hours of work in connection with the graduate's self-employment, including time spent marketing the business, cultivating clients, negotiating contracts, and initiating or completing the work.

(11) The conditions described in this subsection shall be required to qualify as a position in field of study.

(a) The graduate's employment shall be a position included in the most recent National Center for Education Statistics and U.S. Bureau of Labor Statistics CIP-SOC Crosswalk for the program studied identified by the six (6) digit U.S. Department of Education classification of instructional program code, and the routine work

shall predominantly require using the core skills and knowledge expected to have been taught in the program and the position shall require education beyond high school level.

(b) If graduates are continuing in prior employment, the graduate's prior employment position shall be reasonably related to the program training and the graduate shall attest in the graduate's handwriting when enrolling in the program and upon completion of the program, with reference to a specific written policy of the employer, to the benefit of the training as a catalyst for maintaining or advancing in a position.

(12) Failure to comply with this section shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE-15, "Application for Resident School", as provided in EdVera software version 2.1, edition 2021 [Form PE-15, 2017];

(b) Form PE-16, "Application for Non-Resident School", as provided in EdVera software version 2.1, edition 2021 [Form PE-16, 2017];

(c) Form PE-17, "Application for License Renewal Resident School, as provided in EdVera software version 2.1, edition 2021 [Form PE-17, 2017];

(d) Form PE-18, "Application for License Renewal Non-Resident School", as provided in EdVera software version 2.1, edition 2021 [Form PE-18, 2017];

(e) Form PE-11, "Form for Instructional Staff and Key Administrative Personnel", as provided in EdVera software version 2.1, edition 2021 [Form PE-11, 2017];

(f) Form PE-19, "Application for Permit to Act as an Agent", as provided in EdVera software version 2.1, edition 2021 [Form PE-19, 2017];

(g) Form PE-20, "Application for Renewal of Permit to Act as an Agent", as provided in EdVera software version 2.1, edition 2021 [Form PE-20, 2017];

(h) Form PE-21, "Application to Transfer Ownership of a School", as provided in EdVera software version 2.1, edition 2021 [Form PE-21, 2017];

(i) Form PE-22, "Application to Change the Name of a School", as provided in EdVera software version 2.1, edition 2021 [Form PE-22, 2017];

(j) Form PE-23, "Application to Change the Location of a School", as provided in EdVera software version 2.1, edition 2021 [Form PE-23, 2017];

(k) Form PE-10, "Application to Award an Associate Degree", as provided in EdVera software version 2.1, edition 2021 [Form PE-10, 2017];

(l) Form PE-14, "Application for a New Program", as provided in EdVera software version 2.1, edition 2021 [Form PE-14, 2017];

(m) Form PE-28, "Request for Transcript", as provided in EdVera software version 2.1, edition 2021 [PE-28, 2017];

(n) Form PE-12, "Notification to Revise an Existing Program for Less Than 25%", as provided in EdVera software version 2.1, edition 2021 [Form PE-12, 2017];

(o) Form PE-13, "Application to Revise an Existing Program for 25% or More", as provided in EdVera software version 2.1, edition 2021 [Form PE-13, 2017]; and

(p) Form PE-39, "Job Placement Reporting", as provided in EdVera software version 2.1, edition 2021 [Form PE-39, 2017].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-

Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:010) establishes the application requirements for proprietary schools.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:010) establishes the application requirements for proprietary schools and the utilization of an electronic data management system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding applications, permits, and renewals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to proprietary schools. The electronic data management system will modernize the multiple levels of regulatory procedures and license processing.

(2) If 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 facilitate the process of automating and streamlining regulatory and licensing processes through the use of an electronic data management system. This modernization will greatly improve responsiveness, and promote collaboration with stakeholders.

(b) The necessity of the amendment to this administrative regulation: All proprietary schools will use the electronic data management system.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding applications, permits, and renewals. The electronic data management system allows for a controlled exchange of information among stakeholders while maximizing operational efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidelines to proprietary schools to assist in a more efficient application process, reduce operating expenses, and improve record management.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All proprietary

schools will be required to begin utilizing the electronic data management system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities: The electronic data management system will replace a paper based system, facilitate compliance, simply document version control and ultimately lead to a major efficiency.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(6), 165A.350(3), 165A.360(2), 165A.400.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(Amendment)

791 KAR 1:020. Standards for licensure.

RELATES TO: KRS 165A.310(5), 165A.330, 165A.340, 165A.350, 165A.360, 165A.370(1), 165A.390, 165A.450

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.360(2), (7), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.360(2) requires the commission to establish application forms and fees. KRS 165.360(7) authorizes the commission to promulgate administrative regulations requiring supporting documentation to accompany application. This administrative regulation establishes the application requirements and incorporates forms by reference.

Section 1. A school shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The school shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements required by 791 KAR 1:010;

(b) The name and contact information of the bank or other financial institution used by the school as a reference;

(c) Good standing with the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department; and

(d) A school surety bond or other collateral, in accordance with KRS 165A.360 and 791 KAR 1:150, and agent surety bond or other collateral, in accordance with KRS 165A.350 and 791 KAR 1:150.

(2) Accreditation.

(a) If a school is accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish information regarding its accreditation status.

(b) If a school is not accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish a statement indicating if, when, and from whom the school will seek accreditation.

(c) A school shall not:

1. Be the subject of an interim action by a state agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;

2. Have had its state license suspended, revoked, or terminated, even if the required due process procedures have not been completed;

3. Have been denied candidacy or accreditation by an accrediting agency;

4. Have voluntarily withdrawn its candidacy or accreditation while not in good standing from an accrediting agency;

5. Have had its candidacy or accreditation withdrawn or been placed on public probation by an accrediting agency;

6. Be the subject of an interim action by an accrediting agency potentially leading to the suspension, revocation, or withdrawal of candidacy or accreditation; or

7. Have been notified of the loss of any agency's accreditation even if the due process procedures have not been completed.

(3) Agents. A school shall be responsible for the actions of its agent when the agent is acting on behalf of the school. An agent shall have an agent permit and agent bond, in accordance with KRS 165A.350 and 791 KAR 1:150 and shall comply with KRS 165A.330.

(4) Personnel requirements.

(a) The school shall furnish information regarding the administrative officer, the directors, the owners, and the instructors on the Form PE-11, Form for Instructional Staff and Key

Administrative Personnel, incorporated by reference in 791 KAR 1:010.

(b) The chief administrator shall be qualified pursuant to KRS 165A.370(1)(d).

(c) Each qualifying degree possessed by personnel shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

(d) Verification of credentials. A school shall maintain official transcripts for credentials that qualify instructors to teach their assigned courses and for those credentials that are listed in the catalog. All these credentials shall be on file in the administrative offices at the campus location nearest to where the instructor is primarily employed.

(e) A principal party, owner, or administrator involved with the school shall not have had a felony conviction involving moral turpitude, fraud, or a capital crime.

(f) Instructor qualifications. To teach, an instructor shall comply with KRS 165A.370(1)(e). Appropriate training or experience related to the responsibilities of the position shall include a high school diploma or GED along with one (1) or more of the following:

1. Completed a training or degree program in the applicable occupational area;

2. Demonstrated outstanding professional experience;

3. Demonstrated outstanding professional contributions to the discipline being taught; or

4. Professional licensure or certification in the field.

(g) Teaching loads of instructors shall be consistent with recognized educational practices and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(h) Instructor development.

1. A school shall establish instructor development plans including both in-service and professional growth activities to enhance instructor expertise.

2. There shall be documented evidence on an annual basis of these development plans and their implementation.

3. A school shall establish plans that are appropriate given each instructor's training, education, and related work experience and that provide the proper mix of in-service training and professional growth based on the academic and experiential background of the instructor.

(5) Facilities and equipment.

(a) Enrollment shall not exceed the design characteristics of the facilities.

(b) A school shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(c) If a school has an expansion of a school facility, it shall comply with 791 KAR 1:160.

(d) If a school has multiple campuses, it shall comply with 791 KAR 1:150.

(e) If a school is only seeking licensure with the commission to offer a course or courses not for college credit, and it will not conduct its course or courses at a permanent location but rather will utilize the facilities of hotels or other public buildings, it shall:

1. Notify the commission in writing, at least thirty (30) days in advance of the location where any course will be offered;

2. Receive prior approval of the Kentucky Real Estate Commission, the Kentucky Insurance Commission, the Kentucky Bar Association, or other appropriate official agency or group authorized to approve the course or courses; and

3. Not advertise or promote the course or courses until the commission has received in writing the course content, name and qualification of the instructor, and a copy of the approval to offer the course from an authorizing agency.

(6) Library resources. The library shall be appropriate to support the programs offered by the school in accordance with this subsection.

(a) A school, through ownership or formal agreements, shall

provide and support student and instructor access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the program level offered by the school, and shall be sufficient to support all educational, research, and public service programs at the school.

(b) A school that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the commission with the license application, and prior to the offering of any courses.

(c) A school that is dependent on another school or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the commission and to students and instructors.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited schools of similar types.

(e) Library staff shall be qualified as required for accredited schools of similar types.

(f) The school shall have sufficient seating and work space for a reasonable proportion of the instructors and students to be accommodated at one (1) time.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(7) Curriculum.

(a) A course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited schools if the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level. A course may be offered that is not transferable based on the uniqueness of a program that is occupational in nature.

(b) A school shall have a systematic program of curriculum revision in order to maintain the general standards of accredited schools with similar programs.

(c) A school shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(d) A school shall offer with sufficient frequency the courses required for each program for the student to complete the program within publicized time frames.

(8) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program shall include:

(a) Adequate supervision by the school; and

(b) Other instructional support necessary to maintain the program.

(9) Truth in advertising. A school shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or other materials produced by or on behalf of the school which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the school, its personnel, its services, the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the school shall not indicate that the school is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Kentucky Commission on Proprietary Education, or by any other state agency. A statement using the name of the Kentucky Commission on Proprietary Education, if any, shall be in exactly the following form: "(Name of School) is licensed by the Kentucky Commission on Proprietary Education."

(c) A school shall:

1. Publicly disclose, both in print and Web-based materials, information about its student enrollment, degrees conferred, and job placement rate of program graduates in the field of study as reported to the commission, in accordance with 791 KAR 1:010 and KRS 165A.340(6); and

2. Use numbers most recently reported to the commission in its

advertising.

(d) A school shall publicly disclose information about articulation agreements and transfer of credits, in accordance with KRS 165A.340(6)(a)2.c., and shall furnish copies of the articulation agreements and rights and responsibilities of students regarding transfer of credits to the commission.

(e) The commission staff may require that a school furnish proof to the commission of any of its advertising claims. If proof cannot be furnished, a retraction of the advertising claims published in the same format as the claims themselves shall be published by the school and the continuation of the advertising shall be grounds for denial, suspension, or revocation of the school's license.

(10) Recruitment and enrollment procedures. A school shall furnish the following to each prospective student prior to enrollment, and shall require that the student sign and date the school's form to be placed in the student's file, which shall either be part of the enrollment contract or a pre-enrollment checklist verifying that the student received:

(a) The school's most recent catalog including policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits;

(e) The complaint procedures available to students, including the process for filing a complaint with the commission;

(f) Notice of the existence of the student protection fund created in KRS 165A.450; and

(g) The student enrollment application, contract, or agreement.

(11) Student affairs.

(a) Students admitted to the school shall have completed a state-approved secondary school program or its equivalent.

(b) The school shall provide academic advising by instructors or staff to each student at the time of admission and throughout the program.

(c) The school shall make assistance and advising available to each student who completes a technical or vocational program for the purpose of assisting the student with relevant job placement or with transfer.

(d) The school shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes.

(e) The school shall comply with recordkeeping requirements, in accordance with KRS 165A.370 and 791 KAR 1:027.

(f) Administrative officers of the school shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(g) A school shall make provision for the maintenance of student records if the school ceases operations. The location of student records shall be approved in advance by the commission in accordance with KRS 165A.390(5). A school shall comply with KRS 165A.450.

(12) School policies.

(a) The school shall maintain records in an orderly manner and make them available for inspection by the commission or its designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the school including:

1. General information:

a. Official name and address of the school, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The school's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of instructors, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the school;

2. Administrative policies:
 - a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;
 - b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;
 - c. Schedules for all tuition and instructional charges refund policy, and schedules for the tuition and instructional charges;
 - d. Statement of financial aid available to students; and
 - e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and
3. Academic policies:
 - a. Policy on class attendance;
 - b. Description of grading system;
 - c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and
 - d. Full description of the nature and objectives of all programs offered.

(13) Site visits.

(a) The commission shall conduct site visits in accordance with KRS 165A.370(1) and (2).

(b) The costs of the site visit shall be paid in accordance with 791 KAR 1:025.

(c) The commission may conduct an announced or unannounced site visit of a licensed school during reasonable business hours to inspect the files, facilities, and equipment, as well as conduct interviews to determine the school's compliance with this administrative regulation and KRS Chapter 165A.

(d) Within ninety (90) working days of receipt of a complete application or annual report, the commission may conduct a site visit.

(e) The purpose of a site visit shall be to make an assessment of a school using the standards for licensure as set forth in this administrative regulation.

(f) Failure to provide full access to the school's files, facilities, and equipment, or prevention of interviews, shall be grounds for:

1. Denial of a license; or
2. Suspension or revocation of an existing license.

Section 2. General Standards for Approval of Associate Degree Programs. (1) In addition to meeting the requirements and standards in Section 1 of this administrative regulation, a school requesting consideration for approval to award an associate degree shall:

(a) Have been in operation and licensed in Kentucky or in another jurisdiction whose standards substantially meet or exceed those contained in this administrative regulation, for a continuous period of at least two (2) years immediately preceding the application;

(b) Be accredited by an accrediting agency recognized by the United States Department of Education;

(c) Meet the standards set forth in KRS 165A.370 and this administrative regulation;

(d) File with the commission a completed, signed, and dated Application to Award an Associate Degree (Form PE-10), incorporated by reference in 791 KAR 1:010;

(e) Pay the fee for application to award an associate degree set forth in 791 KAR 1:025, Section 8;

(f) Ensure that marketing techniques and advertisements shall not guarantee employment;

(g) Not offer to the public, advertise, or enroll students in a new associate degree program until all necessary forms have been submitted to the commission office for review, and written approval of the application is received from the commission; and

(h) Be inspected by a member of the commission, or commission designee, with prior notification to the school of the date and time of the inspection to determine compliance with KRS 165A.370 and this administrative regulation.

(2) A class in the program shall not commence before the inspection report evidences that the program is in compliance.

Section 3. Associate of Arts Degree or Associate of Science Degree. (1) The granting of an associate of arts degree or associate of science degree shall be limited to a school accredited by an accrediting agency recognized by the U.S. Department of Education.

(2) The associate of arts degree or associate of science degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours of study.

(a) Of the total credit hours, a minimum of thirty (30) semester credit hours or forty-five (45) quarter credit hours, shall be in the appropriate business, technical, or other major field of study as indicated in the program title and description.

(b)1. A minimum of fifteen (15) semester credit hours or twenty-two and one-half (22 1/2) quarter credit hours, shall be required in general education studies.

2. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities, and shall offer balance to the total program.

Section 4. Specialized Associate Degree. (1) The granting of a specialized associate degree designated as an associate of applied science degree or associate of occupational studies degree is limited to schools accredited by an accrediting agency recognized by the U.S. Department of Education, as a business or specialized school.

(2)(a) The associate of applied science degree or associate of occupational studies degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours.

(b) The degrees shall have at least nine (9) semester hours, thirteen and one-half (13 1/2) quarter hours, or its recognized clock hour equivalent in general education or applied general education studies. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities. Applied general education studies shall include courses that apply to a specific occupation (e.g., technology, medication math, psychology for health professionals, and business math) and also satisfy general education requirements.

Section 5. Additional Standards. (1) An associate degree granting school approved by this commission shall follow the additional standards established in this section.

(a) The library or learning resource center items shall include relevant periodical subscriptions or computer data bases and shall contain professionally accepted references in the field or fields of study which shall be appropriate for the program offered.

(b) The library or learning resource center shall be accessible for all students to use the items and shall provide access to materials at hours other than times classes are being taught.

(c)1. A designated staff member shall be responsible for the library or learning resource center, and sufficient funds for support of the facility and acquisition of library or learning resource center items shall be provided.

2. In determining whether sufficient funds are provided, current student enrollment shall be considered.

(d) All equipment and training aids shall be relevant to the program offered and shall be in sufficient quality and quantity to accommodate the current student enrollment.

(e) The school shall provide a listing of the program requirements and prerequisites for the degrees offered.

(f)1. A catalog shall be printed containing a description for each course that is required or which may be taken to meet the requirements for the degree.

2. The catalog shall include all prerequisites.

(g) All promotional literature and advertising shall appropriately identify the degree offered.

(h)1. The school shall submit a completed Form for Instructional Staff and Key Administrative Personnel (Form PE-11)

for each instructor, incorporated by reference in 791 KAR 1:010, to the commission before classes listed on the application begin.

2. Official transcripts, and if applicable, copies of certifications, licenses, and other designations for each instructor in the degree program shall be maintained on file at the school.

(i) The school shall maintain on file a current course syllabus for each course taught.

(j) The school shall maintain on file for the commission or its designee a copy of its last accreditation self-study and correspondence with accrediting agencies.

(2) The school shall make the following materials available to a member of the commission or its designee at the on-site visit:

(a) Promotional literature;

(b) School catalog;

(c) Course syllabi;

(d) Inventory of classroom equipment;

(e) Student files;

(f) Faculty files;

(g) Staff files;

(h) A list of all personnel by position indicating part-time and full-time employees; and

(i) A current organizational chart.

(3) The school shall provide a Statement of Quality Assurance as determined by the Commission.

Section 6. Failure to Meet Standards for Licensure. (1) A school's failure to meet the standards for licensure set forth in this administrative regulation shall be grounds for:

(a) Denial of a license; or

(b) Suspension or revocation of an existing license.

(2) The commission shall notify the school by registered mail, return receipt, of the denial, suspension, or revocation of the school's license.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:020) establishes the requirements and standards for proprietary schools.

(b) The necessity of this administrative regulation: This administrative regulation

(791 KAR 1:020) establishes the standards for licensure and application requirements for proprietary schools.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: The statute requires the commission to promulgate regulations requiring supporting documentation to accompany an application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidelines to proprietary schools to assist in a more efficient application process.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides guidance for accessing electronic applications and submitting supporting documentation.

(b) The necessity of the amendment to this administrative regulation: Schools will submit documents electronically and complete a statement of quality assurance in a form and manner determined by the commission.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding standards for licensure. The electronic data management systems allows for a controlled exchange of information among stakeholders while maximizing operational efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment address the statement of quality assurance. A non-degree granting institution must attest to the institution meeting the minimum standard required for receiving and maintaining a license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All proprietary schools will be required to begin utilizing the electronic data management system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: The electronic data management system will replace a paper based system, facilitate compliance, simply document version control and ultimately lead to a major efficiency.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and the licensed proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(6), 165A.360(2), (7), 165A.400.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There is no cost associated with the amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost 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 (+/-): This administrative regulation will have no fiscal impact on revenues.

Expenditures (+/-): This administrative regulation will have no fiscal impact on expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:025. Fees.

RELATES TO: KRS 165A.350(3), 165A.360(1), (2), (9), 165A.380, 165A.420

STATUTORY AUTHORITY: KRS 165A.340(6), (10), 165A.390, 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and (10), 165A.400, and 165A.450 authorize the commission to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A, including establishment of fees and other charges. This administrative regulation establishes the fees for the Kentucky Commission on Proprietary Education.

Section 1. Definitions. (1) "Actual cost" means the amount sufficient to reimburse the commission for all travel and expenses incurred, including the expense of contract labor, consultant fees, or other miscellaneous expenses necessitated by a site visit or inspection.

(2) "Gross revenue" means the total amount of tuition earned by a school less any tuition refunds to the students during the immediate past school year, July 1 through June 30.

(3) "Transfer of ownership" means any change or transfer in ownership whether or not the change results in a change off control.

Section 2. Initial Licensure Fee and Student Protection Fund Contribution. (1) The fee for initial licensure as a school residing in and doing business in Kentucky shall be \$500.

(2) The initial contribution to the student protection fund for a school residing in and doing business in Kentucky shall be \$500.

(3) The fee for initial licensure as a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(4) The initial contribution to the student protection fund for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(5) At any time the balance in the student protection fund falls below \$500,000, each licensed school shall make an additional contribution to the fund. The amount of the additional contribution shall be determined by the commission pursuant to KRS 165A.450(2)(a) and (b). The commission shall calculate the amount due per school, pursuant to Section 3(1) and (2) of this administrative regulation, and shall use a percentage appropriate to replenish the fund. The additional contribution shall be paid on a quarterly basis until the fund is replenished.

(6) For initial and annual renewal license application fees for resident and non-resident commercial driver license training schools refer to 791 KAR 1:050; 791 KAR 1:060; and, 791 KAR 1:070.

Section 3. Annual Renewal License Fee for Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500.

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue for Kentucky residents in excess of \$50,000, not to exceed \$3,000.

(3) Late fees for a resident or nonresident school's annual renewal license shall be:

(a) Ten (10) percent of the total application fee if received after the due date, May 15, up to and including the fifth business day;

(b) Twenty (20) percent of the total application fee if received after the fifth business day, up to and including the tenth business day;

(c) Thirty (30) percent of the total application fee if received after the tenth business day, up to and including the fifteenth business day;

(d) Forty (40) percent of the total application fee if received after the fifteenth business day, up to and including the twentieth business day;

(e) Fifty (50) percent of the total application fee if received after the twentieth business day, up to and including the twenty-fifth business day;

(f) Seventy-five (75) percent of the total application fee if received after the twenty-fifth business day, up to and including the thirtieth business day; and

(g) 100 percent of the total application fee if received after the thirtieth business day.

Section 4. Annual Permit Fees for Agents. The annual permit fee for each agent working for a school licensed by the commission shall be \$175.

Section 5. Transfer of Ownership of a School. The fee for recording a transfer of ownership of a school licensed by the commission shall be \$500.

Section 6. Change of Name of a School. The fee for approval of a change of name of a school shall be \$150.

Section 7. Change of location of a school. The fee for approval of a change of location of a school shall be \$500.

Section 8. Application to Award an Associate Degree. The fee for an application to award an associate degree shall be \$750 per degree.

Section 9. New Program. The fee to apply for a new certificate or diploma program shall be \$200.

Section 10. Program Revisions. ~~[- Certificate, Diploma, and Degree.]~~ (1) The fee to apply for approval to revise twenty-five (25) percent or more of any existing program shall be \$200.

(2) The fee to apply for approval to revise less than twenty-five (25) percent of any program shall be \$100.

Section 11. Transcript Requests from a Closed School. The fee for requesting a transcript from a closed school shall be five (5) dollars.

Section 12. Cost of site visits. (1) Costs connected with a site visit conducted in accordance with KRS 165A.370(1) and (2), such as travel, meals, lodging, and consultant honoraria, shall be paid by the school.

(2) The estimated cost of the site visit shall be paid by the school prior to the site visit.

(3) The final settlement regarding actual expenses incurred shall be paid by the school no later than thirty (30) days after receipt of the invoice.

(4) Failure to pay these costs shall be grounds for:

(a) Denial of a license; or

(b) Suspension or revocation of an existing license.

(5) This section shall not apply to visits conducted in accordance with KRS 165A.475(3) and (4).

Section 13. Proration or Refund of Fees and Contributions. A fee paid to the commission or contribution to the student protection fund shall not be prorated or refunded.

Section 14. Penalties. A school shall have a license suspended or revoked, be directed to take specific corrective actions, or submit to additional inspections, with and without notice for failure to pay fees or contribute to the student protection fund in accordance with this administrative regulation.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:025) establishes fees and other charges. There is no change to the fee structure.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:025) authorizes the commission to promulgate administrative regulation to administer the provisions of KRS Chapter 165A, including establishment of fees and other charges.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding fees and other charges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a fee structure.

(2) If 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 simply addresses the location of the fee structure for initial and annual resident and non-resident commercial driver license training schools.

(b) The necessity of the amendment to this administrative regulation: All proprietary schools will use the electronic data management system. The amendment simply addresses the location of the fee structure for initial and annual renewal license application fees for resident and non-resident commercial driver license training schools.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding fees and other charges.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide essential fee guidance to initial and annual renewal resident and non-resident commercial driver license training schools.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All proprietary schools will be required to utilize the electronic data management system. The amendment simply addresses the location of the fee structure for initial and annual renewal license application fees for resident and non-resident commercial driver license training schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities: The fee structure is primarily consolidated to 791 KAR 1:025. This amendment makes the fee structure more discoverable.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will not require an increase in fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(6), (10), 165A.390, 165A.400, 165A.450.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:027. School record keeping requirements.

RELATES TO: KRS 165A.370(1)

STATUTORY AUTHORITY: KRS 165A.340(7), 165A.370(1)(h), (i), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.370(1)(h) and (i) set forth the types of records which shall be maintained by a proprietary school. KRS 165A.340(7) and 165A.400 authorize the commission to promulgate necessary administrative regulations to promote efficiency of operations relating to proprietary schools. This administrative regulation specifies the manner in which documents shall be maintained and submitted to the commission.

Section 1. Minimum Record Keeping Requirements. Each licensed proprietary school shall maintain a separate file for each

student, including, at a minimum:

- (1) Student application for admission;
- (2) Enrollment agreement;
- (3) Transcript or other academic record;
- (4) Student account;
- (5) Placement record; and
- (6) Attendance record.

Section 2. Annual Renewal Record Keeping Requirements.

(1)(a) Effective with the 2008 annual license renewal, all proprietary schools shall submit electronic copies of all students' transcripts and student accounts of each student who has attended the school since the end of the immediately preceding renewal period.

(b) The electronic copies shall be identified on the Application for License Renewal Resident School (PE-17) or the Application for License Renewal Nonresident School (PE-18), incorporated in 791 KAR 1:025, Section 3, and shall be submitted in conjunction with the annual renewal application and shall be organized alphabetically according to the students' last names.

(c) Acceptable electronic formats shall be pdf [Microsoft Office 97 or later versions, tif, pdf, jpg, jpeg,] or other generally accepted electronic formats.

(2) If there is a change of ownership or a school closure, electronic copies of all students' transcripts and student accounts, in generally accepted electronic format, shall be submitted to the commission within thirty (30) days of the transfer or closure.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:027) establishes school record keeping requirements.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:027) establishes the types of records that shall be maintained by a proprietary school and submitted to the commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This statute authorizes the commission to promulgate necessary administrative regulations to promote efficiency of operations relating to proprietary schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines school record keeping

requirements.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment simply requires records to be submitted in a generally accepted electronic format.

(b) The necessity of the amendment to this administrative regulation: This amendment removes outdated electronic formats mentioned in 791 KAR 1:027.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations relating to school record keeping requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist with records management.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All proprietary schools will be required to begin utilizing the electronic data management system and submit records in a generally accepted electronic format.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment will enable business continuity, regulatory compliance and allow for the effective retrieval of records.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(7), 165A.370(1)(h), (i), 165A.400.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:030. Procedures for hearings.

RELATES TO: KRS Chapter 13B, 165A.350(4)(b), 165A.360(3)(b), 165A.370(2)-(4), 165A.390, 165A.990

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the commission to promulgate administrative regulations for the administration of KRS Chapter 165A. This administrative regulation establishes hearing procedures.

Section 1. Definitions. (1) "Charge" means a specific allegation contained in a formal pleading, as established in Section 5(3) of this administrative regulation, issued by the commission alleging a violation of a specified provision of KRS Chapter 165A or the requirements established in 791 KAR Chapter 1.

(2) "Complaint" means a written allegation of misconduct by an agent or school, or other allegation of a violation of KRS Chapter 165A, the requirements established in 791 KAR Chapter 1, or another state or federal statute or administrative regulation applicable to an agent or school.

(3) "Complaint committee" means the committee appointed pursuant to KRS 165A.340.

(4) "Formal pleading" means a formal administrative statement authorized by the commission which sets forth charges against a licensed school or agent and commences a formal disciplinary proceeding, pursuant to KRS Chapter 13B, or requests a court to take action.

(5) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the commission to assist the commission in the investigation of a complaint or an investigator employed by the Attorney General for the commission.

Section 2. Complaint Committee. In accordance with KRS

165A.340(12), the complaint committee shall:

- (1) Be appointed by the chair of the commission to:
 - (a) Review complaints and investigative reports;
 - (b) Participate in an informal proceeding to resolve complaints; and
 - (c) Make recommendations for disposition of complaints to the full commission including the dismissal of a complaint or the issuance of a formal pleading; and
- (2) Consist of three (3) persons who may be assisted by the commission staff and counsel to the commission.

Section 3. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity.

(2)(a) A complaint shall be in writing and shall be filed on Form PE-24, Form to File a Complaint, accompanied, if applicable, by Form PE-25, Authorization for Release of Student Records.

(b) The Form PE-24 shall be signed and certified as to its truth by the person offering the complaint.

(3)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the agent or school named in the complaint along with a request for a written response to the complaint and the time and place of the complaint committee hearing, once established.

(b) The agent or school shall file a written response with the commission within ten (10) days from the date of receipt.

(4) Upon receipt of the written response of the agent or school named in the complaint, a copy of the response shall be sent to the complainant, along with the time and place of the complaint committee hearing, once established.

(5) Upon receipt of the agent or school's response, the complaint committee may request an additional response from the complainant, agent, or school if additional issues are raised or clarification is needed.

Section 4. Initial Review. (1) After the receipt of a complaint or the expiration of the period for the response, the complaint committee shall consider the complaint, response, and other relevant material available.

(2)(a) The complaint committee may take steps to enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.

(b) An agreed order or settlement reached through this process shall be approved by the commission.

(c) The complaint committee may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.

(3) If the complaint committee determines a complaint warrants an investigation against either an agent or school, the complaint committee shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity.

Section 5. Results of Initial Review. (1) After a complete review of the complaint, and implementation of any actions available to the complaint committee as set forth in Section 4 of this administrative regulation, a recommendation shall be made by the complaint committee to the commission.

(2) If the commission determines a complaint does not warrant further action or the issuance of a formal pleading against an agent or school, then the commission shall dismiss the complaint and shall notify both the complainant and the agent or school of the commission's decision.

(3) If the commission determines a violation of a statute or administrative regulation may have occurred or has occurred, then the commission shall:

(a) Direct the complaint committee or commission staff to undertake further action as established in KRS Chapter 165A or Section 4 of this administrative regulation;

(b) Direct the issuance of a formal pleading against either an agent or school by commission staff; or

(c) Review the formal pleading and, if approved, it shall be signed by the chairman and served upon the agent or school as required by KRS 13B.050.

Section 6. Operating without Appropriate License or Agent Permit. If the commission receives a complaint that an individual or school may be operating without the appropriate agent permit or license, the commission shall:

(1) Authorize commission staff to send a letter to the individual or school advising of a possible need for a permit or license, and enclose the appropriate application package;

(2) Authorize commission staff to issue a letter ordering the individual or school to cease and desist from operating the school;

(3) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or

(4) Initiate action in Franklin Circuit Court for injunctive relief.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form to File a Complaint", Form PE-24, 2017; and

(b) "Authorization for Release of Student Records", Form PE-25, 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, [3rd Floor, Capital Plaza Tower,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:030) establishes the procedures for hearings.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:030) establishes the procedures for hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to stakeholders regarding complaints and hearings.

(2) If 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 simply adds the word agent for consistency in 791 KAR Chapter 1.

(b) The necessity of the amendment to this administrative regulation: This amendment is solely for the purpose of consistency.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate administrative regulations for the administration of KRS Chapter 165A. This administrative regulation establishes hearing procedures.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarification only.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, and any proprietary school requiring licensure pursuant to KRS 165A.

(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. This is simply for clarification purposes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment is simply for consistency and clarification purposes.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(6), 165A.400.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:035. Student protection fund.

RELATES TO: KRS 165A.450

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.450 requires the commission to promulgate administrative regulations to ensure there is a renewable student protection fund, impose fees when the balance of the fund drops below the minimum, and establish other requirements related to the fund. This administrative regulation establishes standards for distribution of the funds.

Section 1. Definitions. (1) "Commission" means the Kentucky Commission on Proprietary Education.

(2) "Schools" means all schools, resident and nonresident, licensed by the commission.

(3) "Sponsor" means the original source of funds, whether student or entity, used to pay student charges for tuition, books, and fees.

(4) "Student enrolled" means a student currently enrolled and attending classes on a regular basis.

Section 2. Student Protection Fund Notice. Schools shall include on the student enrollment agreement, in 14-point type font:

(1) A statement notifying students of the existence of the student protection fund; and

(2) The process for filing a claim against the fund.

Section 3. Standards for Fund Distribution. (1) The commission shall manage the student protection fund ("the fund"). The fund shall be used in accordance with KRS 165A.450.

(2) Each fund distribution for restitution shall be made payable to the appropriate sponsor, as determined by the commission and shall be made upon the presentation of [a signed Form for Claims Against the Student Protection Fund, Form PE-38, and supporting documentation, verifying the student's enrollment and regular attendance at the time of the school or program closure. The commission may require supporting documentation, such as canceled checks, loan documents, or other documentation that supports the student's entitlement to restitution.

(3) The amount to be refunded shall equal the actual amount of

loans and cash that have been applied to tuition, books, and fees on behalf of the student's attendance at the school. If the claims resulting from a school closing exceed the balance in the fund, the commission shall provide for a pro rata distribution of the fund balance.

(4) If restitution is paid by the fund, the fund shall be subrogated to the amount of the restitution.

(5) In order to be considered, a claim for restitution from the student protection fund shall be made within one (1) year of the date of the school or program closure.

(6) An applicant for payment from the student protection fund who is dissatisfied with the decision of the commission may ask for reconsideration of the commission's determination regarding eligibility for restitution from the student protection fund.

(7) The request for reconsideration shall be submitted by the applicant to the commission within thirty (30) calendar days of the mailing date of the commission's decision.

(8) The request for reconsideration shall be signed by the student and explain the reasons in support of a different decision.

(9) Within forty-five (45) days of receipt of the request for reconsideration, the commission shall make a final determination and provide notice to the applicant.

(10) Students eligible for reimbursement will receive funds from the surety bond or other collateral before filing a claim against the Student Protection Fund.

Section 4. Incorporation by Reference. (1) "Form for Claims Against the Student Protection Fund", Form PE-38 [~~January 2017, is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sewer Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:035) establishes standards for distribution of the student protection fund.

(b) The necessity of this administrative regulation: The commission is responsible for managing the student protection fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission promulgate administrative regulations regarding the student

protection fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures there is a renewable student protection fund, imposes fees when the balance of the fund drops below the minimum, and establishes other requirements related to the fund. This administrative regulation establishes standards for distribution of the funds.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This amendment requires students eligible for reimbursement will receive funds from the surety bond or other collateral before filing a claim against the Student Protection Fund.

(a) How the amendment will change this existing administrative regulation: This amendment simply clarifies that students eligible for reimbursement will receive funds from the surety bond or other collateral before filing a claim against the Student Protection Fund.

(b) The necessity of the amendment to this administrative regulation: The amended regulation will ensure the student protection fund is better protected.

(c) How the amendment conforms to the content of the authorizing statutes: The statute establishes standards for students filing a claim against the student protection fund and other requirements related to the fund.

(d) How the amendment will assist in the effective administration of the statutes: The amendment simply clarifies the process for filing a claim and the order in which it must be filed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, any proprietary school requiring licensure pursuant to KRS 165A, and any eligible claimant.

(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: Students eligible for reimbursement will receive funds from the surety bond or other collateral before filing a claim against the Student Protection Fund.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: The amendment outlines the reimbursement process and ensures clarity is gained.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(6), 165A.400, 165A.450.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:040. Commercial driver license training school curriculum and refresher course.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.460(1)

STATUTORY AUTHORITY: KRS 165A.340(3), 332.095(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460(1) requires that the Kentucky Commission on Proprietary Education establish a curriculum for commercial driver license training schools in consultation with the Kentucky State Police and the Kentucky Community and Technical College System. This administrative regulation establishes the curriculum regarding standards for commercial driver license training schools.

Section 1. A commercial driver license training school shall adhere to the curriculum contained in the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

Section 2. A commercial driver license training school may offer a refresher course, per KRS 332.095, for persons with a valid Class A commercial driver's license and shall maintain records of all persons taking the refresher course. The commercial driver license training school shall assess the person's qualifications and skill level to determine the appropriate course of study as contained in the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

Section 3. A commercial driver license training school shall comply with drug testing of students in accordance with the United States Department of Transportation, Federal Motor Carrier Safety Administration Rule 49 C.F.R. 382.

Section 4. Incorporation by Reference. (1) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools", June 2014 [2010] edition ["~~is incorporated by reference~~"].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:040) establishes the curriculum standards for commercial driver license training schools.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:040) establishes curriculum standards for commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations relating to a curriculum for the commercial driver license training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation addresses commercial driver license training school curriculum and a refresher course.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This amendment inserts KRS 332.095 for reference as it relates to refresher course.

(a) How the amendment will change this existing administrative regulation: The amended regulation simply refers the stakeholder to the specific statute, KRS 332.095, where refresher course is addressed.

(b) The necessity of the amendment to this administrative regulation: The amendment simply inserts KRS 332.095 for reference as it relates to refresher course.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations relating to commercial driver licensing training school curriculum and refresher course.

(d) How the amendment will assist in the effective administration of the statutes: The amendment simply refers the stakeholder to the specific statute, KRS 332.095, where refresher course is addressed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 16 commercial driver license training

schools, and any proprietary school requiring licensure pursuant to KRS 165A.

(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. This is simply for clarification purposes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No cost will be incurred as a result of this clarification.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment is simply for clarification purposes.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340(3), 332.095(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. 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:050. Application for license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.450, 165A.465, 165A.470, 165A.475, 165A.480(1)

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.465(3), 165A.475, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.465, 165A.475, and 165A.510 require the commission to promulgate administrative regulations establishing standards and an application procedure for commercial driver license training schools. This administrative regulation establishes the application procedures for commercial driver license training schools.

Section 1. Application for Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school residing in Kentucky, the school owner shall:

(a) Complete and submit to the commission Form PE 30, Application for Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable license fee for a commercial driver license training school residing in and doing business in Kentucky of \$500;

(d) Pay the nonrefundable contribution to the Student Protection Fund of \$500; and

(e) Meet the requirements of Section 4 of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 2. Application for ~~[Non-Kentucky]~~ Non-resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky, the school's owner shall:

(a) Complete and submit to the commission Form PE 31, Application for Non-Resident Commercial Driver License Training School with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable license fee for a commercial driver license training school not residing in and doing business in Kentucky of \$1,250;

(d) Pay the nonrefundable contribution to the Student Protection Fund of \$1,250; and

(e) Meet the requirements of Section 4 of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 3. Annual Renewal License Fee for Commercial Driver License Training Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500.

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a commercial driver license training school residing in and doing business in Kentucky shall be \$500 plus

twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a commercial driver license training school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue earned from Kentucky resident students in excess of \$50,000, not to exceed \$3,000.

Section 4. (1) Evidence of Liability Insurance Coverage. Each application to operate a commercial driver license training school shall be accompanied by verification of liability insurance coverage for the commercial driver license training school from a Kentucky-licensed insurance carrier, as mandated by KRS 165A.475(1)(d).

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy complete listing of all equipment, serial numbers, vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission in writing within thirty (30) days of the subsequent change.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 30, "Application for Resident Commercial Driver License Training School", as provided in EdVera software version 2.1, edition 2021 [2017 edition]; and

(b) Form PE 31, "Application for Non-resident Commercial Driver License Training School", as provided in EdVera software version 2.1, edition 2021 [2017 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:050) establishes standards, an application procedure for commercial driver license training

schools, and the utilization of an electronic data management system.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:050) establishes the application procedures for commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate administrative regulations establishing standards and an application procedure for commercial driver license training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the commercial driver license training school application process. The electronic data management system will modernize the multiple levels of regulatory procedures and license processing.

(2) If 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 facilitate the process of automating and streamlining regulatory and licensing processes through the use of an electronic data management system. This modernization will greatly improve responsiveness, and promote collaboration with stakeholders.

(b) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding the application process for commercial driver license training schools. The electronic data management system allows for a controlled exchange of information among stakeholders while maximizing operational efficiencies.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations for the application process for commercial driver licensing training schools.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidelines to proprietary schools to assist in a more efficient application process, reduce operating expenses, and improve record management.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 16 commercial driver license training schools, and any proprietary school requiring licensure pursuant to KRS 165A.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The Kentucky Commission on Proprietary Education, the 16 commercial driver license training schools, and any proprietary school requiring licensure pursuant to KRS 165A.

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All proprietary schools will be required to utilize the electronic data management system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: The electronic data management system will replace a paper based system, facilitate compliance, simply document version control and ultimately lead to a major efficiency.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

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

The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(6), 165A.400, 165A.465(3), 165A.475, 165A.510.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:060. Application for renewal of license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.460-165A.515, 49 C.F.R. 325

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.485 requires that the Kentucky Commission on Proprietary Education

establish application forms for license renewal of commercial driver license training schools. This administrative regulation establishes the renewal procedures for commercial driver license training schools.

Section 1. Renewal Application for Kentucky Commercial Driver License Training School. (1) On or before forty-five (45) days prior to the expiration date ~~[May 15 of each year]~~, a licensed Kentucky resident commercial driver license training school shall:

(a) Complete and submit to the commission Form PE 32, Renewal Application to Operate a Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee required by 791 KAR 1:050, Section 3; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order payable to the Kentucky State Treasurer.

Section 2. Renewal Application for Non-Resident ~~[Non-Kentucky Resident]~~ Commercial Driver License Training School.

(1) On or before forty-five (45) days prior to the expiration date ~~[May 15 of each year]~~, a licensed non-resident ~~[non-Kentucky resident]~~ commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky shall:

(a) Complete and submit to the commission Form PE 33, Renewal Application to Operate a Non-Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee required by 791 KAR 1:050, Section 3; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order made payable to the Kentucky State Treasurer.

Section 3. Evidence of Liability Insurance Coverage. (1) Each renewal application to operate a commercial driver license training school shall be accompanied by verification of liability insurance coverage for the commercial driver license training school from a Kentucky-Licensed insurance carrier, as mandated by KRS 165A.475(1)(d).

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy a complete listing of all equipment, serial numbers, and vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission in writing within thirty (30) days of the subsequent change.

Section 4. Denial of Renewal Application. (1) The commission shall deny a renewal application to operate a commercial driver license training school for:

(a) Failure to comply with the requirements of KRS 165A.460-165A.515;

(b) Failure to comply with 791 KAR 1:040 to 791 KAR 1:160, governing the application and operation of a commercial driver license training school;

(c) Failure to comply with KRS 165A.475(1)(d) regarding persons connected in any capacity with commercial driver license training schools; or

(d) Failure to maintain all training vehicles in a safe operating condition, pursuant to 49 C.F.R. 325, as enforced by the Kentucky State Police.

(2) The commission may deny a renewal application to operate a commercial driver license training school for lack of good moral character, as determined by KRS 165A.475(7).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 32, "Renewal Application to Operate a Resident Commercial Driver License Training School", as provided in EdVera software version 2.1, edition 2021 [2017 edition]; and

(b) Form PE 33, "Renewal Application to Operate a Non-Resident Commercial Driver License Training School", as provided in EdVera software version 2.1, edition 2021 [2017 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:060) establishes the renewal procedures for commercial driver license training schools.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:060) establishes the renewal procedures for commercial driver license training schools and the utilization of an electronic data management system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding the renewal procedures for commercial driver license training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to proprietary commercial driver license training schools. The electronic data management system will modernize the multiple levels of regulatory procedures and license processing.

(2) If 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 facilitate the process of automating and streamlining regulatory and licensing processes through the use of an electronic data management system. This modernization will greatly improve responsiveness, and promote collaboration with stakeholders.

(b) The necessity of the amendment to this administrative regulation: All proprietary schools will use the electronic data management system.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding applications, permits, and renewals. The electronic data management system allows for a controlled exchange of information among stakeholders while maximizing operational efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidelines to proprietary schools to assist in a more efficient application process, reduce operating expenses, and improve record management.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 16 commercial driver license training schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All proprietary schools will be required to utilize the electronic data management system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities: The electronic data management system will replace a paper based system, facilitate compliance, simply document version control and ultimately lead to a major efficiency.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(6), 165A.400, 165A.485.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:070. Commercial driver license training school instructor and agent application and renewal procedures.

RELATES TO: KRS 165A.310, 165A.330(1), 165A.350, 165A.370, 165A.380, 165A.460, 165A.465, 165A.470, 165A.475, 165A.480, 165A.485, 332.095

STATUTORY AUTHORITY: KRS 165A.340, (6), (10), 165A.400, 165A.465, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and (10), 165A.400, 165A.465, and 165A.510 require the Kentucky Commission on Proprietary Education to promulgate administrative regulations for the administration of KRS Chapter 165A and to establish standards for instructors and agents of commercial driver licensing schools, including application and renewal procedures. This administrative regulation establishes the standards for instructors and agents, including application and renewal procedures regarding commercial driver license training schools.

Section 1. Definitions. (1) "Classroom instructor" means a commercial driver license school instructor whom the school owner has qualified to perform classroom instruction only for the classroom sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

(2) "Skills Instructor" means a commercial driver's(drivers) license school instructor who instructs the Range and Street sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools and has met the licensing requirements of Section 2 of this administrative regulation.

Section 2. An applicant for a Commercial Driver License Training School Skills Instructor license shall:

(1) Complete and submit Form PE 34, Application for Commercial Driver License Training School Instructor;

(2) Submit two (2) recent passport-size photographs, electronically provided to the Commission;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6);

(4) Pay the nonrefundable initial licensure fee of \$200;

(5) Provide a copy of the applicant's valid Class A CDL license;

(6) Provide proof of at least two (2) years of verifiable commercial over the road driving experience; and

(7) Provide proof of receiving a passing score on the written examination and skills examination administered by the Kentucky State Police as required by 502 KAR 10:030 and 10:035.

Section 3. Application for Renewal of Commercial Driver License Training School Instructor. On or before May 15 of each year, a licensed commercial driver license training school instructor, or a licensed commercial driver license training school on behalf of the skills instructor, shall:

(1) Complete and submit Form PE 35 Renewal Application for Commercial Driver License Training School Instructor;

(2) Submit two (2) recent passport-size photographs;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6); and

(4) Pay the nonrefundable renewal fee of \$200.

Section 4. Classroom Instructors. The CDL school shall submit a Form PE 11, Form for Instructional Staff and Key Administrative Personnel, incorporated by reference in 791 KAR 1:010, to the commission upon qualifying an individual as a classroom instructor.

Section 5. Conditional [Temporary] License for CDL Skills Instructor. (1) The commission shall issue to an applicant who has completed the requirements of Sections 2 and 3 of this administrative regulation a temporary permit, by way of letter, for the performance of skills instructor duties while the license application is being processed.

(2) The commission shall provide the applicant and the licensed school a letter stating the applicant's application is in order and is being processed for applicant licensing.

(a) The commission shall provide this letter within ten (10) business days of receipt of a properly completed application.

(b) This letter shall serve as the applicant's conditional [temporary] license until a regular license is issued.

(c) A copy of the commission's letter shall be maintained by the applicant and be available for review upon request by the commission's inspector or the Kentucky State Police.

(d) If the applicant is denied a license, the commission shall issue a notice to the applicant and the applicant's school rescinding the applicant's conditional [temporary] license for a skills instructor.

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

(a) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools", June 2014 edition;

(b) Form PE 34, "Application for Commercial Driver License Training School Instructor", as provided in EdVera software version 2.1, edition 2021 [2017 edition]; and

(c) Form PE 35, "Renewal Application for Commercial Driver License Training School Instructor", as provided in EdVera software version 2.1, edition 2021 [2017 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:070) establishes the standards for instructors and agents of commercial driver licensing schools, including application and renewal procedures regarding commercial driver license training schools.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:070) establishes the standards for instructors and agents of commercial driver licensing schools, including application and renewal procedures regarding commercial driver license training schools. Further, this administrative regulation addresses the utilization of an electronic data management system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations for the administration of KRS Chapter 165A and to establish standards for instructors and agents of commercial driver licensing schools, including application and renewal procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to proprietary commercial driver license training schools, instructors and agents of commercial driver license training schools. The electronic data management system will modernize the multiple levels of regulatory procedures and license processing.

(2) If 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 facilitate the process of automating and streamlining regulatory and licensing processes through the use of an electronic data management system. This modernization will greatly improve responsiveness, and promote collaboration with stakeholders.

(b) The necessity of the amendment to this administrative regulation: All proprietary schools will use the electronic data management system.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate regulations regarding applications, permits, and renewals. The electronic data management system allows for a controlled exchange of information among stakeholders while maximizing operational efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidelines to proprietary schools to assist in a more efficient application process, reduce operating expenses, and improve record management.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 16 commercial driver license training schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All proprietary

schools will be required to utilize the electronic data management system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: The electronic data management system will replace a paper based system, facilitate compliance, simply document version control and ultimately lead to a major efficiency.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340, (6), (10), 165A.400, 165A.465, 165A.510.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(Amendment)

791 KAR 1:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.500, 165A.510

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.500 and 165A.510 authorize the Kentucky Commission on Proprietary Education to establish the standards for maintenance of student records, schedule of fees charged to students and refund policy, contracts and agreements involving licensed commercial driver license training schools, advertising and solicitation of students by commercial driver license training schools. This administrative regulation establishes these standards for commercial driver license training schools.

Section 1. Maintenance of Student Records and Student Roster. (1)(a) Each licensed commercial driver license training school shall maintain a permanent record of instruction given to each student to include the student instructional training progress report cards or sheets, transcripts, student written examination results, and yard and street driver skills examination scores for so long as the commercial driver license training school holds a license or conducts business.

(b) If the commercial driver license training school discontinues operation, then the school shall comply with KRS 165A.390(5) and 791 KAR 1:155.

(2) The records to be maintained by the commercial driver license training school shall contain the following:

(a) Name and address of the commercial driver license training school;

(b) Name and address of the student;

(c) A photocopy of, or the number of the student's Kentucky CDL instruction permit license;

(d) A photocopy of, or the number of the student's CDL class A driver's[drivers] license after completion of course requirements and successful completion of license examination requirements administered by the Kentucky State Police;

(e) The type and date of instruction given, whether classroom, yard, street, or behind-the-wheel, including the duration of instruction;

(f) The printed name and signature of the instructor on the student instruction card or progress record sheet or equivalent training record forms;[

(g) Student's completed enrollment application;]

(g) [(h)] Student's completed application, student contract or enrollment agreement, including the student's signature and authorized school official's signature properly dated;

(h) [(i)] Financial documents signed by the student including the student's completed loan agreement and accurate record of all fees paid to the school and government agencies;

(i) [(j)] Student's attendance record;

(j) [(k)] Student's progress report;

(k) [(l)] Student's transcript including all examination grades and skills proficiency competency scores, or evaluation received during course of instruction;

(l) [(m)] Written examination and skills examination, including grade; and

(m) [(n)] Results of medical fitness examination and DOT-required drug test.

(3) The school shall furnish each commercial driver license training student upon the student's request a copy of his or her student instruction record if he or she ceases taking instruction at the school.

(4) All student records, school facilities, and school equipment are subject to inspection by the commission and its representatives upon request and without prior notice to the school.

Section 2. Schedule of Fees Charged to Students and Refund Policy. (1) Each licensed commercial driver license training school shall publish a schedule of fees charged to students for instruction to include as applicable:

(a) Administrative fee;

(b) Registration/application fee;

(c) Tuition for instruction;

(d) Commercial driver license permit fee;

(e) Off-the-road and on-the-road training fees;

(f) Room and commission costs; and

(g) Department of Transportation drug test and medical fitness examination.

(2) The schedule of fees shall be published:

(a) In the school's catalog, brochure, and Web site;

(b) In the student contract or enrollment agreement; and

(c) Within the school's facility by being conspicuously displayed at the school.

(3) Each licensed commercial driver license training school shall establish and adhere to a refund policy to be published:

(a) In the school's catalog;

(b) In the student contract or enrollment agreement; and

(c) Within the school's facility by being conspicuously displayed at the school.

(4) At least five (5) days before a prospective student signs a contract or enrollment agreement, the commercial driver license school shall provide to the prospective student:

(a) The school catalog;

(b) The student contract or enrollment agreement; and

(c) The student loan agreement, if any.

Section 3. Contracts and Agreements Involving Licensed Commercial Driver License Training Schools. (1) Each licensed commercial driver license training school shall:

(a) File and maintain with the commission an accurate and current list of those persons authorized by the school to execute student enrollment contracts and student tuition loan agreements on behalf of the licensed commercial driver license training school including a sample of each person's signature;

(b) Provide to each student who enters a contract or agreement with a licensed commercial driver training school a copy of the signed contract or enrollment agreement; and

(c) File the original of each student contract or enrollment agreement in the permanent student record maintained by the school.

(2) All contracts or enrollment executed by the licensed commercial driver license training schools and its students shall contain the following information:

(a) The name and address of the school. If the school is conducted under an assumed name or is operated by a corporation, partnership, or association, the contract or enrollment agreement shall contain the name of the individual owners or names of the officers of the corporation, association, or members of the partnership;

(b) A statement containing the following text in at least fourteen (14) point font: "This constitutes the entire agreement between the school and the student. No verbal agreements or promises shall be recognized by either the school or the student.";

(c) The school refund policy;

(d) A signature and date line for the student and an authorized school official;

(e) A complete description of all fees charged as set forth in Section 2 of this administrative regulation; and

(f) A statement containing the following text in at least fourteen (14) point font: "The Kentucky Revised Statutes and Kentucky Administrative Regulations governing licensed commercial driver training schools shall be available at the facility upon request."

Section 4. Advertising and Solicitation of Students by Commercial Driver License Training Schools. (1) A person, school,

institution, organization, company, association, or partnership shall not advertise or advertise to recruit students unless licensed by the commission.

(2) A licensed commercial driver license training school shall not use any name other than its licensed name, nor shall it advertise or imply that it is "supervised," "recommended," "accredited," or "endorsed" by the Kentucky Commission on Proprietary Education. A school may state "Licensed by the Kentucky Commission on Proprietary Education" in its advertisements.

(3) A licensed commercial driver training school shall not:

(a) Claim nor imply that it guarantees employment upon successful completion of the program;

(b) Guarantee or imply that it guarantees the student will receive a commercial driver license training permit or commercial driver license;

(c) Make any false, misleading, or deceptive claims or guarantees of expected annual income or employee benefits;

(d) Hold itself out as being any type of establishment other than an educational or training establishment;

(e) Use a name that is like or deceptively similar to a name used by another commercial driver license training school;

(f) Advertise or imply that instruction may be given to students who fail the program or examinations without charge to the student unless that instruction without examination is contained in the student contract or enrollment agreement; or

(g) Advertise or solicit in the "help wanted" section of any newspaper or periodical.

(4) A licensed commercial driver license training school shall submit a copy of all advertisements and directory listings to the commission at least thirty (30) days prior to the scheduled publishing date.

Section 5. Inspections of Commercial Motor Vehicles Used by Commercial Driver License Training Schools, Including Mandatory Equipment and Out-of-Service Criteria. (1) Annual inspection. The school shall maintain a copy of the results of the Kentucky State Police's annual inspections of the school's vehicle inventory, as listed with the commission.

(2) In order to be approved, the vehicle shall be:

(a) Owned or leased by the licensed school;

(b) In safe operating condition;

(c) Included on the school's liability insurance policy as mandated by KRS 165A.475(1)(d);

(d) Equipped with seat belts for each vehicle occupant as established by KRS 189.125;

(e) Equipped with functioning side-view and rear-view mirrors;

(f) Identified and clearly displayed on the front, sides, and rear of the vehicle, in letters not smaller than six (6) inches in height and in a color vividly contrasting with the color of the vehicle, the following:

1. Name of the commercial driver license training school; and
2. Words "Student Driver."

(3) Expiration of safety inspection and notification of vehicle changes. The commercial driver license training school shall:

(a) Maintain proof that the vehicle is inspected by the Kentucky State Police annually and passes the inspection;

(b) Remove from use any vehicle that has not passed the inspection by the Kentucky State Police; and

(c) File with the commission written notice if a vehicle has been added or deleted from the school's motor vehicle fleet and have submitted to the commission a revised insurance policy as mandated by KRS 165A.475(1)(d) no later than five (5) business days from the date that the vehicle was added or deleted from the school's motor vehicle fleet.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building

Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:080) establishes the maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

(b) The necessity of this administrative regulation: The administrative regulation (791 KAR 1:080) establishes standards for commercial driver license training schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to establish the standards for maintenance of student records, schedule of fees charged to students and refund policy, contracts and agreements involving licensed commercial driver license training schools, advertising and solicitation of students by commercial driver license training schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the standards for commercial driver license training schools.

(2) If 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 is simply for clarification purposes.

(b) The necessity of the amendment to this administrative regulation: This amendment is simply for clarification purposes.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to establish standards for commercial driver license training schools.

(d) How the amendment will assist in the effective administration of the statutes: The amendment simply clarifies the records to be maintained by the commercial driver license training schools.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 16 commercial driver license training schools, and any proprietary school requiring licensure pursuant to KRS 165A.

(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. This is simply for clarification purposes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment is simply for clarification purposes.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(3), 165A.510.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:100. Standards for Kentucky resident commercial driver training school facilities.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.510(1)
STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510
NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.510(1) authorizes the commission to promulgate administrative regulations to set standards for CDL training school facilities. This administrative regulation establishes the

commission's policy regarding standards for Kentucky resident commercial driver training school facilities.

Section 1. The following standards shall apply to Kentucky resident CDL driver training school office facilities:

(1) A Kentucky resident CDL training school location shall have and maintain an established place of business in the Commonwealth of Kentucky.

(2) The established place of business of each Kentucky resident CDL [driver] training school shall:

(a) Be owned or leased by the driver training school;

(b) Regularly occupied; and

(c) Solely used by that driver training school for the business of:

1. CDL [driver] training instructions for hire;

2. Preparing members of the public for examination for a commercial motor vehicle operator's license; and

3. Instruction of knowledge and skills for entry level tractor and trailer drivers or commercial motor vehicle operators.

(3) The established place of business of each Kentucky resident CDL driver training school shall be located in a district zoned for business or commercial purposes. The Kentucky resident CDL driver training school office shall have a permanent sign displaying the licensed school name. If the classroom or training yard is at a different address, it shall also have a permanent sign meeting the same criteria.

(4) The established place of business or advertised address of any Kentucky resident CDL driver training school shall not consist of or include a house trailer, residence, tent, temporary address, office space only, a room or rooms in a hotel, rooming house or apartment house, or premises occupied by a single or multiple unit dwelling house. Furthermore, a modular building or structure for use as a classroom or office shall be permanently affixed to the property and meet all applicable building codes.

(5) The Kentucky resident CDL training school, office, and classes shall be operated by responsible personnel during stated office hours and shall be open to inspection of the premises, facilities, records and vehicles by any authorized representative of the commission during this time.

(6) The Kentucky resident CDL training school shall have a business telephone used exclusively for the operation of the driving school and operational during the stated office hours.

(7) A Kentucky resident CDL driver training school shall not transfer its license without filing the Application to Transfer Ownership of a Proprietary School, incorporated by reference, for prior approval of the commission. There will be a \$500 fee for a transfer of ownership.

(8) Should a Kentucky resident CDL driver training school discontinue operations, the license and applicable student records shall be surrendered to the commission, at the expense of the licensee, in accordance with 791 KAR 1:155.

(9) A branch or satellite Kentucky resident CDL driver training school shall be licensed as an independent Kentucky resident CDL driver training school and meet all of the requirements of the commission as provided for in KRS Chapter 165A and 791 KAR 1:040 to 791 KAR 1:090.

Section 2. The following standards shall apply to Kentucky resident CDL driver training school classroom facilities:

(1) The classroom facility of each Kentucky resident CDL driver training school shall be reasonably near its office facility and within thirty (30) minutes normal driving time of that facility.

(2) The classroom shall contain sufficient space, equipment, and seating to carry on the business of classroom instruction for students enrolled in the Kentucky resident CDL [driver] training school, and preparation of students for examination for a commercial motor vehicle operator's license.

(3) The classroom facility shall have adequate lighting, heating, ventilation, sanitation facilities, and shall comply with all state and local laws relating to public health, safety and sanitation.

(4) The classroom facility shall contain the following equipment and supplies:

(a) Individual desks or tables with writing surfaces that, if

required, could accommodate up to thirty (30) classroom students, or the school's maximum, number, if less than thirty (30) classroom students, based on available space and occupancy limits established by applicable fire code;

(b) Adequate blackboards or whiteboards which are visible from student seating areas;

(c) Adequate visual aids, charts, and diagrams or pictures relating to the operation of commercial motor vehicles and traffic laws;

(d) Other devices that may aid in acquainting students with state and federal traffic laws and prepare them to safely operate commercial motor vehicles;]

(e) One (1) of the following:

1. Overhead projector or multimedia projector; or

2. A thirty-five (35) millimeter slide projector and slides; or

3. A video/audio display screen of not less than nineteen (19) inches diagonal measure, capable of operation in conjunction with electronic media for providing driver training instruction]; and

(e) [(f)] All Kentucky Revised Statutes and administrative regulations governing CDL [driver] training schools, commercial motor vehicle operator license requirements and federal motor carrier rules and regulations, shall be prominently displayed so as to be accessible to applicants for enrollment and all students.

(5) In addition to the foregoing, the following are suggested teaching aids:

(a) A reaction time testing device;

(b) Peripheral vision testing device;

(c) Magnetic traffic boards; and

(d) Other devices that may aid in acquainting students with state and federal traffic laws and prepare them to safely operate commercial motor vehicles.

Section 3. Location [Relocation] Change of a Licensed [Kentucky Resident] CDL [Driver] Training School. Prior to relocating any [Kentucky resident] CDL [driver] training school office, classroom facility, behind-the-wheel training facility or location, or equipment thereof, the [Kentucky resident] CDL [driver] training school shall:

(1) Submit a completed Application to Change the Location of a [Proprietary] School Form PE-23, incorporated by reference in 791 KAR 1:010 Section 12;

(2) Submit documentation indicating the new location is in compliance with all fire and safety codes;

(3) Submit the required change of school location application fee of \$500 by certified check or money order made payable to the Kentucky State Treasurer; and

(4) Complete a successful inspection by the Kentucky State Police pursuant to the procedures outlined by KRS 165A.475(4).

Section 4. ~~[Incorporation by Reference. (1) "Application to Change the Location of a Proprietary School", 2017 edition, is incorporated by reference.~~

(2)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:100) establishes the commission's policy regarding standards for Kentucky resident commercial driver training school facilities.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:100) establishes the requirements for Kentucky resident commercial driver training school facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate administrative regulations to set standards for CDL training school facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for Kentucky resident commercial driver training school 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 simply removes outdated equipment from the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation simply allows for modernization.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate administrative regulations to set standards for CDL training school facilities.

(d) How the amendment will assist in the effective administration of the statutes: The statute requires the commission to set standards for CDL training school facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the licensed driver training school facilities, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The stakeholder will be notified of the amendment. No further action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: The stakeholder will not be required to maintain outdated equipment.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed

schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(3), 165A.510.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:150. Bond requirements for agents and schools.

RELATES TO: KRS 165A.350(3)-(7), (10), 165A.360(2)-(5), (10)

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.350(3), 165A.360(2), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(3) and 165A.400 authorize the commission to promulgate administrative regulations to administer the provisions of KRS 165A.310-165A.390, including establishment of fees and other charges. KRS 165A.350 requires all proprietary schools to maintain a surety bond for the agents and the schools. KRS 165A.360(2) sets forth the range of bonding requirements for agents and schools and requires the commission to establish the bond amounts. This administrative regulation sets the surety bond requirements to be maintained on agents and schools.

Section 1. Surety Bond. (1) A school shall:

(a) Complete School Surety Bond Form PE-26; and

(b) Maintain a school surety bond in the amount of \$20,000.

(2) In lieu of the school surety bond, the commission shall accept an irrevocable letter of credit made in favor of the Kentucky Commission on Proprietary Education from a verifiable licensed financial institution in the amount of \$20,000, or other types of collateral as approved by the commission.

Section 2. Agent Surety Bond. (1) A school shall:

(a) In accordance with KRS 165A.350(3) maintain an agent surety bond, or in the case of multiple agents, maintain a blanket agent surety bond, in the amount of \$5,000 for each agent employed by the school; and

(b) Complete Form PE-27, Blanket Agent Surety Bond.

(2) In lieu of the agent surety bond, the commission shall accept an irrevocable letter of credit made in favor of the Kentucky Commission on Proprietary Education from a licensed financial institution equal to the amount specified above, [made in favor of the Kentucky Commission on Proprietary Education] or other types of collateral as approved by the commission.

Section 3. Multiple School Campuses. (1) Each school campus for any school residing in and doing business in Kentucky for licensing and bonding purposes shall be considered a separate school and shall be required to provide a separate school surety bond and an agent surety bond.

(2) Each nonresidential school doing business in Kentucky shall be required to provide a school surety bond and an agent surety bond.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "School Surety Bond", Form PE-26, 2017 edition; and

(b) "Blanket Agent Surety Bond", Form PE-27, 2017 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:150) sets the surety bond requirements to be maintained on agents and schools.

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:150) sets the surety bond requirements to be maintained on agents and schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the commission to promulgate administrative regulations regarding surety bond requirements on agents and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the surety bond requirements of agents and schools.

(2) If 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 simply is for clarification and aligns with the language used in KRS 165A.

(b) The necessity of the amendment to this administrative regulation: This regulation amendment aligns better with KRS 165A.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commission to promulgate administrative regulations regarding surety bond requirements on agents and schools.

(d) How the amendment will assist in the effective administration of the statutes: The regulation amendment simply aligns with the language used in KRS 165A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the licensed driver training schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendment simply allows for the use of consistent language.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment simply allows for the use of consistent language.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.340(3), 165A.350(3), 165A.360(2), 165A.400.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:155. School closing process.

RELATES TO: KRS 61.870-61.884, 61.878(1)-(5), 165A.340(8), 165A.370, 165A.390(5)

STATUTORY AUTHORITY: KRS 165A.390(5), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the Commission [Board] to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.390(5), prior to discontinuance of operations, a school shall convey student records to the commission. The Commission [board] shall set forth which records are to be conveyed, the manner they are to be conveyed, where they shall be stored and the length of time for storage. This administrative regulation sets forth the specific responsibilities of a licensed school if it discontinues operations in accordance with KRS 165A.390(5).

Section 1. Definitions. (1) "Academic records" means records pertaining to academic matters, including enrollment agreements, contracts, transcripts, syllabi, catalogs, course listings, and attendance records [~~whether maintained in paper or electronic form~~].

(2) "Discontinuance of operation" means ceasing to operate as a school in the ordinary course of business, or in accordance with the minimum standards and requirements set forth in KRS 165A.370, or in a manner that prevents a student from completing the course or program [courses] as scheduled.

(3) "Financial aid records" means records pertaining to financial aid matters including applications for financial aid, award

notices, disbursement amounts, refunds, student accounts, and loan promissory notes.

(4) "Financial records" means records pertaining to financial matters including ledger cards to include charges, credits, disbursements, refunds, and financial information.

Section 2. Procedures for Discontinuance of Operations and Conveyance of Student Records. (1) A school shall notify the commission in writing of its intent to discontinue operations at least ten (10) business days prior to discontinuation of operations.

(2) A school shall simultaneously submit to the commission and the surety or financial institution notification of cancellation of school surety bonds, agent surety bonds, or letters of credit.

(3) If a school closes, the school shall make arrangements with the commission to forward all student transcripts, financial aid records, and financial records to the offices of the commission.

(4) If a school closes, the school shall arrange with another school or schools to provide teach-out options for students who may need that service.

Section 3. Immediate or Precipitous School Closure. In the absence of a notification of the intent to close, if the commission determines that a school has discontinued operations, a school shall submit the following records:

(1) Academic records of current and former students who attended the school within the last two (2) years prior to closure;

(2) Transcripts of former students who attended the school more than two (2) years prior to closure;

(3) Financial aid records of current and former students; and

(4) Financial records of current and former students; and

(5) Documents subpoenaed by the commission or the commission's designee in accordance with KRS 165A.340(8).

Section 4. Retention of Records by the Commission. (1) The commission shall retain the original documents, or true and accurate copies, of transcripts and all other documentation received pursuant to Section 2 of this administrative regulation, in accordance with the Kentucky Commission on Proprietary Education Records Retention Schedule Recommendation developed with the Kentucky Department of Libraries and Archives.

(2) Documents obtained by the commission pursuant to Section 2 of this administrative regulation shall be state records under KRS 61.870 to 61.884 and subject to KRS 61.878(1)-(5).

Section 5. Incorporation by Reference. (1) "Kentucky Commission on Proprietary Education Records Retention Schedule Recommendation", June 14, 2012~~[October 18, 2007, is incorporated by reference]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street ~~[300 Sewer Boulevard]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:155) sets forth the specific responsibilities of a licensed school if it discontinues operations in accordance with KRS 165A.390(5).

(b) The necessity of this administrative regulation: This administrative regulation (791 KAR 1:155) outlines the school closure process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This statute requires the commission to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides guidance on school closures.

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

(a) How the amendment will change this existing administrative regulation: If a school closes, the school shall arrange with another school or schools to provide teach-out options for students who may need that service.

(b) The necessity of the amendment to this administrative regulation: This amendment aims to protect the interests of the enrollees.

(c) How the amendment conforms to the content of the authorizing statutes: The statute sets forth the specific responsibilities of a licensed school if it discontinues operations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment aims to protect the interests of the enrollees and provide an equitable treatment of enrollees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All proprietary schools will be required to arrange with another school or schools to provide teach-out options for students who may need that service.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: A teach-out plan allows a school to demonstrate its obligation to fulfill its educational commitment to currently enrolled students.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

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

The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A, KRS 165A.390(5), 165A.400.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Commission on Proprietary Education (Amendment)

791 KAR 1:160. Transfer of ownership, change of location, change of name, revision to existing programs.

RELATES TO: KRS 165A.360(2), (7), (9), 165A.370(1), (2)

STATUTORY AUTHORITY: KRS 165A.340(7), 165A.360(2), (9), 165A.370(1)(b), (j), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the commission to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.360(9), licenses [certificates of approval] issued by the commission are transferable. KRS 165A.370(1)(b) and (j) provide the commission with the authority to ensure that schools have all the necessary equipment to operate.

This administrative regulation governs the procedures that a school shall follow to transfer ownership, change the location, change the name of the school, or revise an existing program for twenty-five (25) percent or more, as established in 791 KAR 1:010, Section 10 [201-KAR 40:020, Section 5(2)].

Section 1. Transfer of Ownership. A school which transfers ownership shall: (1) File a completed, signed and dated Application to Transfer Ownership of a School, (Form PE-21), referenced by 791 KAR 1:025, for commission approval within ten (10) days following the effective date of transfer.

(2) Pay by check or money order a transfer fee as set forth in 791 KAR 1:025, Section 5; and

(3) Submit a copy of legal evidence showing the transfer of ownership agreement and evidence of purchase.

Section 2. Change of Location. (1) A school that changes location shall at least thirty (30) days prior to the change of location:

(a) File a completed, signed, and dated, Application to Change the Location of a School, (Form PE-23), referenced by 791 KAR 1:025, for commission approval; and

(b) Pay by check or money order an application fee for the change of location set forth in 791 KAR 1:025, Section 7.

(2)(a) An inspection shall be conducted by a member of the commission or its designee and submitted to the commission for approval.

(b) Schools that fail to meet minimum statutory and regulatory standards shall be provided a list of corrective measures to be completed prior to operation of the school.

Section 3. Change of Name of a School. A school which changes its name shall at least (30) days prior to the change of name:

(1) File a completed, signed, and dated, Application to Change the Name of a School, (Form PE-22), referenced by 791 KAR 1:025, for commission approval; and

(2) Pay by check or money order an application fee for a change of name as set forth in 791 KAR 1:025, Section 6.

Section 4. Revise An Existing Program. (1) A school which revises an existing program for twenty-five (25) percent or more, as established in 791 KAR 1:020, Section 5(2) shall at least thirty (30) days prior to the next commission meeting:

(a) File a completed, signed, and dated, Application to Revise an Existing Program for 25% or More, (Form PE-13), referenced by 791 KAR 1:020, for commission approval; and

(b) Pay by check or money order the fee as set forth in 791 KAR 1:025, Section 10.

(2) A school which revises an existing program for less than twenty-five (25) percent shall file a completed, signed, and dated, Notification to Revise an Existing Program For Less Than 25%, (Form PE-12), referenced by 791 KAR 1:020, prior to the effective date of change.

Section 5. Expansion of School Facilities. (1) If a school expands the space of an approved location, the school shall notify the commission in writing at least ten (10) days prior to occupancy.

(2) If a school utilizes a space, other than an approved location, on an on-going basis, which is already approved for public use, the school shall notify the commission in writing.

Section 6. Conditional Approval. The Executive Director may provide conditional approval of applications until submitted to the Commission for final approval.

MISTY N. EDWARDS, Executive Director

For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-

Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 October 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: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (791 KAR 1:160) establishes the requirements of proprietary schools and the utilization of an electronic data management system.

(b) The necessity of this administrative regulation: KRS 165A.400 authorizes the commission to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute provides the commission the authority to promulgate and adopt regulations for the administration of KRS 165A Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation governs the procedures that a school shall follow to transfer ownership, change the location, change the name of the school, or revise an existing program for twenty-five (25) percent or more.

(2) If 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 simply allows the executive director to provide a conditional approval of applications until submitted to the Commission for final approval.

(b) The necessity of the amendment to this administrative regulation: The amendment will facilitate the process of automating and streamlining regulatory and licensing processes through the use of an electronic data management system. This modernization will greatly improve responsiveness, and promote collaboration with stakeholders.

(c) How the amendment conforms to the content of the authorizing statutes: The statute provides the commission the authority to promulgate and adopt regulations for the administration of KRS 165A Chapter 1.

(d) How the amendment will assist in the effective administration of the statutes: This amendment simply allows the executive director to issue a conditional approval to the applicant once minimum requirements have been satisfied.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, and any proprietary school requiring licensure pursuant to KRS 165A.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The entity is required

to the meet minimum standards pursuant to KRS 165A and 791 KAR. There are no new requirements being introduced.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: The entity is allowed to operate a proprietary school pursuant to KRS 165A.

(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 to the commission associated with the implementation of this amendment.

(b) On a continuing basis: There will be no costs to the commission associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission is funded entirely through fees paid by licensed schools.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because there is no change to the fee or application structure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Commission on Proprietary Education and proprietary schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 165A.340(7), 165A.360(2), (9), 165A.370(1)(b), (j), 165A.400.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amended administrative regulation will not generate any new revenue for the commission.

(b) How 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 amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs will remain unchanged related 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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no fiscal impact associated with this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Amendment)

907 KAR 10:815. Per diem inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 205.510(16), 205.637, 205.639, 205.640, 205.6405, 205.6406, 205.6407, 205.6408[205.644], 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395tt, 1395ww(d)(5)(F), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), [205.637(3), 205.640(1), 205.641(2), 246.380(13)], 42 C.F.R. 447.252, 447.253, 42 U.S.C. 1396a, [1396r-4]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions related to per diem inpatient hospital reimbursement including provisions necessary to enhance reimbursement pursuant to KRS [442.308 and] 205.638.

Section 1. Definitions. (1) "Base year" means the state fiscal year cost reporting period used to establish a per diem rate.

(2) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(3) "CMS" means Centers for Medicare and Medicaid Services.

(4) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Diagnosis related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.

(7) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25.

(8) "DRG service" means a discharge, excluding crossover claims or no pay claims, assigned a discharge classification by the diagnosis related group grouper used by the department pursuant to 907 KAR 10:830[825], whether the discharge is reimbursed by discharge or via a per diem basis.

(9) "GII" means Global Insight, Incorporated.

(10) "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(11) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(12) "Long-term acute care hospital" or "LTAC hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(13) "Medical education cost" means a direct cost that is:

(a) Associated with an approved intern and resident program; and

(b) Subject to limits established by Medicare.

(14) "Operating cost" means allowable routine, ancillary service, or special care unit cost related to inpatient hospital care.

(15) "Parity factor" means a factor applied to a per diem rate to establish cost coverage parity with diagnosis related group hospital reimbursement.

(16) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.

(17) "Psychiatric hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:180.

(18) "Rebase" means to redetermine per diem rates using more recent data.

(19) "Rehabilitation hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:240.

(20) "State-designated free-standing rehabilitation teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated which:

(a) Provides at least 3,000 days of rehabilitation care to Medicaid-eligible recipients in a fiscal year;

(b) Provides at least fifty-one (51) percent of the statewide total of inpatient acute rehabilitation care to Medicaid-eligible recipients;

(c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution post-discharge;

(d) Is licensed as an acute hospital limited to rehabilitation; and

(e) Is a teaching hospital.

(21) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a recipient.

(22) "Third party [payer]" means a payor of a third party pursuant to KRS 205.510(18)[(16)].

(23) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(24) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(25) "Weighted average" means an average that reflects an individual element's proportionality to all elements.

Section 2. Payment for Rehabilitation or Psychiatric Care in an In-State Acute Care Hospital. (1) For rehabilitation care in an in-state acute care hospital that has a Medicare-designated rehabilitation or psychiatric distinct part unit, the department shall reimburse:

(a) A facility specific per diem rate based on the most recently received Medicare cost report received prior to the rate year, trended and indexed to the current state fiscal year; and

(b) In accordance with Sections 6 and 9 of this administrative regulation.

(2) The department shall reimburse for rehabilitation or psychiatric care provided in an in-state hospital that does not have a Medicare-designated distinct part unit:

(a) On a facility specific per diem basis equivalent to its aggregate projected payments for DRG services divided by its aggregate projected Medicaid paid days. Aggregate projected payments and projected Medicaid paid days shall be the sum of:

1. Aggregate projected payments and aggregate projected Medicaid paid days for non-per diem DRG services as calculated by the model established in 907 KAR 10:830[825];

2. Actual prior year payments inflated by the GII; and

3. Per diem DRG service Medicaid days; and

(b) In accordance with Sections 6 and 9 of this administrative regulation.

Section 3. Payment for Long-term Acute Care Hospital Care, In-State Freestanding Psychiatric Hospital Care, and In-State Freestanding Rehabilitation Hospital Care. (1) The department shall reimburse for inpatient care provided to eligible Medicaid recipients in an in-state freestanding psychiatric hospital, in-state freestanding rehabilitation hospital, or LTAC hospital on a per diem basis.

(2) The department shall calculate a per diem rate by:

(a) Using a hospital's state fiscal year 2005 cost report, allowable cost and paid days to calculate a base cost per day for the hospital;

(b) Trending and indexing a hospital's specific cost, excluding capital cost, per day to the current state fiscal year;

(c) Calculating an average base cost per day for hospitals within similar categories, for example rehabilitation hospitals, using the indexed and trended base cost per day;

(d) Assigning no hospital a base cost per day equaling less than ninety-five (95) percent of the weighted average trended and indexed base cost per day of hospitals within the corresponding category;

(e) Applying a parity factor equivalent to aggregate cost coverage established by the DRG reimbursement methodology established in 907 KAR 10:830[825]; and

(f) Applying available provider tax funds on a pro-rata basis to the pre-provider tax per diem calculated in paragraphs (a) through (e) of this subsection.

Section 4. Payment to a Newly-participating In-State Freestanding Psychiatric Hospital, Freestanding Rehabilitation Hospital or a Long-Term Acute Care Hospital. (1) The department shall reimburse a newly-participating in-state freestanding psychiatric hospital, freestanding rehabilitation hospital or long-term acute care hospital the minimum per diem rate paid to hospitals in their category until the first fiscal year cost report submitted by the hospital has been finalized.

(2) Upon finalization of the first fiscal year cost report for a facility, the department shall reimburse the facility a per diem rate in accordance with Section 3 of this administrative regulation.

Section 5. Payment for Critical Access Hospital Care. (1) The department shall pay a per diem rate to a critical access hospital equal to the hospital's Medicare rate.

(2) A critical access hospital's final reimbursement for a fiscal year shall reflect any adjustment made by CMS.

(3)(a) A critical access hospital shall comply with the cost reporting requirements established in Section 10 of this administrative regulation.

(b) A cost report submitted by a critical access hospital to the department shall be subject to audit and review.

(4) An out-of-state critical access hospital shall be reimbursed under the same methodology as an in-state critical access hospital.

(5) The department shall reimburse for care in a federally defined swing bed in a critical access hospital pursuant to 907 KAR 1:065.

Section 6. Reimbursement Limit. Total reimbursement to a hospital, other than to a critical access hospital, shall be subject to the limitation established in 42 C.F.R. 447.271.

Section 7. In-State Hospital Reimbursement Updating Procedures. (1) The department shall adjust an in-state hospital's per diem rate annually according to the following:

(a) An operating and professional component per diem rate shall be inflated from the midpoint of the previous universal rate year to the midpoint of the current universal rate year using the GII; and

(b) A capital per diem rate shall not be adjusted for inflation.

(2) The department shall, except for a critical access hospital, rebase an in-state hospital's per diem rate every four (4) years.

(3) Except for an adjustment resulting from an appeal in accordance with Section 21 of this administrative regulation, the department shall make no other adjustment.

Section 8. Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal year to conform to a universal rate year.

Section 9. Cost Basis. (1) An allowable Medicaid cost shall:

(a) Be a cost allowed after a Medicaid or Medicare audit;

(b) Be in accordance with 42 C.F.R. Parts 412 and 413;

(c) Include an in-state hospital's provider tax; and

(d) Not include a cost listed in Section 11 of this administrative regulation.

(2) A prospective rate shall include both routine and ancillary costs.

(3) A prospective rate shall not be subject to retroactive adjustment, except for:

(a) A critical access hospital; or

(b) A facility with a rate based on un-audited data.

(4) An overpayment shall be recouped by the department as follows:

(a) A provider owing an overpayment shall submit the amount of the overpayment to the department; or

(b) The department shall withhold the overpayment amount from a future Medicaid payment due the provider.

Section 10. In-State Hospital Cost Reporting Requirements. (1) An in-state hospital participating in the Medicaid program shall submit to the department a copy of each Medicare cost report it submits to CMS, an electronic cost report file (ECR), and the Supplemental Medicaid Schedule KMAP-1 [and the Supplemental Medicaid Schedule KMAP-4 as required by this subsection]:

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital; and

2. Within five (5) months after the close of the hospital's fiscal year.

(b) Except as provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report.

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit a final Medicare-audited cost report upon completion by the Medicare intermediary to the department.

Section 11. Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and

(c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1₂ and 2₂ of this paragraph:

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.

(3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Trending of an In-state Hospital's Cost Report Used for Rate Setting Purposes. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, either audited or un-audited, shall be trended to the beginning of the universal rate year to update an in-state hospital's Medicaid cost.

(2) The trending factor, referenced in subsection (1) of this section, to be used shall be the inflation factor prepared by GII for the period being trended.

Section 13. In-State Hospital Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project

inflationary cost in the universal rate year.

(2) The department shall apply the inflation factor prepared by GII for the universal rate year as the indexing factor.

Section 14. In-State Hospital Minimum Occupancy Factor. (1) If an in-state hospital's minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:

(a) Artificially increasing the occupancy factor to the minimum factor; and

(b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:

(a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer total licensed beds;

(b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more total licensed beds; and

(c) A newly-constructed in-state hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.

Section 15. Reduced Depreciation Allowance. The allowable amount for depreciation on a hospital building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

Section 16. Reimbursement for Out-of-state Hospitals. (1) For inpatient psychiatric or rehabilitation care provided by an acute out-of-state hospital, the department shall reimburse a per diem rate comprised of an operating per diem rate and a capital per diem rate.

(a) The psychiatric operating per diem rate shall be the median operating rate, excluding graduate medical education cost or any provider tax cost, per day for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180.

(b) The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate paid for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180[~~Psychiatric hospitals; operation and services~~].

(c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts ch. 252.

(2) For care provided by an out-of-state freestanding psychiatric hospital, the department shall reimburse a per diem rate comprised of a psychiatric operating per diem rate and a capital per diem rate.

(a) The psychiatric operating per diem rate shall equal seventy (70) percent of equal the median operating rate, excluding graduate medical education cost or any provider tax cost, per day for all in-state freestanding psychiatric hospitals.

(b) The psychiatric capital per diem rate shall equal seventy (70) percent of the median psychiatric capital per diem cost for all in-state freestanding psychiatric hospitals.

(c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts ch. 252.

(3) For care in an out-of-state rehabilitation hospital, the department shall reimburse a per diem rate equal to the median rehabilitation per diem rate for all in-state rehabilitation hospitals minus any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts. ch. 252.

(4) The department shall apply the requirements of 42 C.F.R. 447.271 on a claim-specific basis to payments made via this section of this administrative regulation.

Section 17. Supplemental Payments. In addition to a payment based on a rate developed under Section 2, 3, or 4 of this administrative regulation, the department shall:

(1)(a) Make quarterly supplemental payments to an in-state hospital which qualifies as a psychiatric access hospital in an amount:

1. (a) Equal to the hospital's uncompensated costs of providing care to Medicaid recipients and individuals not covered by a third party payor, not to exceed \$6 million annually; and

2. (b) Consistent with the requirements of 42 C.F.R. 447.271;

or

(b) The department may allow an in-state hospital that qualifies as a psychiatric access hospital to participate in and receive enhanced funding under the Hospital Rate Improvement Program described in 907 KAR 10:840 to provide funding for payments described in Section 17(1) if an average commercial rate methodology is available for that program, provided that:

1. Upon request of the Department for Behavioral Health, Developmental, and Intellectual Disabilities, the qualifying hospital or hospital system agrees to provide behavioral health care for Medicaid recipients and uninsured individuals with no third party coverage;

2. The hospital functions as the state hospital for state mental health in District IV pursuant to 908 KAR 2:040; and

3. The payments described in Section 17(1) are not duplicated within the fee-for-service or Hospital Rate Improvement Programs; and

(2) Make an annual payment to an in-state state-designated free-standing rehabilitation teaching hospital that is not state-owned or operated in an amount:

(a) Determined on a per diem or per discharge basis equal to the nonreimbursed costs of providing care to Medicaid recipients. Costs shall be the amount of cost identified on a hospital's most recent cost report received by the department for a fiscal year reduced by the cost of care covered by third parties; and

(b) Equal to the amount of per diem payments pursuant to this administrative regulation or per discharge diagnosis related group payments pursuant to 907 KAR 10:830[825] received by the hospital for Medicaid recipients not covered by third parties.

Section 18. Certified Public Expenditures. (1) The department shall reimburse an in-state public government-owned hospital the full cost of inpatient care via a certified public expenditure (CPE) contingent upon approval by CMS.

(2) To determine the amount of costs eligible for a CPE, an in-state hospital's allowed charges shall be multiplied by the hospital's operating cost-to-total charges ratio.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted cost remains, the department shall reconcile any difference with the provider.

Section 19. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at \$10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor's financial information; and

(b) In accordance with 907 KAR 1:672; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 20. New Provider, Change of Ownership, or Merged Facility. (1) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

(2) Until a fiscal year end cost report is available, a newly constructed or newly participating hospital shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.

(a) A prospective per diem rate shall be set based on the operating budget and projected number of patient days for care not subject to a diagnosis related group method of reimbursement.

(b) A prospective per diem rate set in accordance with paragraph (a) of this subsection shall be tentative and subject to settlement at the time the first audited fiscal year end report is available to the department.

(c) During the projected rate year, the budget shall be adjusted

if indicated and justified by the submittal of additional information.

(3) If two (2) or more separate entities merge into one (1) organization, the department shall:

(a) Merge the latest available data used for rate setting;

(b) Combine bed utilization statistics, creating a new occupancy ratio;

(c) Combine costs using the trending and indexing figures applicable to each entity in order to arrive at correctly trended and indexed costs;

(d) Compute on a weighted average the rate of increase control applicable to each entity, based on the reported paid Medicaid days for each entity taken from the cost report previously used for rate setting;

(e) If one (1) of the entities merging has disproportionate status and the other does not, retain for the merged entity the status of the entity which reported the highest number of Medicaid days paid;

(f) Recognize an appeal of the merged per diem rate in accordance with 907 KAR 1:671; and

(g) Require each provider to submit a Medicaid cost report for the period:

1. Ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end; and

2. Starting with the day of the merger and ending on the fiscal year end of the merged entity in accordance with Section 10 of this administrative regulation.

Section 21. Appeals. (1) An administrative review shall not be available for a facility or service reimbursed via the per diem methodology for the determination of the requirement, or the proportional amount, of any budget neutrality adjustment used in the calculation of the per diem rate.

(2) An administrative review shall be available for a calculation error in the establishment of a per diem rate.

(3) An appeal shall comply with the review and appeal provisions established in 907 KAR 1:671.

Section 22. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:[]

~~(a)] "Supplemental Medicaid Schedule KMAP-1", January 2007 edition; and~~

~~—(b) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition].~~

(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 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at: <https://chfs.ky.gov/agencies/dms/MAPForms/KMAP1.XLS>.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 26, 2021

FILED WITH LRC: July 28, 2021 at 1:34 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you

may submit written comments on this proposed administrative regulation until October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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 Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program per diem reimbursement policies for hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program reimbursement policies for per diem hospitals.

(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 the Medicaid program reimbursement policies for per diem hospitals.

(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 authorizing statutes by establishing the Medicaid program reimbursement policies for per diem hospitals.

(2) If 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 establishes that certain psychiatric access hospitals can participate in 907 KAR 10:840's Hospital Rate Improvement Program, provided that certain conditions relating to maintained psychiatric admissions are met. The amendment also removes a form – titled the KMAP-4 – that is no longer used, but still submitted.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the parameters by which these hospitals can participate in the hospital rate improvement program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by allowing another private hospital provider to participate in the hospital rate improvement program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing a method of participation in the hospital rate improvement program for a specific type of private hospital.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to those psychiatric hospitals that may participate in the hospital rate improvement program. DMS anticipates that the modifications will apply only to one (1) hospital system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. A hospital designated as a psychiatric access hospital will need to continue meeting psychiatric admissions criteria in order to participate in the hospital rate improvement program.

(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 cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The psychiatric access hospitals will receive additional, higher reimbursement by participating in the hospital rate improvement program.

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

(a) Initially: DMS does not anticipate any costs in implementing this administrative regulation.

(b) On a continuing basis: DMS anticipates no continuing cost resulting from the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations. Some hospital rate improvement funds will be paid by the private hospitals via a provider assessment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)

2. State compliance standards. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Medicaid reimbursement for services is required to be consistent with efficiency, economy, and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter or different than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Medicaid Services (DMS) will be impacted by the amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.6405 to .6408 and 907 KAR 10:840 authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates no revenue being generated for the first year for state or local government due to the amendment 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? DMS anticipates no revenue being generated in subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs to the department in administering this program in the first year as the hospital rate improvement program assessment is paid by hospitals subject to the assessment.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs to the department in administering this program in subsequent years as the hospital rate improvement program assessment is paid by hospitals subject to the assessment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Income Support Division of Disability Determinations (Amendment)

923 KAR 2:470. Disability Determinations Program.

RELATES TO: ~~[KRS 194.030(6);]~~ KRS 205.245, 20 C. F. R. 401.5-401.200 [20 C.F.R. 401.100-401.600], Subparts A, B, C, [E, F,] 404.900-404.999d, Subpart J, [404.1501-404.1599, Appendix 1 & 2, Subpart P, 404.1601-404.1694, Subpart Q, 416.901-416.998, Subpart I, 416.1001-416.1094, Subpart J,] 416.1400 - 416.1499, Subpart N, 416.1701 - 416.1725, Subpart Q, 422.401 - 422.445[422.449], Subpart E

STATUTORY AUTHORITY: KRS 194A.030(9), 194A.050, [KRS 194.050, EO 96-862, 20 C. F. R. 401.100-600, 20 C.F.R. 401.100-600, Subparts A, B, C, E, F, 404.900-404.999d, Subpart J,] 20 C.F. R. 404.1501 - 404.1599, Appendix 1 & 2, Subpart P, 404.1601 - 404.1694, Subpart Q, 416.901 - 416.999 [416.998], Subpart I, 416.1001 - 416.1094, Subpart J, 416.1400 - 416.1499, Subpart N, 416.1701 - 416.1725, Subpart Q, 422.401 - 422.449, Subpart E]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030 requires the Cabinet for Health and Family Services, Department for Income Support to serve as the state unit, as required by Title II and Title XVI of the Social Security Act, and shall have responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. KRS 194A.050 requires that the Secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law. 20 C.F.R. 404-1501-404.1599 provides that in order for a person to be entitled to any benefits based upon disability or blindness or to have a period of disability

established, they must be disabled or blind as defined in title II of the Social Security Act. 20 C.F.R. 404.1601-404.1694 provides the standards of performance and administrative requirements and procedures for states making determinations of disability under title II of the Social Security Act. 20 C. F.R. 416.1001-416.1094 provides the standards of performance and administrative requirements and procedures for states making determinations of disability under title XVI of the Social Security Act. [Executive Order 96-862 transfers to the Cabinet for Families and Children the authority to administer a program under 20 C.F.R. 404.1503 for determinations of disability. The Cabinet for Families and Children, Department for Disability Determination Services shall make disability determinations for Social Security Disability and Supplemental Security Income.]

Section 1. The following C.F.R. sections~~[-effective 4-1-96,]~~ govern disability determinations made by the Cabinet for Health and Family Services ~~[Families and Children]~~, Department for Income Support, Division of Disability Determination Services:

- (1) 20 C.F.R. 401.5 -401.200 ~~[20 C.F.R. 401.100-401.600]~~, Subparts A, B, and C; ~~[-E, F;]~~
- (2) 20 C.F.R. 404.900 - 404.999d, Subpart J;
- (3) 20 C.F.R. 404.1501 - 404.1599, Appendix 1 & 2, Subpart P;
- (4) 20 C.F.R. 404.1601 - 404.1694, Subpart Q;
- (5) 20 C.F.R. 416.901 - 416.999d~~[416.998]~~, Subpart I;
- (6) 20 C.F.R. 416.1001 - 416.1094, Subpart J;
- (7) 20 C.F.R. 416.1400 - 416.1499, Subpart N;
- (8) 20 C.F.R. 416.1701 - 416.1725, Subpart Q;
- (9) 20 C.F.R. 422.401 - 422.445 ~~[422.449]~~, Subpart E.

STEVEN P. VENNO, Commissioner
CARRIE BANAHAN, Deputy Secretary

For ERIC C. FRIEDLANDER, Secretary
APPROVED BY AGENCY: July 26, 2021

FILED WITH LRC: July 28, 2021 at 1:34 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 25, 2021 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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 Specialist, 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: Mary W. Sparrow or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the basis for authority to administer a program for determinations of disability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the requirements of how the decision of disability are determined.

(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 ensuring that disability determinations for Social Security Disability and Supplemental Security Income are made in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with outlining the basis for determining eligibility for disability for citizens of the Commonwealth who file disability applications with the Social Security Administration.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation provides updated citations, department names and conforms to KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update citations, cabinet, department and division names and is necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 13A.3104.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating the state and federal statutes and regulations.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation has been updated to reflect the applicable federal regulations as related to the Disability Determinations Services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of the last published data from the Social Security Administration in December 2019, there were 222,274 individuals in Kentucky receiving Title II Social Security disability (SSDI) and 162,356 individuals receiving Title XVI Supplemental Security Income (SSI) for being blind or disabled.

(4) Provide an analysis of how the entities identified in question (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 changes for claimants applying for disability in Kentucky.

(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.

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

(a) Initially: The amendment to this administrative regulation will not require any initial costs to implement.

(b) On a continuing basis: The administrative regulation will not require any ongoing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Disability Determinations Services program is 100% federally funded.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities that elect to be regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 C.F.R. 401.5-401.200, Subparts A, B, C, 404.900-404.999d, Subpart J, 404.1501-404.1599, Appendix 1 & 2, Subpart P, 404.1601-404.1694, Subpart Q, 416.901-416.999, Subpart I, 416.1001-416.1094, Subpart J, 416.1400-416.1499, Subpart N, 416.1701-416.1725, Subpart Q, 422.401-422.445, Subpart E

2. State compliance standards. KRS 194A.0030 and KRS 194A.050.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the applicable statutes and regulations in the administration of the disability determinations program.

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, Disability Determinations Services, 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. 20 C.F.R. 401.100-401.200, Subparts A, B, C, 404.900-404.999d, Subpart J, 404.1501-404.1599, Appendix 1 & 2, Subpart P, 404.1601-404.1694, Subpart Q, 416.901-416.999, Subpart I, 416.1001-416.1094, Subpart J, 416.1400-416.1499, Subpart N, 416.1701-416.1725, Subpart Q, 422.401-422.445, Subpart E, KRS 194A.030 and KRS 194A.050.

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

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

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

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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](#).

DEPARTMENT OF LAW
Department of Criminal Litigation
Office of Trafficking and Abuse Prevention and Prosecution
(New Administrative Regulation)

40 KAR 6:030. Human Trafficking Victims Fund.

RELATES TO: KRS 529.010, 529.130, 529.140, 529.150
STATUTORY AUTHORITY: KRS 529.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 529.140 creates the "human trafficking victims fund" as a separate revolving fund within the Office of the Attorney General. Moneys in the fund must be distributed to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies. The Office of the Attorney General must promulgate administrative regulations to develop procedures for distributing funds pursuant to this section. This administrative regulation governs the distribution of funds from the Human Trafficking Victims Fund.

Section 1. Office of the Attorney General's Use of Funds. (1) The Office of the Attorney General shall use funds received to maintain programs for the prevention of human trafficking, provide education, training, or public outreach programs about human trafficking, and conduct human trafficking investigations.

(2) When distributing funds under this subsection, the Office of Attorney General shall document the activity for which funds were distributed and the total cost of the activity.

Section 2. Distribution of Funds. (1) The Office of Attorney General may distribute funds to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies.

(2) The Office of the Attorney General may also recoup costs for conducting any programs or trainings.

(3) An agency wishing to receive funds from the Human Trafficking Victims Fund shall complete the Human Trafficking Victims Fund Application.

Section 3. Limitation on Use of Funds Under KRS 529.140(3)(b). The Cabinet for Health and Family Services shall use funds received to serve minor victims of human trafficking under KRS 620.029.

Section 4. Incorporation by Reference. (1) "Human Trafficking Victims Fund Application, August 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, 1024 Capital Center Drive, 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 [ag.ky.gov](#).

DANIEL CAMERON, Attorney General

APPROVED BY AGENCY: August 13, 2021

FILED WITH LRC: August 13, 2021 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 9:30 a.m. Eastern Time at 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 October 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: Catherine York, Office of Trafficking and Abuse Prevention and Prosecution, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5670; fax 502-573-1009; email Catherine.york@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Catherine York

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for distributing funds from the Human Trafficking Victims' Fund.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for distributing funds from the Human Trafficking Victims' Fund as required by KRS 529.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms because it establishes the procedures for distributing funds from the Human Trafficking Victims Fund and includes those provisions required by KRS 529.140.

(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 authorizing statute by establishing the procedures and application used to distribute funds from the Human Trafficking Victims 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 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 government affected by this administrative regulation: This administrative regulation affects the Cabinet for Health and Family Services and all law enforcement agencies, prosecutorial agencies, and victim service agencies, including the Office of the Attorney General.

(4) Provide an analysis of how the entities identified in question (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 apply for funds available from the Human Trafficking Victims Fund, the Cabinet for Health and Family Services, the Office of the Attorney General, and other law enforcement agencies, prosecutorial agencies, and victim service agencies must complete the application incorporated by reference 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): In complying with this administrative regulation, there is no cost to the law enforcement agencies, prosecutorial agencies,

and victim service agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Law enforcement agencies, prosecutorial agencies, and victim service agencies that apply for funds as required by this administrative regulation may receive funds to serve victims of human trafficking.

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

(a) Initially: The Office of Attorney General anticipates that this administrative regulation will be budget neutral on an initial basis.

(b) On a continuing basis: The Office of Attorney General anticipates that this administrative regulation will be budget neutral on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation is the Human Trafficking Victims 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. The Office of the Attorney General does not anticipate an increase in fees or funding.

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

(9) Tiering: Is tiering applied? Tiering is not appropriate because the regulation applies equally to all law enforcement agencies, prosecutorial agencies, and victim services 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? This administrative regulation will affect the Office of the Attorney General and to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 529.140 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 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 additional revenue for state or local governments during the first year 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? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Office of the Attorney General anticipates that this administrative regulation will be budget neutral for the first year.

(d) How much will it cost to administer this program for subsequent years? The Office of the Attorney General anticipates that this administrative regulation will be budget neutral 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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

BOARDS AND COMMISSIONS

Board of Pharmacy

(New Administrative Regulation)

201 KAR 002:430. Emergency orders and hearings.

RELATES TO: KRS 13B.050(2), 13B.125, 218A.205, 315.121, 315.131(6)

STATUTORY AUTHORITY: KRS 315.191(1)(a), 218A.205

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205 and 315.191(1)(a) authorize the board to promulgate administrative regulations, issue subpoenas, schedule and conduct hearings, or appoint hearing officers to schedule and conduct hearings on behalf of the board on any matter under the jurisdiction of the board. This administrative regulation sets forth the requirements and procedures of emergency suspensions and emergency hearings conducted by the board.

Section 1. Authority to Issue Emergency Order; Timing.

(1) The case review panel or the president of the board, acting on behalf of the case review panel, may issue an emergency order restricting or suspending a license, permit or registration pursuant to KRS 315.131(3) and 13B.125.

(2) The case review panel shall make this determination following a completed investigation pursuant to KRS 315.191(1)(e) at a regularly scheduled meeting of the case review panel.

(3) (a) The board president may act on behalf of the case review panel and issue an emergency order restricting or suspending a license, permit or registration if the Board President determines that a basis for an emergency order as established in subsection (1) of this section exists and the circumstances of the specific case warrant emergency action prior to the next regularly scheduled meeting of the case review panel.

(b) If an emergency hearing is scheduled prior to the next regularly scheduled meeting of the case review panel, the board president may act on behalf of the case review panel and issue the complaint required to support the continuation of the emergency order.

(c) If the board president acts on behalf of the case review panel pursuant to paragraph (a) or (b) of this subsection, the board president shall report any action to the case review panel at its next regularly scheduled meeting.

Section 2. Findings of Fact and Conclusions of Law.

(1) The case review panel, or the board president acting on the panel's behalf, may consider any evidence or information in making a charging decision pursuant to KRS 315.121 or in making the determination to issue an emergency order pursuant to Section 1 of this administrative regulation. The evidence or information may include:

(a) An application for licensing permitting or registration or renewal filed by the individual with any licensing board;

(b) Any prior or current order issued by the board or the case review panel affecting the license, permit or registration;

(c) Any prior or current order issued by another state's licensing authority affecting the license, permit or registration in that state;

(d) The records of any criminal proceeding involving the licensee, permit holder or registrant;

(e) A report by or record of any governmental agency, including a law enforcement agency report;

(f) Patient records maintained by the permit holder or summaries of or references to the contents of those records;

(g) Records or reports issued or maintained by any business;

(h) An investigative report prepared by a board inspector or special investigator, including any summary of a verbal or written statement by a witness or any evidentiary document reviewed by an inspector;

(i) An investigative report prepared by a board inspector or special investigator involving another investigation conducted by the board relating to the licensee, permit holder or registrant;

(j) An oral or written statement by the licensee, registrant or designee for the permit holder, or the agent of licensee, permit holder or registrant, relating to the investigation; or

(k) A physical, mental, or substance abuse evaluation or assessment of the licensee or registrant.

(2) The evidence or information considered by the case review panel or board president, acting on behalf of the case review panel, shall constitute the board's record of proceedings relating to the issuance of an emergency order of restriction or suspension.

(3) If the case review panel or the board president, acting on behalf of the case review panel, issues an emergency order of restriction or suspension against a license, permit or registration, the emergency order shall be a written order and shall include findings of fact and conclusions of law, supported by the board's record of proceedings, upon which the agency bases the emergency order.

(4) Any emergency order shall be served upon the affected licensee, registrant or designee of the permit holder in the manner specified in KRS 13B.050(2). The emergency order shall become effective immediately upon receipt by the affected licensee, registrant or designee of the permit holder.

Section 3. Authority to Issue Emergency Order of Suspension Upon Felony Indictment.

(1) If a licensee, registrant or designee of the permit holder is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to a controlled substance, the licensee, registrant or designee of the permit holder's practice shall be considered an immediate danger to the public health, safety, or welfare pursuant to KRS 315.131 and 13B.125.

(2) If the board receives verifiable information that a licensee, registrant or designee of a permit holder has been indicted in any state for a crime classified as a felony in the state of indictment and the conduct charged relates to a controlled substance, the case review panel or board president, acting on behalf of the case review panel, shall immediately issue an emergency order suspending or restricting that licensee, registrant or permit holder's license, permit or registration or restricting the licensee, registrant or permit holder from dispensing, administering, or otherwise utilizing a controlled substance in Kentucky, until further order following the final resolution of criminal charges in the indictment.

(3) The emergency order of suspension shall remain in effect for not more than sixty (60) days pursuant to KRS 315.131(6).

Section 4. Request for the Timing of Emergency Hearing; Waiver.

(1) A licensee, registrant or permit holder required to comply with an emergency order may request an emergency hearing at any time between the effective date of the emergency order and the effective date of an order finally resolving the underlying complaint.

(2) (a) A request for an emergency hearing shall be presented to the board in writing, but may be submitted by facsimile or email.

(b) Upon receipt of a written request for an emergency hearing, the board shall schedule the emergency hearing on one (1) of the ten (10) days following the date of receipt of the written request. The day on which the written request is received by the board shall not be considered one (1) of the ten (10) working days.

(c) A written request shall be considered received on a particular work day if it is received by the board during the board's scheduled operating hours for that day. If the board receives a request for an emergency hearing by facsimile or email received after scheduled operating hours, the request shall be considered to have been received the next scheduled work day of the board.

(3) (a) A written request for an emergency hearing shall be considered a certification by the affected licensee, registrant or permit holder or their attorney, if represented, that the licensee, registrant or designee of the permit holder's counsel, if any, that the licensee, registrant or designee of the permit holder is available to participate in an emergency hearing on any of the ten (10) working days following the date of the board's receipt of the written request for an emergency hearing.

(b) The refusal of the licensee, registrant or designee of the

permit holder to accept a hearing date on a date specified by the board within the ten (10) working days shall constitute a waiver of the requirement of KRS 13B.125(3) to conduct the emergency hearing within ten (10) working days of the receipt of a request.

(c) If there is a waiver of the ten (10) working day requirement, the hearing officer and parties shall schedule the emergency hearing to commence at the next date available to the hearing officer and both parties.

(4) (a) Unless there is a waiver of the requirement, the board shall commence the emergency hearing within ten (10) working days of the receipt of the written request for an emergency hearing.

(b) If the parties are unable to conclude the emergency hearing on the initial date assigned, the emergency hearing shall resume on the next date available to the hearing officer and both parties and shall continue on dates available to the hearing officer and both parties until concluded.

Section 5. Scope and Conduct of Emergency Hearing; Hearing Officer's Role.

(1) The emergency hearing shall be conducted by the case review panel, its board president, acting on behalf of the case review panel, or by a qualified hearing officer appointed by the board's executive director.

(2) The singular function of the party conducting the emergency hearing shall be to determine whether the findings of fact providing the basis for the emergency order are supported by substantial evidence and, if so, constitute one (1) or more violations of KRS 315.121.

(3) Given the ten (10) working day requirement of KRS 13B.125(3) and the unique nature of the hearing, it shall not be practicable pursuant to:

(a) KRS 13B.125(3) to conduct the emergency hearing in conformity with the provisions of KRS 13B.050;

(b) KRS 13B.060;

(c) KRS 13B.070;

(d) KRS 13B.080(2);

(e) KRS 13B.080(3) {as it relates to discovery orders} or (4) {to the extent it conflicts with this administrative regulation};

(f) KRS 13B.090(1) {to the extent it prohibits consideration of hearsay evidence}, (2) {other than the requirement that all testimony shall be made under oath or affirmation}, (3) or (7);

(g) KRS 13B.110; or

(h) KRS 13B.120.

(4) There shall not be a motion practice, prior to or as a part of the emergency hearing, relating to the legality or validity of the emergency order under consideration or relating to evidentiary issues.

(5) The emergency hearing shall be conducted as required by KRS Chapter 13B and this subsection.

(a) The board shall produce and the hearing officer shall accept the record of the proceedings relating to the issuance of an emergency order under consideration.

(b) 1. The board shall not be required to produce any further evidence to support the emergency order.

2. The board may call the affected licensee, registrant or designee of the permit holder to testify, as if under cross-examination, regarding the factual accuracy of evidence or information cited in the record of proceedings relating to the issuance of the emergency order.

(c) The affected licensee, registrant or designee of the permit holder may testify, produce factual evidence, produce hearsay evidence through documents, or call lay witnesses to the extent that the evidence specifically tends to demonstrate that a factual statement relied upon by the case review panel or board president, acting on behalf of the case review panel, is factually incorrect or false.

(6) (a) Within five (5) working days of completion of the emergency hearing, the hearing officer shall issue a written decision in which the hearing officer shall:

1. Affirm the emergency order if there is substantial evidence of a violation of law and the case review panel has determined that a violation constitutes an immediate danger to the public health, safety, or welfare. If there is substantial evidence of a violation of law, the hearing officer shall not substitute his or her judgment as

to the level of public protection necessary for the emergency order;

2. Revoke the emergency order if there is no substantial evidence of a violation of law. The findings of fact shall be found to be supported by substantial evidence if there is a factual basis for the findings, even if there is a conflict in the evidence or information considered by the case review panel or board president, acting on behalf of the case review panel. A finding that there is no substantial evidence to support the findings of fact shall require a finding that there is a complete absence of factual basis for the findings; or

3. Modify the emergency order if the emergency order relied upon multiple violations of law and the hearing officer has determined that there is no substantial evidence to support one (1) or more of the violations. Upon making that finding, the hearing officer may consider each remaining violation for which there is substantial evidence and may modify the level of protection if the modified protection fully protects the public health, safety, or welfare based upon the dangers presented by the licensee, registrant or designee of the permit holder's commission of each remaining violation.

(b) The hearing officer shall not include additional findings of fact or conclusions of law in any written decision affirming the emergency order under consideration. The written decision shall be sufficient if it determines that there was substantial evidence of a violation of law and the panel had determined that the violation constituted an immediate danger to the public health, safety, or welfare.

(c) If the hearing officer issues a written decision revoking or modifying the emergency order under consideration, the hearing officer shall include findings of fact and conclusions of law to support the action.

Section 6. Judicial Review. Judicial review of a final order resulting from an emergency hearing shall comply with KRS 13B.140, 13B.150 and 13B.160.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: August 10, 2021

FILED WITH LRC: August 10, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements and procedures of emergency suspensions and emergency hearings conducted by the Board of Pharmacy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the requirements and procedures of emergency suspensions and emergency

hearings conducted by the Board of Pharmacy.

(c) c. How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 315.191(1)(a) and KRS 218A.205, establishes the requirements and procedures of emergency suspensions and hearings conducted by the Board of Pharmacy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 315.191 enables the Board of Pharmacy to promulgate an administrative regulation that identifies the appropriate requirements and procedures for emergency suspensions and emergency hearings conducted by the board.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The board anticipates licensees, permit holders and registrants will be minimally impacted by this new 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: Licensees, permit holders and registrants will have to familiarize themselves with this new regulation. This regulation provides the requirements and procedures of emergency suspensions and emergency hearings conducted by the board. The board will help educate identified entities of this new regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This new regulation will provide licensees, permit holders and registrants with information applicable to the requirements and procedures of emergency suspensions and emergency hearings conducted by the board.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) Tiering: Is tiering applied? Tiering is not applied because this new regulation is applicable to all licensees, permit holders and registrants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

be impacted by this administrative regulation? Only the Board of Pharmacy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a), KRS 218A.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.

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

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

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

TOURISM, ARTS, AND HERITAGE CABINET
Kentucky State Fair Board
Fiscal and Contract Management
(New Administrative Regulation)

303 KAR 1: 110. Procurement procedures.

RELATES TO: KRS 247.100, KRS 247.147

STATUTORY AUTHORITY: KRS 247.100, KRS 247.147

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.147(1)(b) authorizes the Kentucky State Fair Board to adopt administrative regulations establishing its procurement procedures. This administrative regulation establishes the procurement procedures of the Kentucky State Fair Board in a manner consistent with KRS 247.147 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 State Fair Board are established in the "Kentucky State Fair Board Procurement Procedures, June 24, 2021."

Section 2. Incorporation by Reference. (1) "Kentucky State Fair Board Procurement Procedures, June 24, 2021," is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the General Counsel at the offices of the Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209, Monday through Friday at 8 a.m. to 5 p.m.

DAVID BECK, President and Chief Executive Officer

APPROVED BY AGENCY: July 22, 2021

FILED WITH LRC: July 22, 2021 at 1:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 10:00 am Eastern Time at Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209. Individuals interested in being heard at this hearing shall notify this agency in writing 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 October 31, 2021. Send written notifications of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carrie Bauer, General Counsel, Kentucky State Fair Board, 937 Phillips Lane, Louisville, Kentucky 40209; phone 502-367-5244; fax 502-367-5109; email carrie.bauer@kyvenues.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the procurement procedures for the Kentucky State Fair Board.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to ensure the independent, corporate structure of the Kentucky State Fair Board promised by KRS 247.100 and to allow the Kentucky State Fair Board to act economically and in its best interest.

(c) How does this administrative regulation conform to the authorizing statute: KRS 247.147 authorizes the State Fair Board to promulgate its own procurement procedures via administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This administrative regulation is necessary to allow the Kentucky State Fair Board to purchase supplies, equipment, services, and construction items that provide the greatest long-term benefit for the state, the greatest integrity for the Kentucky State Fair Board, and the best service and products for the public.

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

(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, organization or state and local governments that will be affected: This will affect the Kentucky State Fair Board and tangentially any business, person, or state or local government doing business with the Kentucky State Fair Board. This regulation will also impact the Finance and Administration Cabinet, the Government Contract Review Committee, and the Tourism, Arts, and Heritage Cabinet.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, including:

(a) List the action that each of the regulated entities in question (3) will have to take to comply with this administrative regulation: The Finance and Administration Cabinet will need to create the necessary cited authority and update the workflows in EMARS to allow for the Kentucky State Fair Board to administer its procurement procedures. The Government Contract Review Committee will need to begin accepting review of certain contracts directly from the Kentucky State Fair Board. The Kentucky State Fair Board will begin approving its procurements of goods and service in accordance with the procurement procedures. No other actions will need to be taken.

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

question (3). Indeed, this should result in a cost savings to the Finance and Administration Cabinet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky State Fair Board will be able to provide the best service and products for the public. The Finance and Administration Cabinet and the Tourism, Arts, and Heritage Cabinet should save costs and resources as a result of this transition.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no continuing cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: To the extent needed, the source of funding is the Kentucky State Fair Board budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation only refers to the internal functions and procedures of the Kentucky State Fair Board.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government will be impacted by this administrative regulation? The Kentucky State Fair Board will be impacted by this administrative regulation. The Finance and Administration Cabinet, Government Contract Review Committee, and Tourism, Arts, and Heritage will also be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.147 authorizes the Kentucky State Fair Board to promulgate its own procurement procedures.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency 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 for the first year? The revenue of this administrative regulation is difficult to quantify. However, it will allow for more efficient and streamlined operations. It will also allow the Kentucky State Fair Board to procure better products at a lesser price, and services in a timelier manner. This will result in overall cost savings for the Kentucky State Fair Board. The administrative regulation will also assist the Kentucky State Fair Board in attracting more events and improving relationships with its tenants, which should generate additional revenue for local and state government.

(b) How much revenue will this administrative regulation generate for the state or local government in subsequent years? The revenue of this administrative regulation is difficult to quantify. However, it will allow for more efficient and streamlined operations. It will also allow the Kentucky State Fair Board to procure better products at a lesser price, and services in a timelier manner. This will result in overall cost savings for the Kentucky State Fair Board. The administrative regulation will also assist the Kentucky State Fair Board in attracting more events and improving relationships with its tenants, which should generate additional revenue for local and state government.

(c) How much will it cost to administer this program for the first year? The costs of this administrative regulation are difficult to quantify, but as explained above in the answers to (3)(a) and (3)(b), they should result in overall cost savings for the Kentucky State Fair Board, the Tourism, Arts, and Heritage Cabinet, and the Finance and Administration Cabinet.

(d) How much will it cost to administer the program for subsequent years? The costs of this administrative regulation are

difficult to quantify, but as explained above in the answers to (3)(a) and (3)(b), the purpose of the regulation is to create a cost savings for the Kentucky State Fair Board, which will should also save the Tourism, Arts, and Heritage Cabinet and the Finance and Administration Cabinet time, money, and resources.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Department of Highways Division of Incident Management (New Administrative Regulation)

603 KAR 5:360 Transportation Cabinet use of interstate and parkway signs to locate missing persons.

RELATES TO: KRS 39F.180, 29F.200

STATUTORY AUTHORITY: KRS 39F.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.180(2)(e) requires the duty officer of the Division of Emergency Management to provide notice to the Transportation Cabinet of certain missing persons in order to carry out prompt publication by message boards on all interstates and parkways in the Commonwealth of Kentucky. KRS 39F.180(2)(e) requires the Transportation Cabinet to promulgate administrative regulations relating to reporting requirements from the Division of Emergency Management to the Transportation Cabinet. This administrative regulation establishes the requirements to request the use of interstate and parkway signs related to missing persons.

Section 1. Definitions.

(1) "Duty officer" means an officer on duty at the Division of Emergency Management, Emergency Communications Information Center or ECIC, at the time the notice of missing person is received.

(2) "Missing person" means a person missing, lost, or overdue as established in KRS 39F.180(1) and (2).

(3) "Missing person report" means, pursuant to KRS 39F.180(2)(a) through (d), a written or electronic report containing information to appropriately identify the missing person if the person is seen or discovered by a third party.

(4) "Notice" means information provided at the point in time a local search and rescue coordinator contacts the Division of Emergency Management with a request and required information to establish the basis for a missing person report.

Section 2. Reporting Requirements. (1) As established in KRS 39F.180(2)(a) through (d), the missing person report shall contain the name, age, gender, county last seen, and how traveling. If the traveling method is by automobile, the report shall include, if available, license plate, year, make, model, and color of automobile. Other known information that may be reasonably calculated to assist in the rescue effort shall also be noted in the report.

(2) Request shall be by and through a local search and rescue coordinator as established by KRS 39F.200 in the County where the missing person was last seen.

(3) If the local search and rescue coordinator makes a request of a duty officer of the Division of Emergency Management and fails to provide information required by this administration, the request shall be considered insufficient notice to the duty officer of the Division of Emergency Management, and the duty officer shall not notify the Kentucky Transportation Cabinet.

(4) Upon receipt of a request, the duty officer shall contact the Transportation Cabinet if the local search and rescue coordinator determines pursuant to KRS 39F.180 that at any time during a search the use of electronic highway signs will aid in the search and is in the best interest of the missing person. Electronic highway signs that may be utilized shall include those located on the interstates and parkways.

(5) Upon request by a duty officer, the Transportation Cabinet

shall publish information on available message boards permanently located on both interstates and parkways.

(6) Message options for interstate message boards may include:

(a) Option 1 – Interstate message board; or



(b) Option 2 – Interstate message board.



(7) Messages for parkway message boards may be formatted as in this example:



(8) The missing person message shall be discontinued by the Transportation Cabinet:

(a) Upon notice to the cabinet that the missing person has been found;

(b) Upon notice to the cabinet that an AMBER alert or other higher priority incident has been issued that takes precedence;

(c) Upon notice to the cabinet that a subsequent missing person notice has been issued for either a new notice for the same missing person or a new notice for a new missing person; or

(d) If the County search and rescue coordinator provides no further update to the cabinet after a period of four (4) hours.

JIM GRAY, Secretary, Transportation Cabinet
JAMES BALLINGER, State Highway Engineer
MICHAEL E. DOSSETT, Director, Division of Emergency Management

APPROVED BY:

TRANSPORTATION CABINET: August 12, 2021

DEPARTMENT OF MILITARY AFFAIRS: August 10, 2021

FILED WITH LRC: August 13, 2021 at 10:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 p.m. EST on October 27, 2021, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of: This new administrative regulation is the result of HB 105 from the 2021 General Session. This administrative regulation provides the framework for the Division of Emergency Management to make a request of the Transportation Cabinet to use electronic message boards along interstate and parkways when a missing person has been reported.

(a) What this administrative regulation does: This administrative regulation establishes the requesting requirements for the use of interstate and parkway signs related to missing persons.

(b) The necessity of this administrative regulation: KRS 39F.180(2)(e) requires the Transportation Cabinet to promulgate administrative regulations relating to reporting requirements from the Division of Emergency Management to the Transportation Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39F.180(2)(e) requires the duty officer of the Division of Emergency Management to provide notice to the Transportation Cabinet of certain missing persons in order to carry out prompt publication by message boards on all interstates and parkways in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requesting requirements for the use of interstate and parkway signs related to missing persons.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals working in emergency management, TRIMARC, Kentucky Transportation Cabinet, Kentucky Division of Emergency Management, duty officers, county search and rescue coordinator, law enforcement

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This administrative regulation establishes the requesting requirements for the use of interstate and parkway signs related to missing persons.

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

(c) As a result of compliance, what benefits will accrue to the entities: Compliance with this administrative regulation will allow prompt notice of missing persons to be distributed to all electronic message boards on Kentucky interstates and parkways.

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost associated with implementing this administrative regulation, therefore there is no source of the funding to be used 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: There is no cost associated with implementing this administrative regulation, therefore there is no need for an increase in fees or funding in order 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? 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? Kentucky State Police; Kentucky Transportation Cabinet, Division of Incident Management; Kentucky Department of Emergency Management; TRIMARC

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39F.180

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation should cause no effect on the expenditures and revenues of a state or local government agency.

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

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected

to generate costs.

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

Other Explanation: n/a

TRANSPORTATION CABINET Department of Highways Division of Maintenance (New Administrative Regulation)

603 KAR 10:040. Advertising devices.

RELATES TO: KRS 177.572 - 177.576, 177.830 - 177.890, 177.990(2), 23 C.F.R. Part 750, 23 U.S.C. 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for static and electronic advertising devices.

Section 1. Definitions.

(1) "Abandoned" means that, for a period of one (1) year or more, an advertising device previously lawfully erected has:

(a) Not displayed advertising;

(b) Displayed obsolete advertising; or

(c) Needed substantial repairs due to lack of maintenance.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage, and process areas that are integral and essential to the primary business activity that takes place on the property.

(3) "Advertiser" means a person or entity entered into a contractual agreement with the owner of an advertising device for advertisement services in the advertiser's interest that is displayed upon the subject advertising device at the time of violation.

(4) "Advertising device" is defined by KRS 177.830(5).

(5) "Business device" means a device for advertising for which no compensation is derived, received, or exchanged for its use.

(6) "Centerline of the highway" means a line:

(a) Equidistant from the edges of the median separating the main traveled ways of a divided:

1. Interstate;

2. Parkway;

3. National highway system; or

4. Federal-aid primary highway; or

(b) That is the centerline of the main traveled way of a non-divided:

1. Interstate;

2. Parkway;

3. National highway system; or

4. Federal-aid primary highway.

(7) "Commercial or industrial activities" is defined by KRS 177.830(9).

(8) "Commercial or industrial land use":

(a) Means an activity, in a zoned area within 660 feet of the interstate or parkway right-of-way, engaged in for financial gain; and

(b) Does not mean:

1. The leasing of property for residential purposes;

2. An activity conducted in a building principally used as a

residence;

3. An agricultural, forestry, ranching, grazing, farming, or related enterprise, including a wayside fresh produce stand;

4. Operation, maintenance, or storage of an advertising device;

5. A railroad track or minor siding; or

6. A facility generally recognized as a utility such as a cell tower.

(9) "Commercial or industrial zone" means an area adjacent to a highway zoned to allow business, commerce, or trade as established in local ordinance or regulation.

(10) "Compensation" is defined by KRS 177.830(11).

(11) "Conversion" or "converted" means to legally modify or change a legal permitted static advertising device to a legal permitted electronic advertising device or a legal permitted electronic advertising device to a legal permitted static advertising device and can include the replacement of the device face, facing, or structure.

(12) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(13) "Destroyed" means a nonconforming advertising device damaged beyond substantial repair due to weather related events, vandalism, or other criminal or tortious acts.

(14) "Electronic advertising device":

(a) Means an advertising device that changes its message or copy by programmable electronic or mechanical processes; and

(b) Does not mean a numerical display changed by an electronic or mechanical process not exceeding one-half of the face.

(15) "Enlargement" means an addition to the permitted area of the facing of an advertising device.

(16) "Erect":

(a) Means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or bring into being or establish; and

(b) Does not mean routine maintenance, including changing of a message or copy.

(17) "Exchange credit" means a singular allotment of value assigned by the department for the removal of an approved eligible advertising device that can be transferred or redeemed by its owner in exchange for future qualification of an electronic advertising device permit.

(18) "Extension" means a temporary addition to an advertising device for a message or copy.

(19) "Face" means the part of the advertising device including trim and background that contains the message, copy, and informative content.

(20) "Facing" means the face or faces displayed on the same advertising device and oriented in the same direction of travel.

(21) "Federal-aid primary highway" is defined by KRS 177.830(3) and, pursuant to 23 U.S.C. 131, refers to the existence of the highway on June 1, 1991.

(22) "FHWA adjusted urban area boundaries" means a boundary, in addition to the urban area boundary, established by the department designed to encompass areas outside municipal boundaries that have urban characteristics with residential, commercial, industrial, or national defense land uses.

(23) "Highway" means:

(a) An interstate, parkway, national highway system, or federal-aid primary highway located within the boundaries of the state of Kentucky and being further depicted by the Transportation Cabinet on <http://maps.kytc.ky.gov/PAFOA/>; and

(b) A public road maintained by the department.

(24) "Interstate highway" is defined by KRS 177.830(2).

(25) "Lawfully erected" means erected in compliance with law and administrative regulations in effect at the time of erection or as later allowed by law.

(26) "Legal permit" means written authorization granting the erection or continued existence of an advertising device in compliance with current state law and administrative regulation.

(27) "Main traveled way":

(a) Means the traveled way of a highway on which through traffic is carried; and

(b) Does not mean frontage roads, turning roadways, or parking areas.

(28) "Nit" means a unit of measurement of luminance used to

specify the brightness or the intensity of visible light from a device.

(29) "Noncompliant advertising device" means an advertising device that was erected within a protected area between the dates of April 24, 2020 and March 18, 2021 and that does not comply with current state law or this administrative regulation.

(30) "Noncompliant permit" means written authorization allowing the continued existence of a noncompliant advertising device, subject to current state law and this administrative regulation.

(31) "Nonconforming advertising device" means an advertising device that was once lawfully erected but does not comply with:

(a) Current state law or this administrative regulation; or

(b) Changed conditions such as:

1. A change in zoning;

2. The relocation or reclassification of a highway;

3. A change in restriction on size, space, or distance; or

4. The abandonment of required business or businesses.

(32) "Nonconforming permit" means written authorization allowing the continued existence of a nonconforming advertising device, subject to current state law and this administrative regulation.

(33) "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.

(34) "Permit" means written authorization allowing the erection or continued existence of an advertising device, subject to current state law and this administrative regulation.

(35) "Protected area" means the area adjacent to the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway, and being:

(a) Within 660 feet from the edge of the right-of-way in an area defined as an urban area; and

(b) Extending beyond 660 feet from the edge of the right-of-way outside of an area defined as an urban area.

(36) "Scenic byway" is defined by KRS 177.572.

(37) "Scenic highway" is defined by KRS 177.572.

(38) "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message or copy but can include a numerical display changed by an electronic or mechanical process that does not exceed one-half of the face.

(39) "Substantial repair" means the cost to repair the advertising device would exceed sixty (60) percent of the costs to replace it with an advertising device of the same basic construction using new materials and at the same location.

(40) "Substantial structure" means an affixed, solid, or strong permanent construction.

(41) "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.

(42) "Unzoned commercial or industrial area" is defined by KRS 177.830(8).

(43) "Urban area" is defined by KRS 177.830(10) as well as any adjacent geographical area identified as FHWA Adjusted Urban Area Boundaries.

(44) "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

Section 2. Conditions Relating to Static and Electronic Advertising Devices Located in a Protected Area.

(1) A static or an electronic advertising device located in a protected area of an interstate, parkway, national highway system, or federal-aid primary highway displaying copy or a message, whether or not legible, that is visible from the main traveled way shall require a permit issued by the department.

(2) A permit shall only be issued for a device in a protected area of:

(a) An interstate or parkway being erected or maintained fifty (50) feet or more from the edge of the main traveled way or turning roadway that:

1. Is zoned commercial or industrial and was an incorporated municipality on or before September 21, 1959; or

2. Was zoned commercial or industrial and included a commercial or industrial land use on or before September 21, 1959; or

(b) A national highway system or federal-aid primary highway being erected or maintained in:

1. A commercial or industrial zone; or
2. An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway; and

(c) Complies with applicable county or city zoning ordinance and regulations.

(3) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured horizontally and at a right angle to the centerline of the interstate, parkway, national highway system, or federal-aid primary highway.

(4) The erection or existence of an advertising device shall be prohibited in a protected area if the device:

- (a) Is abandoned;
- (b) Is not clean and in good repair;
- (c) Is not securely affixed to a substantial structure permanently attached to the ground;
- (d) Directs the movement of traffic;
- (e) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;
- (f) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;
- (g) Is erected or maintained upon a tree;
- (h) Is erected upon or overhanging the right-of-way;
- (i) Is mobile, temporary, or vehicular;
- (j) Is a static advertising device and painted or drawn on rocks or another natural feature; or
- (k) Is a static advertising device and includes or is illuminated by flashing, intermittent, or moving lights.

 (5) The spacing between static and electronic advertising devices per direction of travel on:

(a) Interstates, parkways, national highway systems, or limited access federal-aid primary highways shall be a minimum of:

1. 2,500 feet between electronic advertising devices;
2. 500 feet between an electronic advertising device and a static advertising device; or
3. 500 feet between a static advertising device and another static advertising device; and

(b) Non-limited access federal-aid primary highways shall, pursuant to KRS 177.863(2)(a), be a minimum of:

1. 300 feet between advertising devices, unless separated by a building, natural obstruction, or roadway, in a manner so that only one (1) sign located within the required spacing distance shall be visible from the highway at any one time; or
2. 100 feet between advertising devices if located within an incorporated municipality.

(6) An advertising device displaying copy or message, whether or not legible, that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements of this section for each highway independently.

(7) An electronic advertising device shall only be erected or maintained within an urban area located within 660 feet of right-of-way of a highway.

(8) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to Section 8 of this administrative regulation.

(9) An electronic advertising device shall not be converted to a static advertising device prior to receiving a permit pursuant to Section 8 of this administrative regulation.

(10) Lighting used for a static advertising device shall be:

- (a) Only white;
- (b) Effectively shielded to prevent a beam of light from being directed at the interstate, parkway, national highway system, or federal-aid primary highway;
- (c) Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; and
- (d) Of a luminance less than 300 nits.

 (11) An electronic advertising device erected or maintained in a

protected area shall:

- (a) Not have a facing larger than 672 square feet;
- (b) Not have more than one (1) face per facing;
- (c) Not contain extensions to the face;
- (d) Not have interior angles between two (2) facings that exceed forty-five (45) degrees; and
- (e) Be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.

(12) The message or copy on an electronic advertising device shall:

- (a) Be static for at least eight (8) seconds;
- (b) Change from one (1) message or copy to another in less than two (2) seconds;
- (c) Not blink, scroll, or contain animation or video; and
- (d) Be programmed to freeze in a static display if a malfunction occurs.

(13) A static advertising device:

(a) Shall not:

1. Exceed the maximum size of 1,250 square feet per facing as established in KRS 177.863(3)(a);
2. Contain more than two (2) advertisements or faces per facing pursuant to KRS 177.863(3)(b); or
3. Have interior angles between two (2) facings that exceed forty-five (45) degrees; and

(b) May contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size limits of the facing of the device established in KRS 177.863(3)(a).

(14) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.

(15) The name of the owner of an advertising device shall:

- (a) Be legible from the main traveled way;
- (b) Not be larger than twenty (20) square feet;
- (c) Be shown without other owner information; and
- (d) Not be considered an advertisement.

Section 3. Exchange of Advertising Device for Permit.

(1) An advertising device proposed for exchange shall require eligibility approval by the department pursuant to subsections (3), (4), and (5) of this section prior to removal.

(2) The owner of an approved advertising device exchange shall receive an exchange credit by the department upon verification of removal.

(3) An advertising device eligible for exchange shall be:

- (a) Currently nonconforming as established in Section 4 of this administrative regulation or pursuant to local regulations;
- (b) Not less than fifty (50) square feet per facing; and
- (c) Situated in an unpermissible location in a protected area; or
- (d) Observable from a scenic highway.

(4) The submittal of six (6) exchange credits shall be required for one (1) new electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(5) The submittal of five (5) exchange credits shall be required for the conversion of an existing legal permitted static advertising device in an urban area to an electronic advertising device.

(6) If an Application for Electronic Advertising Device is denied by the department, the department shall hold and apply any exchange credits pending the outcome of any subsequent appeal or until exchange credits can be applied toward another approved application.

(7) If the permittee voluntarily removes an advertising device and receives an exchange credit, the permittee shall thereby waive any right or claim to any additional compensation from the department for that device.

(8) The ownership of an exchange credit may be transferred with acknowledgment of the department and shall be submitted on a completed Advertising Device or Exchange Credit Ownership

Section 4. Nonconforming Static and Electronic Advertising Devices.

(1) A nonconforming advertising device in a protected area shall require a nonconforming permit.

(2) A nonconforming advertising device permit shall be required to be renewed annually pursuant to Section 8 of this administrative regulation.

(3) A nonconforming advertising device may remain in place if the device:

(a) Is not abandoned;

(b) Has been subjected to only routine maintenance as established in subsection (6) of this section;

(c) Was in compliance with state law and KAR Title 603 as well as local zoning, sign, or building restrictions at the time of erection; and

(d) Remains unaltered beyond the extent of routine maintenance as it was on the effective date of the state law or requirement of KAR Title 603 that made the device nonconforming.

(4) An owner may conduct routine maintenance of a nonconforming advertising device. Routine maintenance shall include:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing existing nonstructural light fixtures for energy efficiency;

(d) Replacement of nuts, bolts, or nails;

(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers;

(f) Rebuilding a destroyed advertising device; or

(g) Changing an advertising message or copy on an advertising device.

(5) An owner shall not conduct non-routine maintenance of a nonconforming advertising device. Non-routine maintenance shall include:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of bracing, guy wires, or other reinforcement;

(d) A change in the location or configuration of the device;

(e) A change in the direction of the face or faces;

(f) The addition of a light or lights, either attached or unattached, to help illuminate the nonconforming static advertising device structure that previously had no lighting for illumination; or

(g) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process on a static advertising device.

(6) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation and result in the loss of nonconforming classification and action pursuant to Section 10 of this administrative regulation.

Section 5. Business Devices.

(1) A business device that complies with this administrative regulation shall only be erected in a protected area if the device complies with county or city zoning ordinances but shall not require a permit from the department.

(2) A business device shall only be erected upon the property parcel where the business or businesses are located as is demarcated by the unique Parcel Identification Number utilized and assigned by the Property Valuation Administration Office of jurisdiction and:

(a) Inside the activity boundary line; or

(b) No further than 400 feet from the activity boundary line.

(3) A business device placed within fifty (50) feet of the activity boundary line shall not exceed 1,250 square feet, including border and trim excluding supports. An entrance or exit on the property shall be considered within the activity boundary line.

(4) If further than fifty (50) feet outside the activity boundary line, a business device shall not exceed:

(a) Twenty (20) feet in length, width, or height; and

(b) 150 square feet in area, including border and trim and excluding supports.

(5) No more than one (1) business device shall be located at a distance greater than fifty (50) feet outside of the activity boundary line.

(6) If taking measurements for the placement of a business device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.

(7) A business device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside the activity boundary line of the property parcel.

(8) If taking measurements for the placement of business device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(9) A business device erected for a shopping center, mall, or other combined business location shall either:

(a) Identify a business or businesses situated upon the same property parcel; or

(b) Display business activities being conducted upon the same property parcel.

(10) A business device shall not:

(a) Be of such intensity as to cause glare or impair the vision of a driver;

(b) Move, or have moving or animated parts;

(c) Be erected or maintained on a tree; or

(d) Be erected upon or overhanging the right-of-way.

(11) An electronic business device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.

(12) A business device shall not affect the spacing requirements of an advertising device as established in Section 2(5) of this administrative regulation.

(13) Extensions of a facing up to fifteen (15) percent shall be allowed but shall not exceed the maximum size of the facing of the device as established this section.

(14) The owner of a business device shall be subject to revolving compensation compliance reviews and upon request shall provide to the department all requested documentation relevant to certify the continued compliance of a business device such as:

(a) A signed affidavit in which the device owner shall attest to the device's compliance to current law and this administrative regulation;

(b) Financial records or statements relevant to compliance certification; and

(c) PVA parcel data.

(15) If the device is determined to be an advertising device, paragraphs (a) through (d) of this subsection shall apply.

(a) The department shall send notice by certified letter to the owner of a business device that becomes subject to this chapter. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.

(b) The device owner shall apply for and obtain an advertising device permit in accordance with the provisions of this administrative regulation within sixty (60) days of notice.

(c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.

(d) If the owner of a device as established in paragraph (a) of this subsection does not obtain an advertising device permit within sixty (60) days of the notice, the owner shall be subject to:

1. A fine of \$500 per violation pursuant to KRS 177.990(2); and

2. Provisions as established in KRS 177.870.

(16) If the device is found to be out of compliance with current business device requirements, paragraphs (a) through (d) of this

subsection shall apply.

(a) The department shall send notice by certified letter to the owner of a business device stating the required corrective action or actions to become compliant with the provisions of this section. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.

(b) The device owner shall implement required corrective actions or actions within sixty (60) days of notice.

(c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.

(d) If the owner of a device as established in paragraph (a) of this subsection does not correct the violation or violations within sixty (60) days of notice, the owner shall be subject to:

1. A fine of \$500 per violation pursuant to KRS 177.990(2); and
2. Action pursuant to Section 10 of this administrative regulation.

Section 6. Noncompliant Static and Electronic Advertising Devices.

(1) A noncompliant advertising device in a protected area shall require a noncompliant permit.

(2) A noncompliant advertising device permit shall be required to be renewed annually pursuant to Section 8 of this administrative regulation.

(3) A noncompliant advertising device may remain in place if the device:

(a) Is not abandoned;

(b) Has been limited to maintenance activities as established in Section 4(6) (b) through (f) of this administrative regulation to correct hazardous conditions determined to be in the interest of the safety of the traveling public; and

(c) Was in compliance with local zoning, sign, or building restrictions at time of erection.

(4) A noncompliant advertising device in a protected area shall be granted a legal permit if the device is in compliance with current state law and this administrative regulation.

(5) Except as established in subsection (3)(b) of this section, maintenance on a noncompliant advertising device shall constitute a violation of KRS 177 and this administrative regulation and shall result in the loss of noncompliant classification and action pursuant to Section 10 of this administrative regulation.

(6) Noncompliant advertising devices shall not be eligible as an exchange credit.

Section 7. Scenic Highways and Byways.

(1) Subsequent to the designation of a scenic highway by the Transportation Cabinet, additional static or electronic advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for a static or electronic advertising device located on a scenic byway as a static or electronic advertising device located on a scenic highway.

(3) Only routine maintenance as established in Section 4(3) shall be performed on a static or electronic advertising device legally in existence on the date of the scenic highway designation.

Section 8. Permits, Renewals, and Transfers.

(1) The requirements of this section shall apply to legal, nonconforming, and noncompliant advertising devices within a protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(2) A permit shall be required from the department for a legal, nonconforming, or noncompliant advertising device located within a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within three (3) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.

(4) An application for a static or an electronic advertising device permit shall be submitted on a completed Application for Static Advertising Device, TC Form 99-221 or Application for Electronic Advertising Device, TC Form 99-222.

(5) Application for an advertising device permit and annual permit renewal shall require a fee pursuant to KRS 177.860(1) and as established in Section 9 of this administrative regulation.

(6) The timing of issuance of an advertising device permit shall be determined based on the order in which a completed application and payment of applicable fees are made to the department.

(7) The permit issued for the erection of a static or electronic advertising device that has not been constructed prior to the renewal date shall be revoked.

(8) If an advertising device is erected or maintained without an approved permit, the department shall issue a notice of violation to the owner of the device. If the owner of the device cannot be identified, the department shall send notice to the landowner of record.

(9) If a violation is not cured within sixty (60) days of the date of receipt of the notice, the owner or landowner shall be subject to:

(a) A fine of \$500 per violation pursuant to KRS 177.990(2); and

(b) Action pursuant to Section 10 of this administrative regulation.

(10) Beginning in 2023, between the renewal period of November 1 and December 31, a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, and applicable photographs shall be submitted. An incomplete or inaccurate submission shall not be considered by the department.

(11) Annual permit renewals shall require a fee in the amount of \$100 per each static or electronic advertising device pursuant to KRS 177.860(1).

(12) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees within thirty (30) days of the expiration of the permit shall result in:

(a) The owner of the legal, nonconforming, or noncompliant advertising device being fined \$500 per permit violation pursuant to KRS 177.990(2); and

(b) Conditional suspension of the permit.

(13) Upon receipt of a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration, the suspended permit shall be reinstated if compliant with current law and this administrative regulation.

(14) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration of the permit shall result in:

(a) Revocation of the permit;

(b) Loss of nonconforming or noncompliant classification for a nonconforming or noncompliant advertising device; and

(c) Action pursuant to Section 10 of this administrative regulation.

(15) A static or electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location or configuration shall not be changed. A transfer of ownership for an advertising device shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.

(16) Notification of a substantial change to an approved static or electronic advertising device permit shall be submitted to the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) The addition of bracing, guy wires, or other reinforcement;

(e) A change in the location of the device;

(f) A change in the direction or configuration of the face or faces; or

(g) The addition of a light or lights, either attached or

unattached, to help illuminate a static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit.

(17) Making a substantial change to a device without first submitting notification to the department constitutes a violation of this administrative regulation and shall result in action pursuant to Section 10 of this administrative regulation.

(18) Issuance of a permit under this administrative regulation shall not create a contract or property right in the permit holder.

Section 9. Permit Fees.

(1) Beginning on January 1, 2023, pursuant to KRS 177.860, permit fees and annual renewals fees shall be assessed, including:

(a) \$250 for an Application for Electronic Advertising Device permit;

(b) \$150 for an Application for Static Advertising Device permit; and

(c) \$100 for the Advertising Device Annual Permit Renewal Request.

(2) A fee established by this section shall be payable by cashier's check or electronic payment.

(3) A fee paid to the department established in this section shall be nonrefundable.

Section 10. Notice of Violations; Appeals.

(1) The department shall notify the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2) If device continues to be in violation thirty (30) days after notice, the department shall notify the landowner, the advertiser, and the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(3) The landowner, the advertiser, or the owner of an advertising device aggrieved by the findings of the department may request an administrative hearing. An administrative hearing shall be pursuant to KRS Chapter 13B.

(a) The request shall be in writing and within thirty (30) days of the certified letter.

(b) A request for a hearing shall thoroughly state the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(4) If the landowner, the advertiser, or the owner of an advertising device fails to request an administrative hearing or fails to cure the violation within thirty (30) days of notice, the department shall proceed pursuant to KRS 177.870.

Section 11. Penalties.

(1) The owner of an advertising device in violation of a provision of KRS Chapter 177 or of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application or renewal contains false or materially misleading information.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Static Advertising Device", TC Form 99-221, July 2021;

(b) "Application for Electronic Advertising Device", TC Form 99-221, July 2021;

(c) "Advertising Device Annual Permit Renewal Request", TC Form 99-223, July 2021;

(d) "Advertising Device or Exchange Credit Ownership Transfer", TC Form 99-224, July 2021; and

(e) The formal designation of interstates, parkways, national highway system, and federal-aid primary highways by the Kentucky Transportation Cabinet may be found on the department's website at: <http://maps.kytc.ky.gov/PAFOA/>.

(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. to 4:30 p.m.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: July 27, 2021

FILED WITH LRC: July 30, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. on October 27, 2021 at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

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 amended provisions to correct first amendment constitutional issues as prescribed by the 6th Circuit Federal Court and defines prohibited and conforming activities relative to outdoor advertising in protected areas.

(b) The necessity of this administrative regulation: The administrative regulation is required by KRS 177.860 and as further demonstrated by directive of the General Assembly to promulgate the amended regulation herein.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to KRS 177.860 by establishing parameters of both prohibited and conforming activities relative to advertising devices and the safety of the users of the highways.

(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 advertising devices located within the protected area.

(2) If 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 amended regulation removes the elements found by the court as being unconstitutional and provides the framework for an alternative, content-neutral compensation based regulatory model.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the framework of an enacted content neutral compensation based regulatory model.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation amendment furthers the statutory intent of establishing a content neutral, compensation based regulatory scheme.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will further establish parameters of both prohibited and conforming

activities relative to advertising devices in protected areas.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Advertising Device Owners, Landowners, Advertisers, KYTC, County & City Municipalities

(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:

Advertising Device Owners will be required to submit annual permit renewal documentation and the associated annual device renewal fee.

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

Advertising Device Owners: Applicable fees as established by KRS 177.860.

Landowners: There are no known direct financial impacts

Advertisers: There are no known direct financial impacts

KYTC: Approximately \$350,000 annually

County & City Municipalities: There are no known direct financial impacts.

(c) As a result of compliance, what benefits will accrue to the entities: Compliant industry stakeholders will be provided the benefit and protection of conducting business within a regulated industry.

(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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Statutory authority providing for the assessment of permit fees, pursuant to KRS 177.860.

(7) Provide an assessment of whether an 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 will continue be administered pursuant to terms of the Federal/State Agreement. The statutory authorization to assess permit fees for advertising devices is expected to cover the administrative costs relative to regulating advertising devices.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Statutory authority providing for the assessment of permit fees, KRS 177.860 was enacted. This administrative regulation further prescribes the application of the fee assessment.

(9) TIERING: Is tiering applied? No, all advertising devices 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?

KYTC Department of Highways, Division of Maintenance, KYTC District Offices, KYTC Office of Legal Services, and County and City Local Municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.860 and 23 U.S.C. 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. 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?

Approximately \$300,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$300,000

(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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

701 KAR 5:160. Selection and appointment of non-voting Kentucky board of education members.

RELATES TO: KRS 156.029

STATUTORY AUTHORITY: KRS 156.029(3); 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(1) sets forth the membership of the Kentucky Board of Education, including an active public elementary or secondary school teacher and a public high school student serving as non-voting members. KRS 156.029(3) requires the Kentucky Board of Education to promulgate an administrative regulation establishing the process for selecting the non-voting teacher and non-voting student member to serve on the board. This administrative regulation establishes the process for selection and appointment of a non-voting active public elementary or secondary school teacher, and a non-voting public high school student to serve on the Kentucky Board of Education.

Section 1. Definitions.

(1) "Board" means the Kentucky Board of Education as provided in KRS 156.029 and 156.035.

(2) "Commissioner" means the Commissioner of Education appointed by the Kentucky Board of Education pursuant to KRS 156.148.

(3) "Student" means a person enrolled in a Kentucky public high school and classified by the Kentucky public high school as a junior on July 1 of the calendar year for which appointment is sought.

(4) "Teacher" means a person employed on a full-time basis by a Kentucky public school district in a position for which certification is required pursuant to KRS 161.020, and who is not employed in an administrative role.

Section 2. Recommendation and Selection of Non-Voting Teacher Member. (1) An application for consideration to become a non-voting teacher member of the board shall contain the following:

(a) The applicant's name, home address, public school district of employment, and congressional district of residence;

(b) A resume or curriculum vitae for the applicant;

(c) A narrative statement by the applicant explaining why he/she wants to serve as a non-voting teacher member of the board;

(d) A statement of assurance from the applicant that he/she meets the definition of a teacher as set forth in section one (1) of this administrative regulation; and

(e) A description of any pending or final disciplinary action against the applicant by the Education Professional Standards Board.

(2) The Commissioner may develop an application form for use that incorporates the requirements of subsection one (1) of this

section.

(3) No later than March 1 of each calendar year the Commissioner or the Commissioner's designee shall publicly advertise the application process to become a non-voting teacher member of the board. The public advertisement may be in electronic format and shall be included in a publication designed to reach Kentucky public school teachers. The public advertisement shall contain the following:

- (a) The composition, authority, and duties of the board;
- (b) The time commitment expected of board members;
- (c) The eligibility requirements set forth in KRS 156.029 and this administrative regulation to be selected as a non-voting teacher member of the board;
- (d) The selection process for the non-voting teacher member of the board;
- (e) All required application materials as set forth in subsection one (1) of this section;
- (f) The method of application material submission, including the name and address of the individual designated by the Commissioner or Commissioner's designee to receive applications; and
- (g) The deadline by which all application materials shall be received for consideration, which shall be no later than April 1 of the calendar year for which applications are sought.

(4) Within three (3) business days following the deadline established in subsection three (3) of this section, the Commissioner or Commissioner's designee shall forward all eligible applicants to the Commissioner's Teacher Advisory Council for review and recommendation. Applicants who are ineligible for appointment because they do not meet the requirements of KRS 156.029 and this administrative regulation shall not be forwarded to the Commissioner's Teacher Advisory Council for review and recommendation.

(5) The Commissioner's Teacher Advisory Council, or a subset of the council designated by a majority vote of the full council, shall review applications forwarded by the Commissioner or Commissioner's designee for the non-voting teacher member of the board. No later than May 1, the Commissioner's Teacher Advisory Council shall recommend to the board three (3) candidates from the applications for selection as the non-voting teacher member of the board. If the Commissioner's Teacher Advisory Council fails to take action to make such a recommendation to the board by May 1, within five (5) business days after May 1, the Commissioner shall recommend to the board three (3) candidates from the applications for selection as the non-voting teacher member of the board.

(6) No later than its last regular meeting of the fiscal year, the board shall consider the recommendation pursuant to subsection five (5) of this section and, by majority vote, select one (1) candidate to serve as the non-voting teacher member of the board for a one year term which shall begin on July 1 immediately following the board's selection, and expire on the following June 30.

(7) The non-voting teacher member of the board serving a term to begin on July 1, 2022 and to expire on June 30, 2023, shall reside in Kentucky's Sixth (6th) congressional district as defined by KRS 118B.160. Successive non-voting teacher members shall rotate among the state's congressional districts in numerical order.

Section 3. Recommendation and Selection of Non-Voting Student Member. (1) An application for consideration to become a non-voting student member of the board shall contain the following:

- (a) The applicant's name, home address, public school district of enrollment, and congressional district of residence;
- (b) A resume or curriculum vitae for the applicant;
- (c) A narrative statement by the applicant explaining why he/she wants to serve as a non-voting student member of the board;
- (d) Two letters of recommendation from a teacher, school administrator, employer, coach, or volunteer supervisor explaining why the applicant should be appointed to the board; and
- (e) If the student is a minor, a parental consent form signed by a parent or guardian acknowledging the time commitment and

periodic travel requirements of board members, and providing consent for the applicant to participate as a non-voting student member of the board if selected.

(2) The Commissioner may develop an application form for use that incorporates the requirements of subsection one (1) of this section.

(3) No later than March 1 of each calendar year the Commissioner or the Commissioner's designee shall publicly advertise the application process to become a non-voting student member of the board. The public advertisement may be in electronic format and shall be included in a publication designed to reach Kentucky public school teachers and superintendents for further dissemination to students. The public advertisement shall contain the following:

- (a) The composition, authority, and duties of the board;
- (b) The time commitment expected of board members;
- (c) The eligibility requirements set forth in KRS 156.029 and this administrative regulation to be selected as a non-voting student member of the board;
- (d) The selection process for the non-voting student member of the board;
- (e) All required application materials as set forth in subsection one (1) of this section;
- (f) The method of application material submission, including the name and address of the individual designated by the Commissioner or Commissioner's designee to receive applications; and
- (g) The deadline by which all application materials shall be received for consideration, which shall be no later than April 1 of the calendar year for which applications are sought.

(4) Within three (3) business days following the deadline established in subsection three (3) of this section, the Commissioner or Commissioner's designee shall forward all eligible applicants to the Commissioner's Student Advisory Council for review and recommendation. Applicants who are ineligible for appointment because they do not meet the requirements of KRS 156.029 and this administrative regulation shall not be forwarded to the Commissioner's Student Advisory Council for review and recommendation.

(5) The Commissioner's Student Advisory Council, or a subset of the council designated by a majority vote of the full council, shall review applications forwarded by the Commissioner or Commissioner's designee for the non-voting student member of the board. No later than May 1, the Commissioner's Student Advisory Council shall recommend to the board three (3) candidates from the applications for selection as the non-voting student member of the board. If the Commissioner's Student Advisory Council fails to take action to make such a recommendation to the board by May 1, within five (5) business days after May 1, the Commissioner shall recommend to the board three (3) candidates from the applications for selection as the non-voting student member of the board.

(6) No later than its last regular meeting of the fiscal year, the board shall consider the recommendation pursuant to subsection five (5) of this section and, by majority vote, select one (1) candidate to serve as the non-voting student member of the board for a one year term which shall begin on July 1 immediately following the board's selection, and expire on the following June 30.

(7) The non-voting student member of the board serving a term to begin on July 1, 2022 and to expire on June 30, 2023, shall reside in Kentucky's Fourth (4th) congressional district as defined by KRS 118B.160. Successive non-voting student members shall rotate among the state's congressional districts in numerical order.

Section 4. Selection to Fill an Unexpired Term as a Result of Resignation or Death. In the event of resignation or death of a non-voting board member selected and appointed pursuant to this administrative regulation, the board shall re-consider the recommendation utilized when it selected the resigned or deceased non-voting member and, by majority vote, select one (1) candidate to serve the unexpired term resulting from the resignation or death of the non-voting member.

Section 5. Appointment. (1) Following action by the board to select a non-voting member pursuant to this administrative regulation, the board's action shall be memorialized in a written resolution signed by the board chair.

(2) No later than five (5) business days following board action to select a non-voting member pursuant to this administrative regulation, the Commissioner shall forward the board's written resolution to the Governor and Secretary of State so both may take notice of the action pursuant to KRS 156.029 and this administrative regulation.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Commissioner
LU YOUNG, Chair

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 4:07 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 26, 2021 at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the process for selecting and appointing the nonvoting teacher and student members of the Kentucky Board of Education.

(b) The necessity of this administrative regulation:

KRS 156.029 was amended during the 2021 Session of General Assembly. The statute adds a nonvoting teacher and student member to the Kentucky Board of Education, and directs the Kentucky Board of Education to promulgate administrative regulations to establish a process for selecting those members.

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

KRS 156.029 requires the Kentucky Board of Education to promulgate administrative regulations to establish a process for selecting the nonvoting teacher and student members of the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The administrative regulation establishes the process for selecting the nonvoting teacher and student members of the Kentucky Board of Education.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative

regulation: N/A.

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

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

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

Kentucky Board of Education, the Commissioner's Teachers Advisory Council, and the Commissioner's Student Advisory Council.

(4) Provide an analysis of how the entities identified in question (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 Education, the Commissioner's Teachers Advisory Council, and the Commissioner's Student Advisory Council will each be required to devote a portion of their meeting at some point in spring to making their recommendation or selection as required. In addition, selected members of each group will spend time reviewing candidate applications as part of the recommendation and selection process.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Teachers and students provide a valuable and important voice to the formulation of statewide education policy. Allowing teachers and students input regarding their selection of member from their ranks ensures that a broad cross-section of those groups has their voice heard.

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

(a) Initially: There are no additional costs associated with this administrative regulation.

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

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 have an impact on expenditures or revenues. (b) How 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 have an impact on expenditures or revenues.

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

702 KAR 1:191. District Employee Quarantine Leave.

RELATES TO: KRS 156.160, 160.290, 161.155

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. This administrative regulation establishes paid quarantine leave to employees in the event of quarantine due to infectious or contagious disease exposure.

Section 1. Quarantine Leave. (1) Each district board of education shall adopt policies providing each eligible full or part-time employee in the school district paid leave during the period the employee is ordered to quarantine due to infectious or contagious disease exposure. This leave shall be in addition to any other leave provided by statute or board policy. (2) In order to be eligible for leave under this section, the employee shall:

(a) Be ordered to quarantine due to infectious or contagious disease exposure by a treating medical professional, a public health department, or the Department for Public Health; and

(b) Have exhausted all accumulated sick leave provided to the employee pursuant to KRS 161.155 and local board of education policies, or be ineligible to utilize accumulated sick leave provided to the employee pursuant to KRS 161.155 and local board of education policies.

(3) A school district may require the employee to provide written documentation from the entity ordering the employee to quarantine due to exposure to infectious or contagious disease.

(4) A school district, at its discretion, may determine quarantine leave pursuant to the section is unnecessary when an employee can fulfill his or her job duties remotely during the quarantine period.

(5) Leave granted pursuant to this section shall not accumulate or carry over year-to-year, and shall not be transferrable to any other classification of paid leave established by KRS 161.155, KRS 161.154, or local board of education policy.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner & Chief Learner

LU YOUNG, Chairperson

APPROVED BY AGENCY: August 9, 2021

FILED WITH LRC: August 11, 2021 at 3:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 26, 2021, at 10am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2021. CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed regulation establishes leave for local school district employees in the event of a quarantine order due to exposure to infectious or contagious disease.

(b) The necessity of this administrative regulation: KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate administrative regulations for the "pay of teachers during absence because of sickness or quarantine." KRS 161.155(2) provides sick leave to school district employees upon certification that "the teacher or employee was ill, that the teacher or employee was absent for the purpose of attending to a member of his or her immediate family who was ill, or for the purpose of mourning a member or his or her immediate family." As such, a school district employee who is asymptomatic and undiagnosed with an infectious or contagious disease, yet subject to a quarantine order by a treating medical profession or public health department, may not meet the requirements set forth in KRS 161.155(2) to utilize sick leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for: The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine. KRS 156.160(1)(h) provides the Kentucky Board of Education with authority to promulgate administrative regulations "necessary or advisable for the protection of the physical welfare and safety of the public school children." This regulation establishes the leave requirements for quarantine due to infectious or contagious disease.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the leave requirements for quarantine due to infectious or contagious disease pursuant to KRS 156.160(1)(l). Furthermore, this regulation provides a leave mechanism for school district employees subject a quarantine order who are otherwise ineligible for sick leave.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, local school district 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: This administrative regulation requires school districts to adopt local policies providing leave for employees subject to quarantine due to infectious or contagious disease who have either exhausted all sick leave or are ineligible to utilize sick leave.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts will incur the cost of any leave provided pursuant to the administrative regulation, in addition to the cost of any necessary substitute. Total costs will be dependent on the number of employees subject to quarantine orders due to exposure to infectious or contagious disease. However, costs are mitigated by requiring employees to exhaust or be ineligible for sick leave, and by allowing school districts to direct employees to work remotely when feasible.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts will be able to provide employees with leave when the employee is required to quarantine due to infectious or contagious disease exposure. Furthermore, this regulation ensures that school district employees are not faced with the decision of complying with a quarantine order or being absent without leave, furthering the safety and welfare of public school children.

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

Initially: School districts will incur the cost of any leave provided pursuant to the administrative regulation, in addition to the cost of any necessary substitute. Total costs will be dependent on the number of employees subject to quarantine orders due to exposure to infectious or contagious disease. However, costs are mitigated by requiring employees to exhaust or be ineligible for sick leave, and by allowing school districts to direct employees to work remotely when feasible.

(b) On a continuing basis: School districts will incur the cost of any leave provided pursuant to the administrative regulation, in addition to the cost of any necessary substitute. Total costs will be dependent on the number of employees subject to quarantine orders due to exposure to infectious or contagious disease. However, costs are mitigated by requiring employees to exhaust or be ineligible for sick leave, and by allowing school districts to direct employees to work remotely when feasible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and federal COVID-19 relief funds (e.g. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations (CRSSA) Act, and the American Rescue Plan (ARP) Act) when permissible.

(7) Provide an assessment of whether an 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 anticipated to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies uniformly to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that

requires or authorizes the action taken by the administrative regulation. KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for:

The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine. KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate regulations for "the protection of the physical welfare and safety of the public school children."

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. School districts will incur the cost of any leave provided pursuant to the administrative regulation, in addition to the cost of any necessary substitute. Total costs will be dependent on the number of employees subject to quarantine orders due to exposure to infectious or contagious disease. However, costs are mitigated by requiring employees to exhaust or be ineligible for sick leave, and by allowing school districts to direct employees to work remotely when feasible.

(a) How much 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.

(b) How 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.

(c) How much will it cost to administer this program for the first year? School districts will incur the cost of any leave provided pursuant to the administrative regulation, in addition to the cost of any necessary substitute. Total costs will be dependent on the number of employees subject to quarantine orders due to exposure to infectious or contagious disease. However, costs are mitigated by requiring employees to exhaust or be ineligible for sick leave, and by allowing school districts to direct employees to work remotely when feasible.

(d) How much will it cost to administer this program for subsequent years? School districts will incur the cost of any leave provided pursuant to the administrative regulation, in addition to the cost of any necessary substitute. Total costs will be dependent on the number of employees subject to quarantine orders due to exposure to infectious or contagious disease. However, costs are mitigated by requiring employees to exhaust or be ineligible for sick leave, and by allowing school districts to direct employees to work remotely when feasible.

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

Revenues (+/-): N/A

Expenditures (+/-): Unknown

Other Explanation: Specific dollar estimates cannot be determined. The cost of the program is indeterminable and will depend on the numbers of employees placed in quarantine and costs related to obtaining substitute employees where appropriate.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Data and Analytics Division of Telehealth Services (New Administrative Regulation)

900 KAR 12:005. Telehealth terminology and requirements.

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2)-(5), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

STATUTORY AUTHORITY: KRS 194A.105, 211.334(1)(d), 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations

necessary under applicable state laws to establish a telehealth terminology glossary to provide standard definitions for all health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors; establish minimum requirements for the proper use and security of telehealth including requirements for confidentiality and data integrity, privacy, and security, informed consent, privileging and credentialing, reimbursement, and technology; and establish minimum requirements to prevent waste, fraud, and abuse related to telehealth.

Section 1. Definitions. (1) "Department" means Department for Medicaid Services.

(2) "Division" means Division of Telehealth Services.

(3) "Health care service" is defined by KRS 211.332(2).

(4) "Professional licensure board" is defined by KRS 211.332(3).

(5) "State agency authorized or required to promulgate administrative regulations relating to telehealth" is defined by KRS 211.332(4).

(6) "Telehealth" or "digital health" is defined by KRS 211.332(5).

Section 2. Compliance. (1) Health care providers performing a telehealth or digital health service shall:

(a) Maintain confidentiality of patient medical information in accordance with KRS 311.5975;

(b) Maintain patient privacy and security in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9, unless waived by the applicable federal authority;

(c) Obtain patient informed consent in accordance with KRS 311.5975 and KRS 304.40-320;

(d) Secure credentialing if required by a third party or insurer or other payor;

(e) Obtain privileges by hospitals or facilities to admit and treat patients;

(f) 1. Utilize the appropriate current procedural terminology (CPT) or health care common procedure coding (HCPCS) code and place of service (POS) code "02" to secure reimbursement for a professional telehealth service; or

2. Utilize appropriate telehealth service code, if a CPT or HCPCS code is not available or not used for that service, according to customary practices for that health care profession, including the use of any telehealth modifiers or alternate codes;

(g) Utilize non-public facing technology products that are HIPAA compliant;

(h) As appropriate for the service, provider, and recipient, utilize the following modalities of communication delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:

1. Live or real-time audio and video synchronous telehealth technology;

2. Asynchronous store-and-forward telehealth technology;

3. Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;

4. Audio-only telecommunications systems; or

5. Clinical text chat technology when:

a. Utilized within a secure, HIPAA compliant application or electronic health record system; and

b. Meeting:

(i) The scope of the provider's professional licensure; and

(ii) The scope of practice of the provider; and

(i) Comply with the following federal laws to prevent waste, fraud, and abuse relating to telehealth:

1. False Claims Act, 31 U.S.C. § 3729-3733;

2. Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); and

3. Physician Self-Referral, Section 1877 of the Social Security Act (42 U.S.C. § 1395nn).

Section 3. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", July 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

ROBERT E. PUTT, Executive Director

CARRIE BANAHAN, Deputy Secretary

For ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 22, 2021

FILED WITH LRC: July 28, 2021 at 1:34 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 18, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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 Specialist, 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: Kim Minter or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a telehealth terminology glossary and establishes requirements to prevent waste, fraud, and abuse.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a telehealth glossary to be utilized by state agencies when promulgating telehealth administrative regulations, and by health care providers and payors to understand telehealth in the delivery of health care services, and establishes requirements to prevent waste, fraud, and abuse in KRS 211.334 and 211.336 and required by HB 140, Ky. Acts Ch. 67, from the 2021 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes. The administrative regulation conforms to the content of the authorizing statutes by establishing a telehealth glossary and requirements for use.

(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 a telehealth glossary and requirements. KRS 211.334(1) authorizes the cabinet, in consultation with the Division of Telehealth Services within the Office of Health Data and Analytics, to provide guidance and direction to providers delivering health care services using telehealth or digital health; and to promote access to health care services provided via telehealth or digital health.

(2) If 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 government affected by this administrative regulation: This increase will impact those payors, providers, members, and recipients who are regulated by state government. In the early part of the pandemic, telehealth utilization increased and was about 78 times higher than previous levels. Over the course of the COVID-19 pandemic, telehealth usage appears to have stabilized at levels that are about 38 times higher than pre-pandemic telehealth utilization. The Cabinet for Health and Family Services anticipates that increased telehealth utilization will be an ongoing feature of the healthcare system.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: All health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors should utilize the glossary for consistency when referencing telehealth terminology.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): No cost is imposed on the entities regulated by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Telehealth Terminology Glossary will assist providers, consumers, patients, and stakeholders in understanding telehealth within the health care system as well as standardizing telehealth language across all state agencies who promulgate telehealth legislation.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of this administrative regulation in the first year of operation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in 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: Federal Centers for Medicare and Medicaid Services (CMS) funding, state restricted funding, and MCO capitation fees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees. This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as telehealth requirements are applied equally to all affected.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

2. State compliance standards. Meeting federal standards by complying with privacy, security, waste, fraud, and abuse

requirements.

3. Minimum or uniform standards contained in the federal mandate. Meeting federal standards by complying with privacy, security, waste, fraud and abuse requirements.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) and all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.105, 205.510, 205.559, 205.5591, 211.332(2)-(5), 211.334(1)(d), 211.336(3), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 in the first year.

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering this administrative regulation 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:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of August 10, 2021

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 10, 2021 at 1 p.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the July 2021 meeting were approved.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Alice Forgy Kerr and Julie Raque Adams. 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: Cassie Trueblood, Education Professional Standards Board; Carrie Bass, Michael Board, Kentucky Retirement Systems; Leanne Diakov, Eric Fuchs, Board of Medical Licensure; Robert Andrew, Phil Dietz, Chuck O'Neal, John Wood, Board of Medical Emergency Medical Services; Dave Dreves, Steven Fields, Chris Garland, Department for Fish and Wildlife Resources; David Atha, Matt Cole, Tiffany Duval, Jon Johnson, Larissa Plecha, Transportation Cabinet; Todd Allen, Matthew Courtney, Kelly Foster; Board of Education; Erin Bravo, Sam Flynn Anthony Hudgins, Office of Unemployment Insurance; Robin Maples, Chuck Stribling, Occupational Safety and Health; John Ghaelian, Douglas Gott, Dale Hamblin, Robert Walker, Department of Workers Claims; Abigail Gall, Betsy Davis-Stone, Department of Insurance; Julie Brooks, Department for Public Health; Brittany Allen, Justin Dearing, Department of Behavioral Health, Developmental and Intellectual Disabilities; Laura Begin, Department for Community Based Services.

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 10, 2021 at 1 p.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the July 2021 meeting were approved.

The Administrative Regulation Review Subcommittee met on Tuesday, August 10, 2021, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Administrative Certificates

16 KAR 3:060. School counselor, provisional and standard certificates, all grades. Cassie Trueblood, counsel and policy advisor, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Educator Preparation

16 KAR 5:020. Standards for admission to educator preparation.

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.

Alternative Routes to Certification

16 KAR 9:090. University based alternative certification program for teachers of world languages.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO paragraph, and Sections 2, 4 through 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.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:270. Federal tax withholding or direct rollover of funds for eligible distributions. Carrie Bass, staff attorney supervisor, and Michael Board, executive director, represented the systems.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph, Sections 1

through 6, and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 9:290. Interpretation and application of KRS 311.901(1) and KRS 311.903(4). Leanne Diakov, counsel, and Dr. Fuchs, member, Athletic Trainer Subcommittee, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1, 3, 4, 8, and 10 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 7:201. Emergency Medical Responders. Robert Andrew, director of education and training; Phil Dietz, board chair; Chuck O'Neal, deputy executive director; and John Wood, attorney, represented the board.

202 KAR 7:301. Emergency Medical Technician.

202 KAR 7:330. Advanced Emergency Medical Technician.

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.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5, 8, 11, and 17 to comply with the drafting and formatting 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 1:201. Taking of fish by traditional fishing methods. Dave Dreves, fisheries director; Steven Fields, staff attorney; and Chris Garland, division director, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, the amendment was approved.

Game

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

In response to a question by Co-Chair Hale, Mr. Garland stated that, in the past, there had been problems with elk causing property damage. Hunting pressure had caused elk to shift their behavior, and the property damage had no longer been a major issue. The department had not received requests for permits related to elk damage to property; therefore, those provisions were being deleted.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

A motion was made and seconded to approve the following amendments: to amend Sections 7 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:300. Black bear seasons and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 9 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:233. Kentucky Ignition Interlock Program; participants and device providers. Matt Cole, commissioner; Tiffany Duvall, budget specialist; Jon Johnson, assistant general counsel; and Larisa Plecha, staff attorney, represented the department.

In response to a question by Co-Chair West, Mr. Johnson stated that this administrative regulation was in response to Senate Bill 85 from the 2019 Regular Session of the General Assembly.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Office of Chief State School Officer

701 KAR 5:100. School-based decision making guidelines. Todd Allen, general counsel; Dr. Matthew Courtney, policy advisor; and Dr. Kelly Foster, associate commissioner, represented the board.

In response to questions by Co-Chair West, Dr. Foster stated that this administrative regulation consolidated requirements, clarified procedures, created a timeline for submission of the school-based decision making model application, established a standardized effective date for newly approved site-based models, and aligned provisions with those in the authorizing statute. Dr. Courtney stated that the alternative model application process was being streamlined to reduce paperwork. Districts would be able to have nonvoting members without submitting applications for those members. Dr. Foster stated that nonvoting members sometimes included students, classified instructional members, certified teachers, and other school staff members. It was unnecessary for nonvoting members to complete applications. Changes to this administrative regulation complied with the authorizing statute.

A motion was made and seconded to approve the following

amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Office of Unemployment Insurance

787 KAR 1: 360. Overpayment waivers. Erin Bravo, deputy general counsel; Sam Flynn, general counsel; and Anthony Hudgins, deputy executive director, represented the office.

In response to a question by Co-Chair West, Mr. Flynn stated that this administrative regulation was necessitated by Senate Bill 7 from the 2021 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:011. Repeal of 803 KAR 002:018. Sam Flynn, general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, federal – state coordinator, represented the department.

803 KAR 2:041. Repeal of 803 KAR 002:040.

803 KAR 2:060. Employer responsibility to post notice.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:062. Employer responsibility when employee is exposed to toxic substances or harmful physical agents.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:070. Inspections.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:110. Employer and employee representatives.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:122. Abatement.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3, 5 through 9, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add Section 10 related to incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:125. Posting of citation.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:127. Failure to correct violation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:130. Informal conference.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:140. Contest of citation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:170. Variance and interim order.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 through 6, 8 through 11, and 14 through 25 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

803 KAR 2:220. Refusal to work when dangerous condition exist.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:230. Pay during inspection activity.

803 KAR 2:250. Discrimination.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:306. Occupational health and environmental control.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:310. Medical services and first aid.

803 KAR 2:423. Stairways and ladders.

803 KAR 2:435. Supply lines in excess of 600 volts.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 2 and 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.

803 KAR 2:440. Cranes and derricks in construction.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Workers' Claims

803 KAR 25:021. Individual self-insurers. Sam Flynn, general counsel; John Ghaelian, general counsel; Dale Hamblin, assistant general counsel; and Robert Walker, commissioner, represented the department.

In response to a question by Co-Chair West, Mr. Hamblin stated that this administrative regulation did not make self-insurance more difficult. Provisions were added for voluntarily surrendering a certificate.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3 and 5 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add a Web link to the agency's forms. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 25:091. Workers' compensation hospital fee schedule.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 8, and 9 to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete: (a) two (2) definitions; and (b) provisions for reimbursement for surgical implants and surgical hardware. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 25:220. Guaranty funds.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete outdated language; and (2) to amend Section 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.

PUBLIC PROTECTION CABINET: Department of Insurance: Trade Practices and Frauds

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance. Abigail Gall, regulation coordinator, and Elizabeth Stone, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Life Insurance and Annuity Contracts

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Health Insurance Contracts

806 KAR 17:580. Definition of health care provider.

In response to a question by Co-Chair West, Ms. Stone stated that the department added a definition for pharmacies because "licensed pharmacist" was already defined. This would require insurance companies to enter into insurance contracts with pharmacies that wished to do so.

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 KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Workers' Compensation Self-Insured Groups

806 KAR 52:030. Workers' compensation self-insured group rate, rule and for filings.

A motion was made and seconded to approve the following

amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Communicable Diseases

902 KAR 2:221E. Repeal of 902 KAR 002:220. Julie Brooks, regulation coordinator, represented the department.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Substance Abuse

908 KAR 1:390. Voluntary Employer Substance Use Program (VESUP). Dr. Brittany Allen, division director, and Justin Dearing, program administrator, represented the department.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:026E. Repeal of 921 KAR 003:025. Laura Begin, regulation coordinator, represented the department.

921 KAR 3:027E. Technical requirements.

The following administrative regulations were deferred or removed from the August 10, 2021, subcommittee agenda:

STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

Kentucky Infrastructure Authority

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

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.

Board of Licensure for Professional Art Therapists

201 KAR 34:070. Inactive status.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Vehicle Commission

605 KAR 1:030. Applications.

605 KAR 1:035. Facilities requirements.

605 KAR 1:130. Procedures.

605 KAR 1:215. Licensing fees.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Exceptional and Handicapped Programs

707 KAR 1:340. Procedural safeguards and state complaint procedures.

LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:325. General industry standards.

Workers' Claims

803 KAR 25:165. Electronic data interchange vendor approval.

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.

PUBLIC PROTECTION CABINET: Department of Insurance: Fees and taxes

806 KAR 4:010. Fees of the 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.

Rates and Rating Organizations

806 KAR 13:150. Property and casualty rate and rule filings.

Health Insurance Contracts

806 KAR 17:070. Filing procedures for health insurance rates.

806 KAR 17:085. Minimum standards for short-term nursing home insurance policies.

806 KAR 17:100. Certificate of filing for provider-sponsored networks.

806 KAR 17:150. Health benefit plan rate filing requirements.

806 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.

806 KAR 17:511. Repeal of 806 KAR 017:005, 806 KAR 017:095, 806 KAR 017:170, 806 KAR 017:180, and 806 KAR 017:510.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:015. Access and attachments to utility poles and facilities.

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 Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:060. Administrative disqualification hearings and penalties.

Child Welfare

922 KAR 1:300. Standards for child-caring facilities.

922 KAR 1:380. Standards for emergency shelter child-caring facilities.

922 KAR 1:390. Standards for residential child-caring facilities.

The subcommittee adjourned at 1:40 p.m. The next meeting of this subcommittee was tentatively scheduled for September 14, 2021, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE Meeting of July 8, 2021

The Interim Joint Committee on Agriculture met on July 8, 2021 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on May 5, 2021, pursuant to KRS 13A.290(6):

302 KAR 079:011
302 KAR 079:012

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 8, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS AND ADMINISTRATIVE REGULATIONS Meeting of August 12, 2021

The Licensing, Occupations, and Administrative Regulations met on August 12, 2021 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on August 4, 2021, pursuant to KRS 13A.290(6):

810 KAR 002:001
810 KAR 003:001
810 KAR 004:001
810 KAR 005:001
810 KAR 006:001
810 KAR 006:010
810 KAR 006:020
810 KAR 006:030

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

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 12, 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 48th year of the *Administrative Register of Kentucky*, from July 2021 through June 2022.

Locator Index - Effective Dates

C - 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

C - 12

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

C - 22

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

C - 23

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

C - 24

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](#).

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
As Amended	2534	5-11-2021
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
Withdrawn		8-10-2021
200 KAR 008:505E	47 Ky.R. 1735	1-27-2021
200 KAR 017:110E	48 Ky.R. 5	6-2-2021
201 KAR 002:411E	48 Ky.R. 734	8-10-2021
201 KAR 015:030E	48 Ky.R. 268	6-30-2021
201 KAR 015:040E	48 Ky.R. 270	6-30-2021
201 KAR 015:0050E	48 Ky.R. 272	6-30-2021
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
601 KAR 002:233E	47 Ky.R. 2335	4-12-2021
603 KAR 010:011E	48 Ky.R. 736	7-30-2021
603 KAR 010:040E	48 Ky.R. 737	7-30-2021
605 KAR 001:215E	47 Ky.R. 2526	5-12-2021
702 KAR 001:190E	47 Ky.R. 503	8-12-2020
702 KAR 001:191E	48 Ky.R. 744	8-11-2021
702 KAR 001:195E	48 Ky.R. 746	8-12-2021
As Amended	760	
702 KAR 007:125E	48 Ky.R. 748	8-11-2021
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
Replaced	2376	8-3-2021
803 KAR 002:330E	48 Ky.R. 753	7-20-2021
810 KAR 002:001E	47 Ky.R. 1900	2-25-2021
Replaced	48 Ky.R. 353	8-12-2021
810 KAR 003:001E	47 Ky.R. 1903	2-25-2021
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810 KAR 004:001E	47 Ky.R. 1905	2-25-2021
Replaced	48 Ky.R. 355	8-12-2021
810 KAR 005:001E	47 Ky.R. 1908	2-25-2021
Replaced	48 Ky.R. 357	8-12-2021
810 KAR 006:001E	47 Ky.R. 1912	2-25-2021
Replaced	48 Ky.R. 359	8-12-2021
810 KAR 006:010E	47 Ky.R. 1916	2-25-2021
Replaced	48 Ky.R. 362	8-12-2021
810 KAR 006:030E	47 Ky.R. 1919	2-25-2021
Replaced	48 Ky.R. 372	8-12-2021
811 KAR 001:251E(r)	47 Ky.R. 1923	2-25-2021
900 KAR 012:005E	48 Ky.R. 755	7-28-2021
902 KAR 002:211E	47 Ky.R. 1533	1-5-2021
Am Comments	2558	4-28-2021
As Amended	48 Ky.R. 18	
Withdrawn		6-11-2021
902 KAR 002:213E	48 Ky.R. 757	8-12-2021
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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

LOCATOR INDEX - EFFECTIVE DATES

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Am Comments	2344	4-12-2021	Amended	48 Ky.R. 466	
As Amended	2560	5-11-2021	103 KAR 016:320		
922 KAR 002:160E	48 Ky.R. 299	7-1-2021	Amended	48 Ky.R. 484	
922 KAR 002:415E	47 Ky.R. 1928	3-15-2021	103 KAR 016:352		
As Amended	2523	4-13-2021	Amended	48 Ky.R. 486	
Withdrawn		5-10-2021	103 KAR 018:020		
			Amended	48 Ky.R. 488	
			103 KAR 018:090		
			Amended	48 Ky.R. 490	
			103 KAR 026:100		
			Amended	47 Ky.R. 1610	
			As Amended	2357	8-3-2021
			103 KAR 026:131	47 Ky.R. 1857	
			As Amended	48 Ky.R. 20	
			103 KAR 027:050		
			Amended	48 Ky.R. 491	
			103 KAR 027:150		
			Amended	48 Ky.R. 492	
			103 KAR 027:230		
			Amended	48 Ky.R. 495	
			103 KAR 030:091		
			Amended	48 Ky.R. 497	
			103 KAR 030:120		
			Amended	48 Ky.R. 501	
			103 KAR 030:140		
			Amended	48 Ky.R. 504	
			103 KAR 030:190		
			Amended	48 Ky.R. 506	
			103 KAR 030:250		
			Amended	48 Ky.R. 509	
			105 KAR 001:210		
			Amended	48 Ky.R. 858	
			105 KAR 001:270		
			Amended	47 Ky.R. 2623	
			As Amended	48 Ky.R. 767	
			105 KAR 001:310		
			Amended	48 Ky.R. 866	
			105 KAR 001:330		
			Amended	48 Ky.R. 873	
			200 KAR 002:006		
			Amended	47 Ky.R. 1811	
			200 KAR 003:020		
			Amended	48 Ky.R. 510	
			200 KAR 017:100	48 Ky.R. 215	
			201 KAR 001:100		
			Amended	47 Ky.R. 1816	
			As Amended	2575	
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			Amended	47 Ky.R. 2029	
			As Amended	48 Ky.R. 22	7-21-2021
			201 KAR 002:050		
			Amended	48 Ky.R. 877	
			201 KAR 002:061		
			Amended	47 Ky.R. 2421	
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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139.260	103 KAR 027:150	150.015	301 KAR 002:015
	103 KAR 027:230		301 KAR 002:082
	103 KAR 030:091		301 KAR 002:260
	103 KAR 030:190		301 KAR 004:050
	103 KAR 030:250	150.022	301 KAR 004:001
139.270	103 KAR 027:150		301 KAR 004:010
	103 KAR 027:230	150.023	301 KAR 004:001
	103 KAR 030:250	150.025	301 KAR 001:019
139.280	103 KAR 027:150		301 KAR 001:031
	103 KAR 027:230		301 KAR 002:050
	103 KAR 030:250		301 KAR 002:111
139.290	103 KAR 027:150		301 KAR 002:224
	103 KAR 027:230		301 KAR 002:230
	103 KAR 030:250		301 KAR 003:010
139.310	103 KAR 027:050		301 KAR 003:026
	103 KAR 027:150		301 KAR 003:030
	103 KAR 027:230		301 KAR 004:010
	103 KAR 030:250		301 KAR 004:020
139.330	103 KAR 027:050		301 KAR 004:110
	103 KAR 027:150	150.090	301 KAR 001:012
	103 KAR 027:230		301 KAR 001:016
	103 KAR 030:250		301 KAR 001:031
139.340	103 KAR 030:190		301 KAR 005:030
139.470	103 KAR 027:230	150.105	301 KAR 002:260
	103 KAR 030:091	150.170	301 KAR 001:031
	103 KAR 030:190		301 KAR 001:050
	103 KAR 030:250		301 KAR 001:125
139.480	103 KAR 027:230		301 KAR 001:152
	103 KAR 030:091		301 KAR 002:041
	103 KAR 030:120		301 KAR 002:050
	103 KAR 030:140		301 KAR 002:111
	103 KAR 030:250		301 KAR 002:230
139.486	103 KAR 030:190		301 KAR 002:260
141.010	103 KAR 016:270		301 KAR 003:026
	103 KAR 016:352		301 KAR 003:110
141.0101	103 KAR 016:352		301 KAR 005:030
141.012	103 KAR 016:352		301 KAR 004:070
141.039	103 KAR 016:320	150.175	301 KAR 001:031
	103 KAR 016:352		301 KAR 001:050
141.040	103 KAR 016:270		301 KAR 001:082
	103 KAR 016:352		301 KAR 001:120
141.044	103 KAR 016:352		301 KAR 001:152
141.050	103 KAR 016:320		301 KAR 002:142
	103 KAR 018:090		301 KAR 002:230
141.120	103 KAR 016:270		301 KAR 002:260
	103 KAR 016:352		301 KAR 003:026
141.121	103 KAR 016:270		301 KAR 003:110
141.160	103 KAR 016:352		301 KAR 005:030

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150.180	301 KAR 002:041		301 KAR 001:016
	301 KAR 004:070		301 KAR 001:019
150.183	301 KAR 002:082		301 KAR 002:050
150.186	301 KAR 002:082		301 KAR 003:010
150.190	301 KAR 001:120		301 KAR 003:012
150.195	301 KAR 002:082	150.680	301 KAR 002:050
	301 KAR 004:070	150.990	301 KAR 001:050
	301 KAR 005:001		301 KAR 001:152
	301 KAR 005:030		301 KAR 002:041
150.235	301 KAR 001:120		301 KAR 002:142
	301 KAR 001:125		301 KAR 002:082
	301 KAR 002:082		301 KAR 002:224
	301 KAR 002:260		301 KAR 002:260
	301 KAR 005:030		301 KAR 003:012
150.236	301 KAR 005:100		301 KAR 003:030
150.240	301 KAR 003:012		301 KAR 003:110
150.250	301 KAR 001:031		301 KAR 004:070
	301 KAR 002:050		301 KAR 004:100
	301 KAR 004:100		301 KAR 005:030
150.280	301 KAR 002:041	151.601	200 KAR 017:110E
	301 KAR 002:084		200 KAR 017:110
150.290	301 KAR 002:084	151.605	200 KAR 017:110E
150.300	301 KAR 004:020		200 KAR 017:110
150.305	301 KAR 002:142	151B.020	787 KAR 002:040
	301 KAR 002:224	151B.185	781 KAR 001:020
150.320	301 KAR 002:082	151B.190	781 KAR 001:010
150.330	301 KAR 002:082		781 KAR 001:020
	301 KAR 002:224		781 KAR 001:030
	301 KAR 002:230		781 KAR 001:040
	301 KAR 002:260		781 KAR 001:050
150.340	301 KAR 001:031	151B.200	781 KAR 001:010
	301 KAR 001:050		781 KAR 001:020
	301 KAR 002:224	151B.402	013 KAR 003:040
	301 KAR 002:260	151B.403	013 KAR 003:010
150.360	301 KAR 001:031		013 KAR 003:030
	301 KAR 001:082		013 KAR 003:050
	301 KAR 002:050		013 KAR 003:060
	301 KAR 003:027	151B.408	013 KAR 003:020
	301 KAR 003:030		013 KAR 003:030
	301 KAR 003:110		013 KAR 003:040
150.362	301 KAR 003:110		013 KAR 003:060
150.365	301 KAR 003:110	154A.060	202 KAR 003:020
150.370	301 KAR 001:031	154A.120	202 KAR 003:020
	301 KAR 002:111	156.029	701 KAR 005:160
	301 KAR 003:030	156.070	702 KAR 001:191E
	301 KAR 003:110		702 KAR 001:195E
150.390	301 KAR 002:111	156.160	702 KAR 001:191E
	301 KAR 003:027		701 KAR 001:191
	301 KAR 003:110	157.320	702 KAR 007:125E
150.445	301 KAR 001:152		702 KAR 007:125
150.450	301 KAR 001:140	157.350	702 KAR 007:125E
	301 KAR 001:152		702 KAR 007:125
150.470	301 KAR 001:031	157.360	702 KAR 007:125E
150.485	301 KAR 001:120		702 KAR 007:125
	301 KAR 001:125	158.030	702 KAR 007:125E
150.600	301 KAR 002:224		702 KAR 007:125
	301 KAR 002:260	158.070	702 KAR 007:125E
	301 KAR 004:020		702 KAR 007:125
	301 KAR 004:050	158.100	702 KAR 007:125E
150.620	301 KAR 001:012		702 KAR 007:125
	301 KAR 001:018	158.135	013 KAR 003:050
	301 KAR 001:019	158.143	013 KAR 003:050
	301 KAR 001:050	158.160	902 KAR 002:221E
	301 KAR 003:010	158.240	702 KAR 007:125E
	301 KAR 003:012		702 KAR 007:125
	301 KAR 003:026	158.6645	013 KAR 003:050
	301 KAR 003:027	159.010	702 KAR 007:125E
	301 KAR 004:100		702 KAR 007:125
150.625	301 KAR 001:012	159.030	702 KAR 007:125E
	301 KAR 001:016		702 KAR 007:125
	301 KAR 001:019		704 KAR 007:121
150.630	301 KAR 002:041	159.035	702 KAR 007:125E
	301 KAR 002:260		702 KAR 007:125
150.640	301 KAR 001:012	159.140	702 KAR 007:125E

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159.170	702 KAR 007:125		791 KAR 001:070
	702 KAR 007:125E		791 KAR 001:080
160.290	702 KAR 007:125		791 KAR 001:100
	702 KAR 001:191E		791 KAR 001:155
	702 KAR 001:191		791 KAR 001:160
	702 KAR 007:150	165A.380	791 KAR 001:025
	704 KAR 007:121		791 KAR 001:070
160.613	103 KAR 030:140	165A.390	791 KAR 001:020
161.011	013 KAR 003:030		791 KAR 001:030
161.020	016 KAR 002:180		791 KAR 001:155
	016 KAR 002:220E	165A.420	791 KAR 001:025
	016 KAR 002:220	165A.450	791 KAR 001:020
	016 KAR 002:230E		791 KAR 001:035
	016 KAR 002:230		791 KAR 001:050
	016 KAR 002:180	165A.460	791 KAR 001:040
	016 KAR 003:070		791 KAR 001:070
	016 KAR 004:050	165A.460-165A.515	791 KAR 001:060
	016 KAR 005:010	165A.465	791 KAR 001:050
	016 KAR 006:010		791 KAR 001:070
161.028	016 KAR 002:220E	165A.470	791 KAR 001:050
	016 KAR 002:220		791 KAR 001:070
	016 KAR 002:230E	165A.475	791 KAR 001:050
	016 KAR 002:230		791 KAR 001:070
	016 KAR 003:070	165A.480	791 KAR 001:050
	016 KAR 004:050		791 KAR 001:070
	016 KAR 005:010	165A.485	791 KAR 001:070
161.030	016 KAR 006:010	165A.500	791 KAR 001:080
	016 KAR 002:180	165A.510	791 KAR 001:080
	016 KAR 002:220E		791 KAR 001:100
	016 KAR 002:220	165A.990	791 KAR 001:030
	016 KAR 002:230E	171	725 KAR 001:010
	016 KAR 002:230		725 KAR 001:050
	016 KAR 003:070	171.027	725 KAR 002:015
	016 KAR 004:050	171.125	725 KAR 002:015
	016 KAR 005:010	171.221	725 KAR 002:080
	016 KAR 006:010	171.420	725 KAR 001:025
161.1211	016 KAR 002:180		725 KAR 001:061
161.155	702 KAR 001:191	171.450	725 KAR 001:020
161.200	702 KAR 007:125E		725 KAR 001:030
	702 KAR 007:125		725 KAR 001:061
163.470	782 KAR 001:010	171.470	725 KAR 001:025
164.945	016 KAR 005:010	171.480	725 KAR 001:025
164.946	016 KAR 005:010	171.500	725 KAR 001:025
164.947	016 KAR 005:010		725 KAR 001:040
165A.310	791 KAR 001:020	171.520	725 KAR 001:025
	791 KAR 001:070	171.550	725 KAR 001:025
165A.330	791 KAR 001:010	171.580	725 KAR 001:025
	791 KAR 001:020	171.590	725 KAR 001:025
	791 KAR 001:040	171.600	725 KAR 001:020
	791 KAR 001:050	171.670	725 KAR 001:020
	791 KAR 001:060	173.040	725 KAR 002:015
	791 KAR 001:070	173.340	725 KAR 002:015
	791 KAR 001:080	173.480	725 KAR 002:015
	791 KAR 001:100	173.725	725 KAR 002:015
165A.340	791 KAR 001:020	177.572-177.576	603 KAR 010:011E
	791 KAR 001:155		603 KAR 010:040E
165A.350	791 KAR 001:010		603 KAR 010:040
	791 KAR 001:020	177.830-177.890	603 KAR 010:011E
	791 KAR 001:025		603 KAR 010:040E
	791 KAR 001:030		603 KAR 010:040
	791 KAR 001:070	177.990	603 KAR 010:011E
	791 KAR 001:150		603 KAR 010:040E
165A.360	791 KAR 001:010		603 KAR 010:040
	791 KAR 001:020	186A.040	806 KAR 039:070
	791 KAR 001:025	186A.042	806 KAR 039:070
	791 KAR 001:030	186A.095	806 KAR 039:070
	791 KAR 001:150	186.021	806 KAR 039:070
	791 KAR 001:160	186.480	782 KAR 001:070
165A.370	791 KAR 001:020	186.570	921 KAR 001:390
	791 KAR 001:027	186.576	782 KAR 001:070
	791 KAR 001:030	186.577	782 KAR 001:070
	791 KAR 001:040	186.578	782 KAR 001:070
	791 KAR 001:050	186.579	782 KAR 001:070
	791 KAR 001:060	189A.010	782 KAR 001:070

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194A	921 KAR 002:015E		907 KAR 023:020
	921 KAR 002:015	205.5634	907 KAR 023:020E
194A.540	201 KAR 020:320		907 KAR 023:020
194.010	921 KAR 004:116E	205.5636	907 KAR 023:020E
	921 KAR 004:116		907 KAR 023:020
194.030	787 KAR 001:310	205.5638	907 KAR 023:020E
194.060	921 KAR 004:116E		907 KAR 023:020
	921 KAR 004:116	205.5639	907 KAR 023:020E
	922 KAR 002:160E		907 KAR 023:020
	922 KAR 002:160	205.6316	907 KAR 023:020E
194.070	921 KAR 004:116E		907 KAR 023:020
	921 KAR 004:116	205.637	907 KAR 010:815
196.035	501 KAR 002:060	205.639	907 KAR 010:815
196.020	501 KAR 002:060	205.640	907 KAR 010:815
196.030	501 KAR 006:250	205.6405	907 KAR 010:815
197.045	501 KAR 002:060	205.6406	907 KAR 010:815
	725 KAR 002:015	205.6407	907 KAR 010:815
198B.032	725 KAR 002:015	205.6408	907 KAR 010:815
198B.040	815 KAR 007:110	205.710	921 KAR 001:020
198B.050	725 KAR 002:015		921 KAR 001:390
	815 KAR 004:025		921 KAR 001:400E
	815 KAR 007:110		921 KAR 001:400
	815 KAR 010:060	205.712	921 KAR 001:020
	815 KAR 020:195		921 KAR 001:390
198B.060	815 KAR 007:110	205.721	921 KAR 001:390
198B.070	815 KAR 007:110	205.730	921 KAR 001:020
198B.400	815 KAR 004:010		921 KAR 001:390
	815 KAR 004:027	205.735	921 KAR 001:020
198B.400-198B.0540	815 KAR 004:025	205.7685	921 KAR 001:020
198B.470	815 KAR 004:010	205.772	921 KAR 001:020
198B.480	815 KAR 004:010	205.774	921 KAR 001:020
198B.490	815 KAR 004:027	205.776	921 KAR 001:020
198B.500	815 KAR 004:010	205.800	921 KAR 001:020
198B.510	815 KAR 004:010	205.802	921 KAR 001:400E
198B.540	815 KAR 004:010		921 KAR 001:400
198B.550-198B.630	815 KAR 007:080	205.990	921 KAR 001:020
199.894	922 KAR 002:160E		921 KAR 001:400E
	922 KAR 002:160		921 KAR 001:400
199.896	922 KAR 002:160E	209.020	921 KAR 002:015E
	922 KAR 002:160		921 KAR 002:015
199.898	922 KAR 002:160E	211.015	902 KAR 010:120
	922 KAR 002:160		902 KAR 010:190
199.8982	922 KAR 002:160E	211.090	902 KAR 010:120
	922 KAR 002:160	211.180	902 KAR 002:212E
199.899	922 KAR 002:160E		902 KAR 002:213E
	922 KAR 002:160		902 KAR 010:190
202A.011	702 KAR 007:150		902 KAR 048:010
	921 KAR 002:015E		902 KAR 048:020
	921 KAR 002:015		902 KAR 048:030
202A.410	501 KAR 014:010		902 KAR 048:040
205.175	921 KAR 001:020	211.332	900 KAR 012:005E
205.177	921 KAR 001:020		900 KAR 012:005
205.2005	921 KAR 003:026E	211.990	902 KAR 010:120
	921 KAR 003:027E	211.994	902 KAR 048:010
	921 KAR 003:027		902 KAR 048:010
205.245	921 KAR 002:015E	211.210	902 KAR 010:120
	921 KAR 002:015	211.220	902 KAR 010:120
	923 KAR 002:470	211.900-211.905	902 KAR 048:010
205.510	900 KAR 012:005E		902 KAR 048:010
	900 KAR 012:005	211.990	902 KAR 010:120
	907 KAR 010:815		902 KAR 048:010
205.5510-205.5520	907 KAR 023:020E	211.994	902 KAR 048:010
	907 KAR 023:020		902 KAR 048:010
205.559	900 KAR 012:005E	211.9061-200.9079	902 KAR 048:010
	900 KAR 012:005	211.9063	902 KAR 048:030
205.5591	900 KAR 012:005E		902 KAR 048:040
	900 KAR 012:005	211.9069	902 KAR 048:030
205.560	907 KAR 023:020E	211.9071	902 KAR 048:030
	907 KAR 023:020		902 KAR 048:040
205.561	907 KAR 023:020E	211.9075	902 KAR 048:030
	907 KAR 023:020	212.626	815 KAR 007:110
205.5631	907 KAR 023:020E	213.036	921 KAR 001:390
	907 KAR 023:020	213.046	921 KAR 001:390
205.5632	907 KAR 023:020E		921 KAR 001:400E

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	921 KAR 001:400	241.010	103 KAR 030:120
213.071	921 KAR 001:390	243.030	103 KAR 030:120
214.010	902 KAR 002:212E	243.040	103 KAR 030:120
	902 KAR 002:213E	247.100	303 KAR 001:110
	902 KAR 002:221E	247.145	303 KAR 001:005
214.020	902 KAR 002:221E		303 KAR 001:010
214.036	922 KAR 002:160E		303 KAR 001:015
	922 KAR 002:160		303 KAR 001:075
214.645	902 KAR 002:212E		303 KAR 001:080
	902 KAR 002:213E		303 KAR 001:090
216.380	907 KAR 010:815		303 KAR 001:100
216A.070	201 KAR 006:020	217.147	303 KAR 001:110
216A.080	201 KAR 006:020	247.153	303 KAR 001:005
216.530	921 KAR 002:015E	247.154	303 KAR 001:005
	921 KAR 002:015		303 KAR 001:010
216.557	921 KAR 002:015E		303 KAR 001:015
	921 KAR 002:015	247.160	303 KAR 001:075
216.765	921 KAR 002:015E	285.065	301 KAR 002:082
	921 KAR 002:015	285.085	301 KAR 002:082
216B	921 KAR 002:015E	302.31	921 KAR 001:390
	921 KAR 002:015	302.33	921 KAR 001:390
217.015	907 KAR 023:020E	302.34	921 KAR 001:020
	907 KAR 023:020	302.50	921 KAR 001:400E
217.055	201 KAR 002:076		921 KAR 001:400
217.065	201 KAR 002:076	302.56	921 KAR 001:400E
217.186	201 KAR 002:360		921 KAR 001:400
217.211	806 KAR 017:280	302.80	921 KAR 001:400E
217.660	902 KAR 048:010		921 KAR 001:400
217.801	902 KAR 048:010	303.107	921 KAR 001:020
	902 KAR 048:010	303.21	921 KAR 001:020
	902 KAR 048:040	303.4	921 KAR 001:400E
218A.172	201 KAR 020:057		921 KAR 001:400
218A.205	201 KAR 002:050	303.5	921 KAR 001:390
	201 KAR 002:430	303.70	921 KAR 001:020
	201 KAR 008:520	303.8	921 KAR 001:400E
	201 KAR 020:057		921 KAR 001:400
	201 KAR 020:215	303.30-303.32	921 KAR 001:400E
224A.011	200 KAR 017:110E		921 KAR 001:400
	200 KAR 017:110	304	806 KAR 011:020
224A.020	200 KAR 017:110E		921 KAR 001:020
	200 KAR 017:110		921 KAR 001:390
224A.035	200 KAR 017:110E	304.1-050	806 KAR 011:020
	200 KAR 017:110		806 KAR 046:050
224A.040	200 KAR 017:110E	304.1-120	806 KAR 011:020
	200 KAR 017:110	304.2-100	806 KAR 017:290
224A.050-224A.314	200 KAR 017:110E		806 KAR 017:350
	200 KAR 017:110	304.2-110	806 KAR 017:470
224.60-105	815 KAR 030:060	304.2-140	806 KAR 017:280
224.60-135	815 KAR 030:060	304.2-160	806 KAR 011:020
227.300	725 KAR 002:015	304.2-165	806 KAR 011:020
	815 KAR 010:060	304.2-230	806 KAR 017:290
	815 KAR 030:060	304.2-310	806 KAR 017:290
227.320	815 KAR 010:060		806 KAR 017:450
227.330	815 KAR 010:060	304.5-040	806 KAR 011:020
227.489	815 KAR 007:110	304.9-020	806 KAR 011:020
227.700	815 KAR 010:070	304.9-051	806 KAR 011:020
227.702	815 KAR 010:070	304.9-052	806 KAR 017:450
227.704	815 KAR 010:070	304.11-030	806 KAR 011:020
227.708	815 KAR 010:070	304.11-045	806 KAR 011:020
227.710	815 KAR 010:070	304.13-011	806 KAR 046:050
227.715	815 KAR 010:070	304.13-051	806 KAR 046:050
227.750	815 KAR 010:070	304.14-120	806 KAR 046:050
227.752	815 KAR 010:070	304.17-412	806 KAR 017:280
227.990	815 KAR 010:060	304.17A	806 KAR 017:260
230.215	810 KAR 004:040	304.17A-005	806 KAR 011:020
230.260	810 KAR 004:040		806 KAR 017:370
234.120	815 KAR 030:010		806 KAR 017:470
234.130	815 KAR 030:010	304.17A-138	806 KAR 017:270
234.140	815 KAR 010:060		900 KAR 012:005E
235	301 KAR 006:001		900 KAR 012:005
235.40	301 KAR 006:070	304.17A-200	806 KAR 017:450
235.220	301 KAR 006:070	304.17A-230	806 KAR 017:240
235.315	301 KAR 001:018	304.17A-330	806 KAR 017:240
237.110	921 KAR 001:390	304.17A-410	806 KAR 011:020

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	806 KAR 017:280		922 KAR 002:160
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			900 KAR 012:005
			907 KAR 010:815
			907 KAR 023:020E
			907 KAR 023:020
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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
201 KAR 043:100	8-1-2021	Remain in Effect without Amendment
201 KAR 046:015	3-5-2021	Remain in Effect without Amendment

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 48th year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
401 KAR 048:320	8-4-2021		
921 KAR 003:020	6-24-2021		
921 KAR 003:030	6-24-2021		
921 KAR 003:035	6-24-2021		
921 KAR 003:042	6-24-2021		
921 KAR 003:090	6-24-2021		
921 KAR 002:090	6-24-2021		
922 KAR 002:190	6-24-2021		

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 - Human Trafficking Victims Fund; 040 KAR 006:030
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- Dentistry, 201 KAR Chapter 008
- Durable Medical Equipment; 201 KAR Chapter 047
- Embalmers and Funeral Directors, 201 KAR Chapter 015
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 - Telehealth terminology and requirements; 900 KAR 012:005

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- Child Care
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 - Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 002:015
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 - Transfer requests; 501 KAR 002:050
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