



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

## MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on October 12, 2021, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - **1087** [Online agenda updated as needed](#)

## INDEXES & OTHER INFORMATION

Regulation Review Procedure .....	<b>1092</b>
ARRS Report.....	<b>1145</b>
Other Committee Reports .....	<b>1458</b>
Locator Index - Effective Dates.....	<b>D – 2</b>

KRS Index.....	<b>D – 14</b>
Certifications .....	<b>D– 26</b>
Technical Amendments .....	<b>D – 27</b>
Subject Index.....	<b>D – 28</b>

### Emergencies

#### Secretary Of State

030 KAR 006:011E. Kentucky address confidentiality program .....	1093
------------------------------------------------------------------	------

#### Personnel Cabinet

101 KAR 002:210E. 2022 Plan Year Handbook for the Public Employee Health Insurance Program.....	1095
-------------------------------------------------------------------------------------------------	------

### AMENDED IN-PROCESS EMERGENCIES

#### Kentucky Infrastructure Authority

200 KAR 017:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.....	1098
---------------------------------------------------------------------------------------------------------------------	------

#### Department for Medicaid Services

907 KAR 023:0020E. Reimbursement for outpatient drugs.....	1099
------------------------------------------------------------	------

#### Department for Community Based Services

922 KAR 002:160E. Child Care Assistance Program ...	1102
-----------------------------------------------------	------

### AS AMENDED

#### Board of Pharmacy

201 KAR 002:270. Expungement.....	1112
201 KAR 002:360. Naloxone dispensing.....	1112
201 KAR 002:420. Administration of vaccines.....	1113

#### Board of Medical Licensure

201 KAR 009:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone .....	1113
----------------------------------------------------------------------------------------------------------------------------------------------------------------	------

#### Department of Fish and Wildlife Resources

301 KAR 001:012. Boating, swimming and water skiing and other activities on department-owned or controlled lakes .....	1117
301 KAR 001:016. Use of lands and waters on lakes owned or controlled by the department.....	1117
301 KAR 001:018. Use of boating access areas.....	1120

301 KAR 001:019. Cedar Creek Lake .....	1121
301 KAR 001:031. Land Between the Lakes provisions .....	1121
301 KAR 001:050. Small state-owned lakes, special administrative requirements of.....	1122
301 KAR 001:082. Frog season; limits .....	1122
301 KAR 001:120. Live fish scales and handling; licensure .....	1122
301 KAR 001:125. Transportation of fish .....	1123
301 KAR 001:140. Special commercial fishing permit for Kentucky and Barkley lakes .....	1124
301 KAR 001:152. Harvest and sale of Asian carp.....	1125
301 KAR 002:050. Land Between the Lakes hunting requirements .....	1127
301 KAR 002:230. Shoot-to-retrieve field permits and procedures .....	1127
301 KAR 002:260. Crow hunting season .....	1128

#### Motor Vehicle Commission

605 KAR 001:030. Applications.....	1128
605 KAR 001:035. Facilities requirements .....	1130
605 KAR 001:215. Licensing fees .....	1130

#### Board of Education

707 KAR 001:340. Procedural safeguards and state complaint procedures .....	1131
-----------------------------------------------------------------------------	------

#### Department of Workers' Claims

803 KAR 025:165. Electronic data interchange vendor approval .....	1136
803 KAR 025:170. Filing of claims information with the Office of Workers' Claims .....	1137
803 KAR 025:175. Filing of insurance coverage and notice of policy change or termination.....	1138
803 KAR 025:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage .....	1138

#### Department of Insurance

806 KAR 004:010. Fees of the Department of Insurance .....	1139
806 KAR 009:025. Licensing process .....	1141

806 KAR 012:120. Suitability in annuity transactions .....	1144
806 KAR 013:150. Property and casualty rate and rule filings .....	1148
806 KAR 017:070. Filing procedures for health insurance rates .....	1151
806 KAR 017:085. Minimum standards for short-term nursing home insurance policies .....	1153
806 KAR 017:100. Certificate of filing for provider-sponsored networks .....	1158
806 KAR 017:150. Health benefit plan rate filing requirements .....	1159
806 KAR 017:230. Requirements regarding medical director's signature on health care benefit denials .....	1164
806 KAR 017:260. Conversion policy minimum benefits .....	1164
806 KAR 017:290. Independent External Review Program .....	1165
806 KAR 017:370. Standardized health claim attachments .....	1169
806 KAR 017:450. Insurance purchasing outlet requirements .....	1171
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 .....	1173
806 KAR 046:050. Liability self-insurance group rate, underwriting and evidence of coverage filings .....	1173
<b>Department for Medicaid Services</b>	
907 KAR 003:010. Reimbursement for physicians' services .....	1174
<b>Department for Community Based Services</b>	
921 KAR 001:020. Child Support Enforcement Program; confidentiality, program administration contracts, and agreements .....	1178
921 KAR 001:390. Child Support Enforcement Program paternity establishment .....	1179

## **AMENDED AFTER COMMENTS**

### **Public Service Commission**

807 KAR 005:015. Access and attachments to utility poles and facilities .....	1181
-------------------------------------------------------------------------------	------

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

921 KAR 003:060. Administrative disqualification hearings and penalties .....	1188
-------------------------------------------------------------------------------	------

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

922 KAR 001:300. Standards for child-caring facilities .....	1191
--------------------------------------------------------------	------

## **PROPOSED AMENDMENTS**

### **Early Childhood Development Scholarship Program**

011 KAR 016:001. Definitions for 11 KAR Chapter 16 .....	1203
011 KAR 016:010. Early Childhood Development Scholarship Program applicant selection process .....	1205

### **Education Professional Standards Board**

016 KAR 002:040. Interdisciplinary early childhood education, birth to primary .....	1207
016 KAR 002:050. Certificates for teachers of exceptional children/communication disorders .....	1210
016 KAR 004:020. Certification requirements for teachers of exceptional children .....	1213

### **Secretary of State**

030 KAR 003:010. Application for registration of trademarks and service marks .....	1215
030 KAR 003:020. Application for renewal of registration .....	1217
030 KAR 003:030. Classification of goods and services for registration of trademarks and service marks .....	1218

### **Personnel Board**

101 KAR 001:335. Employee actions .....	1220
101 KAR 001:345. Disciplinary actions .....	1223

101 KAR 001:365. Appeal and hearing procedures .....	1224
101 KAR 001:367. Standards of conduct and technology governing recording board proceedings .....	1226
101 KAR 001:375. Employee grievances and complaints .....	1229
101 KAR 001:395. Restoration from military duty .....	1230
101 KAR 001:400. Promotion .....	1232

### **Personnel Cabinet**

101 KAR 002:210. 2022 Plan Year Handbook for the Public Employee Health Insurance Program .....	1233
-------------------------------------------------------------------------------------------------	------

### **Board of Pharmacy**

201 KAR 002:030. License transfer. ....	1235
201 KAR 002:074. Pharmacy services in hospitals. ....	1237

### **Board of Licensure for Massage Therapy**

201 KAR 042:010. Goals for massage therapy sessions. ....	1241
201 KAR 042:020. Fees. ....	1242
201 KAR 042:030. Licensee's change of name, home address, or place of business .....	1244
201 KAR 042:035. Application process, exam, and curriculum requirements. ....	1246
201 KAR 042:040. Renewal and reinstatement .....	1248
201 KAR 042:050. Complaint procedure and disciplinary action. ....	1251
201 KAR 042:060. Code of ethics and standards of practice for massage therapists. ....	1253
201 KAR 042:070. Endorsement .....	1255
201 KAR 042:110. Continuing education requirements. ....	1258

### **Department of State Police**

502 KAR 010:010. Definitions. ....	1260
502 KAR 010:020. Department facilities; facility inspection; conflict of interest .....	1262
502 KAR 010:030. Instructor's license. ....	1263
502 KAR 010:035. Commercial driver's license skill testing. ....	1264
502 KAR 010:040. Training school facilities. ....	1266
502 KAR 010:050. Contracts and agreements. ....	1268
502 KAR 010:060. School advertising. ....	1269
502 KAR 010:070. Training vehicle, annual inspection ..	1270
502 KAR 010:080. License suspension, revocation, denial .....	1272
502 KAR 010:090. Procedure for denial, suspension, nonrenewal or revocation hearings. ..	1273
502 KAR 010:110. Third-party CDL skills test examiner standards. ....	1276
502 KAR 010:120. Hazardous materials endorsement requirements. ....	1278
502 KAR 011:010. Application for license to carry concealed deadly weapon. ....	1280
502 KAR 011:060. License denial and reconsideration process .....	1282
502 KAR 011:070. License revocation and suspension notice and reinstatement process. ....	1284
502 KAR 012:010. Sexual assault forensic-medical examination protocol .....	1286
502 KAR 013:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers .....	1289
502 KAR 013:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers .....	1291
502 KAR 013:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety	

	Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers. ....	1292
502 KAR 013:050.	Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers. ....	1294
502 KAR 013:060.	Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers. ....	1295
502 KAR 013:080.	Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers. ....	1297
502 KAR 014:010.	Provision and maintenance of automated fingerprint identification system equipment and programs in detention centers. Submission of fingerprints by jailers to the Kentucky State Police. ....	1298
502 KAR 015:010.	Traffic collision. ....	1300
502 KAR 015:020.	Abandoned vehicles. ....	1301
502 KAR 020:020.	Detection of deception examiners. ....	1303
502 KAR 030:010.	Criminal History Record Information System. ....	1306
502 KAR 030:020.	Arrest and disposition reporting procedure. ....	1308
502 KAR 030:030.	Audit of Criminal History Record Information System. ....	1309
502 KAR 030:050.	Security of centralized criminal history record information. ....	1310
502 KAR 030:060.	Dissemination of criminal history record information. ....	1312
502 KAR 030:070.	Inspection of criminal history record information by record subject. ....	1314
502 KAR 031:020.	Sex Offender Registration System. ....	1316
502 KAR 035:010.	Definitions. ....	1318
502 KAR 035:020.	Capabilities of the Missing Child Information Center computer system. ....	1320
502 KAR 035:030.	Quality of information reported to the Kentucky Missing Child Information Center. ....	1321
502 KAR 035:040.	Reporting of missing children by law enforcement agencies. ....	1322
502 KAR 035:050.	Statistical analysis of information related to missing children. ....	1324
502 KAR 040:010.	Law Information Network of Kentucky. ....	1325
502 KAR 045:005.	Definitions. ....	1326
502 KAR 045:015.	Qualifications. ....	1328
502 KAR 045:035.	Application and selection process. ....	1329
502 KAR 045:045.	Aptitude examination. ....	1331
502 KAR 045:075.	Register. ....	1332
502 KAR 045:085.	Medical examination. ....	1334
502 KAR 045:105.	Appointment. ....	1335
502 KAR 045:115.	Appeals. ....	1336
502 KAR 045:150.	Physical Fitness Test (PFT). ....	1338
502 KAR 047:010.	Methamphetamine. ....	1339
502 KAR 050:010.	Admissibility of evidence. ....	1340

## Department of Criminal Justice Training

503 KAR 003:020.	Law enforcement training course trainee requirements; misconduct; penalties; discipline procedures. ....	1342
503 KAR 003:030.	Training charges. ....	1346
503 KAR 003:050.	Telecommunications (Public Safety Dispatch) Academy graduation requirements; records. ....	1348
503 KAR 004:010.	Definitions for 503 KAR Chapter 4. ....	1350
503 KAR 004:040.	Required instructor training. ....	1352
503 KAR 004:050.	Required content and conduct of applicant training course. ....	1353
503 KAR 005:080.	Definitions. ....	1355
503 KAR 005:100.	Disbursement of salary supplement funds; audits. ....	1357

## Department of Highways

603 KAR 004:035.	Logo sign panels; placement along fully controlled and partially controlled access highways. ....	1359
------------------	---------------------------------------------------------------------------------------------------	------

## Kentucky State University

745 KAR 001:035.	Procurement procedures. ....	1362
------------------	------------------------------	------

## Department of Insurance

806 KAR 005:025.	Credit for reinsurance. ....	1363
------------------	------------------------------	------

## Kentucky Horse Racing Commission

810 KAR 005:030.	Claiming races. ....	1375
810 KAR 005:060.	Entries and starters. ....	1378
810 KAR 005:070.	Running of the race. ....	1383

## Department for Public Health

902 KAR 002:020.	Reportable disease surveillance. ....	1389
902 KAR 010:121.	Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments. ....	1396
902 KAR 020:081.	Operations and services; home health agencies. ....	1399

## Office of Inspector General

906 KAR 001:180.	Operation and services; personal services agencies. ....	1403
------------------	----------------------------------------------------------	------

## Department for Medicaid Services

907 KAR 001:005.	Nonduplication of payments. ....	1409
907 KAR 001:030.	Home health agency services. ....	1411
907 KAR 001:604.	Cost-sharing prohibited within the Medicaid program. ....	1414
907 KAR 010:830.	Acute care inpatient hospital reimbursement. ....	1417

## Department for Community Based Services

922 KAR 001:565.	Service array for a relative or fictive kin caregiver. ....	1426
------------------	-------------------------------------------------------------	------

## NEW ADMINISTRATIVE REGULATIONS

### Secretary of State

030 KAR 001:011.	Repeal of 30 KAR 1:010, 30 KAR 1:020, 30 KAR 1:040, and 30 KAR 1:050. ....	1431
030 KAR 006:011.	Kentucky address confidentiality program. ....	1432

### Department of Highways

603 KAR 003:100.	Noxious weeds and invasive plants to be eradicated from rights-of-way. ....	1434
------------------	-----------------------------------------------------------------------------	------

### Department of Alcoholic Beverage Control

804 KAR 004:212.	In-State Distilled Spirits Supplier License. ....	1435
804 KAR 004:221.	Alternating proprietorship 1435 agreements. ....	1437
804 KAR 004:251.	Special temporary licenses. ....	1439
804 KAR 004:480.	License surrender. ....	1441

### Department for Aging and Independent Living

910 KAR 004:010.	Alzheimer's and dementia services curriculum review and approval. ....	1442
------------------	------------------------------------------------------------------------	------

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2021 Edition of the  
**KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

**HOW TO CITE:** Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Register Year number and Page number. Example: 48<sup>th</sup> Year of the Kentucky Register, page 318 (short form: 48 Ky.R. 318).

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

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

**ADMINISTRATIVE REGISTER OF KENTUCKY**

(ISSN 0096-1493)

© 2021 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

**KENTUCKY LEGISLATIVE RESEARCH COMMISSION**

**Chairmen**

Senator Robert Stivers  
Senate President

Representative David W. Osborne  
Speaker of the House

**Senate and House Members**

Senator David Givens  
President Pro Tempore

Representative David Meade  
Speaker Pro Tempore

Senator Damon Thayer  
Majority Floor Leader

Representative Steven Rudy  
Majority Floor Leader

Senator Morgan McGarvey  
Minority Floor Leader

Representative Joni L. Jenkins  
Minority Floor Leader

Senator Julie Raque Adams  
Majority Caucus Chair

Representative Suzanne Miles  
Majority Caucus Chair

Senator Reginald Thomas  
Minority Caucus Chair

Representative Derrick Graham  
Minority Caucus Chair

Senator Mike Wilson  
Majority Whip

Representative Chad McCoy  
Majority Whip

Senator Dennis Parrett  
Minority Whip

Representative Angie Hatton  
Minority Whip

Jay D. Hartz, Director  
Joe Cox, Printing and Publications Officer

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

**Members**

Senator Stephen West, Co-Chair  
Representative David Hale, Co-Chair  
Senator Julie Raque Adams  
Senator Ralph Alvarado  
Senator David Yates  
Representative Randy Bridges  
Representative Deanna Frazier  
Representative Mary Lou Marzian

**Staff**

Sarah Amburgey  
Stacy Auterson  
Emily Caudill  
Ange Darnell  
Emily Harkenrider  
Karen Howard  
Carrie Nichols  
Christy Young



**VOLUME 48, NUMBER 4– OCTOBER 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, October 12, 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 002:180. One (1) year conditional certificate.
- 016 KAR 002:220. Emeritus Certificate. (Filed with Emergency)
- 016 KAR 002:230. Exception Certificate. (Filed with Emergency)
- 016 KAR 003:070. Endorsement for individual intellectual assessment.
- 016 KAR 004:050. Dating of certifications.
- 016 KAR 005:010. Standards for accreditation of educator preparation providers and approval of programs.
- 016 KAR 006:010. Assessment prerequisites for teacher certification.

**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) (Not Amended After Comments)
- 031 KAR 004:195. Consolidation of precincts and precinct election officers. (Filed with Emergency)
- 031 KAR 004:200E. Chain of custody for records during an election contest. (Filed with Ordinary) ("E" expires 03-20-2022) (Not Amended After Comments)
- 031 KAR 004:200. Chain of custody for records during an election contest. (Filed with Emergency)

**Voting**

- 031 KAR 005:025E. Ballot standards and election security. (Filed with Ordinary) ("E" expires 03-20-2022) (Not Amended After Comments)
- 031 KAR 005:025. Ballot standards and election security. (Filed with Emergency)

**DEPARTMENT OF LAW**

**Office of Civil and Environmental Law**

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

**FINANCE AND ADMINISTRATION CABINET**

**Department of Revenue**

**Ad Valorem Tax; State Assessment**

- 103 KAR 008:090. Classification of property; public service corporations.

**Income Tax; Corporations**

- 103 KAR 016:270. Apportionment; receipts factor.
- 103 KAR 016:320. Claim of right doctrine.
- 103 KAR 016:352. Corporation income taxes policies and circulars.

**Income Tax; Withholding**

- 103 KAR 018:020. Withholding return adjustment.
- 103 KAR 018:090. Payroll records.

**Sales and Use Tax; Miscellaneous Retailer Occupations**

- 103 KAR 027:050. Sourcing of retail sales by florists.
- 103 KAR 027:150. Repairers and reconditioners of tangible personal property.
- 103 KAR 027:230. Motor vehicle body shops.

**Sales and Use Tax; General Exemptions**

- 103 KAR 030:091. Sales to farmers.
- 103 KAR 030:120. Machinery for new and expanded industry.
- 103 KAR 030:140. Energy and energy-producing fields.
- 103 KAR 030:190. Interstate and foreign commerce.
- 103 KAR 030:250. Property used in the publication of newspapers.

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

### State-owned Buildings and Grounds

200 KAR 003:020. Use of state-owned facilities and grounds. (Emergency Impacted by 2021 Legislation)

### Kentucky Infrastructure Authority

200 KAR 017:110. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program. (Filed with Emergency) (Deferred from September)

## BOARDS AND COMMISSIONS

### Board of Pharmacy

201 KAR 002:411E. Ordering and administering vaccinations. ("E" expires 05-07-2022) (Emergency Only)

### Board of Embalmers and Funeral Directors

201 KAR 015:040. Examination. (Filed with Emergency)

201 KAR 015:050. Apprenticeship and supervision requirements. (Filed with Emergency)

201 KAR 015:110. Funeral establishment criteria. (Filed with Emergency)

201 KAR 015:125. Surface transportation permit. (Filed with Emergency)

### Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses.

201 KAR 020:215. Continuing competency requirements.

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

201 KAR 020:471. Repeal of 201 KAR 020:470. (Comments Received, SOC ext., due 10-15-2021)

201 KAR 020:472. Initial approval for dialysis technician training programs. (Comments Received, SOC ext., due 10-15-2021)

201 KAR 020:474. Continuing approval and periodic evaluation of dialysis technician training programs. (Comments Received, SOC ext., due 10-15-2021)

201 KAR 020:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement. (Comments Received, SOC ext., due 10-15-2021)

201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements. (Comments Received, SOC ext., due 10-15-2021)

### Board of Chiropractic Examiners

201 KAR 021:035. Seal. (Deferred from September)

201 KAR 021:054. Emergency orders. (Deferred from September)

201 KAR 021:070. Licensing examination requirements. (Deferred from September)

201 KAR 021:090. Pre-chiropractic education requirements. (Deferred from September)

201 KAR 021:100. Minimum standards for recordkeeping or itemized statements. (Deferred from September)

### Board of Physical Therapy

201 KAR 022:045. Continued competency requirements and procedures.

### Board of Licensure for Professional Art Therapists

201 KAR 034:070. Inactive status. (Not Amended After Comments) (Deferred from September)

### Board of Durable Medical Equipment

201 KAR 047:010. Home medical equipment and supplier licenses, requirements, and fees.

201 KAR 047:030. Compliant and disciplinary process.

## KENTUCKY LOTTERY CORPORATION

202 KAR 003:020. Procurement procedures.

## TOURISM, ARTS AND HERITAGE CABINET

### Department of Fish and Wildlife Resources

#### Game

301 KAR 002:015. Feeding of wildlife. (Deferred from September)

## JUSTICE AND PUBLIC SAFETY CABINET

### Office of Medical Examiner

500 KAR 012:010. Duplicate records request fee schedule.

### Department of Corrections

501 KAR 002:020. Definitions for 501 KAR Chapter 2.

501 KAR 002:050. Transfer requests.

501 KAR 002:060. Procedures for housing of Class C and D felons.

501 KAR 002:070. Work release.

## TRANSPORTATION CABINET

### Department of Highways

#### Billboards

603 KAR 010:011E. Repeal of 603 KAR 010:002, 010:010, and 010:021. ("E" expires 04-26-2022) (Emergency Only)

603 KAR 010:040E. Advertising devices. ("E" expires 04-26-2022) (Filed with Ordinary)

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET

#### Board of Education

##### General Administration

702 KAR 001:191E. District employee quarantine leave. ("E" expires 05-08-2022) (Filed with Ordinary)

##### School Terms, Attendance, and Operation

702 KAR 007:125E. Pupil attendance. ("E" expires 05-08-2022) (Filed with Ordinary)

702 KAR 007:150. Home or hospital instruction. (Comments Received, SOC ext., due 10-15-2021)

##### Office of Learning Support Services

704 KAR 007:121. Repeal of 704 KAR 007:120. (Deferred from September)

#### Department for Libraries and Archives

##### Archives

725 KAR 001:010. Records officers; duties.

725 KAR 001:020. Recording and reproducing public records.

725 KAR 001:025. Transfer of public records.

725 KAR 001:030. Scheduling public records for retention and disposal; procedures.

725 KAR 001:040. Collection and distribution of reports and publications.

725 KAR 001:050. Records management program.

725 KAR 001:061. Records retention schedules; authorized schedules.

##### Libraries

725 KAR 002:015. Public library facilities construction.

725 KAR 002:080. Interstate Library Compact.

### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEMS

#### Commission on Fire Protection Personnel Standards and Education

739 KAR 002:060. Certification and qualifications of fire and emergency services instructors.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET

#### Department Of Workforce Investment

##### Unemployment Insurance

787 KAR 001:010. Application for employer account; reports.

787 KAR 001:020. Change of status; discontinuance of business.

787 KAR 001:060. Separation for cause; reports.

787 KAR 001:080. Labor dispute or strike; notification.

787 KAR 001:090. Unemployed worker's reporting requirements.

787 KAR 001:110. Appeals.

787 KAR 001:140. Unemployment insurance fund payments.

787 KAR 001:150. Interstate claimants.

787 KAR 001:210. Employer contribution rates.

787 KAR 001:220. Required reports and due dates.

787 KAR 001:260. Voluntary election of coverage.

787 KAR 001:290. Contract construction rates.

787 KAR 001:300. Successorship.

787 KAR 001:310. Claimant profiling.

### LABOR CABINET

#### Department of Workplace Standards

##### Labor Standards; Wages and Hours

803 KAR 001:005. Employer-employee relationship. (Deferred from September)

803 KAR 001:025. Equal pay provisions, meaning and application. (Deferred from September)

803 KAR 001:060. Overtime pay requirements. (Deferred from September)

803 KAR 001:063. Trading time. (Deferred from September)

803 KAR 001:065. Hours worked. (Deferred from September)

803 KAR 001:066. Recordkeeping requirements. (Deferred from September)

803 KAR 001:070. Executive, administrative, supervisory or professional employees; salesmen. (Deferred from September)

803 KAR 001:075. Exclusions from minimum wage and overtime. (Deferred from September)

803 KAR 001:080. Board, lodging, gratuities and other allowances. (Deferred from September)

803 KAR 001:090. Workers with disabilities and work activity centers' employee's wages. (Comments Received, SOC ext., due 10-15-2021)

##### Occupational Safety and Health

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

803 KAR 002:330E. Occupational exposure to COVID-19. ("E" expires 04-16-2022) (Emergency Only)

##### Department of Workers' Claims

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**

**Unauthorized Insurers' Prohibitions, Process and Advertising**

806 KAR 011:020. Multiple employer welfare arrangements.

**Health Insurance Contracts**

806 KAR 017:240. Data reporting requirements. (Deferred from September)

806 KAR 017:270. Telehealth claim forms and records. (Deferred from September)

806 KAR 017:280. Registration, utilization review, and internal appeal. (Deferred from September)

806 KAR 017:350. Life insurance and managed care.

806 KAR 017:470. Data reporting to an employer-organized association health benefit plan. (Deferred from September)

**Motor Vehicle Repairs (No-fault)**

806 KAR 039:070. Proof of motor vehicle insurance.

**ENERGY AND ENVIRONMENT CABINET**

**Public Service Commission**

**Utilities**

807 KAR 005:015. Access and attachments to utility poles and facilities. (Amended After Comments)

**PUBLIC PROTECTION CABINET**

**Kentucky Horse Racing Commission**

**Flat and Steeplechase Racing**

810 KAR 004:040. Running of the race.

**Department of Housing, Buildings and Construction**

**Elevator Safety**

815 KAR 004:010. Annual inspection of elevators, chairlifts, fixed guideway systems, and platform lifts.

815 KAR 004:025. Permit and inspection fees for new and altered elevators, chairlifts, fixed guideway systems, and platform lifts.

815 KAR 004:027. Reporting incidents involving personal injury or death.

**Kentucky Building Code**

815 KAR 007:080. Licensing of fire protection sprinkler contractors.

815 KAR 007:110. Criteria for expanded local jurisdiction.

**Standards of Safety**

815 KAR 010:060. Kentucky standards of safety.

815 KAR 010:070. Consumer fireworks retailer registration and fees.

**Plumbing**

815 KAR 020:050. Installation permits.

815 KAR 020:195. Medical gas piping installations.

**Hazardous Materials**

815 KAR 030:010. LP gas license; financial responsibility required.

815 KAR 030:060. Certification of underground petroleum storage tank contractors.

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Telehealth Services**

**Telehealth**

900 KAR 012:005E. Telehealth terminology and requirements. ("E" expires 04-24-2022) (Filed with Ordinary)

**Sanitation**

902 KAR 010:120. Kentucky public swimming and bathing facilities.

902 KAR 010:190. Splash pads operated by local governments.

**Lead Abatement**

902 KAR 048:010. Definitions for 902 KAR Chapter 48.

902 KAR 048:020. Training and certification requirements for persons who perform lead-hazard detection or abatement.

902 KAR 048:030. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

902 KAR 048:040. Lead-hazard abatement permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

**Department for Medicaid Services**

**Outpatient Pharmacy Program**

907 KAR 023:020E. Reimbursement for outpatient drugs. (Filed with Ordinary) (Emergency Amended After Comments)

907 KAR 023:020. Reimbursement for outpatient drugs. (Filed with Emergency)

**Department for Community Based Services**

**Family Support**

921 KAR 001:400. Establishment, review, and modification of child support and medical support orders. (Filed with Emergency)

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

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

921 KAR 002:015. Supplemental programs for persons who are aged, blind, or have a disability. (Filed with Emergency)

### **Supplemental Nutrition Assistance Program**

921 KAR 003:060. Administrative disqualification hearings and penalties. (Amended After Comments)

### **Energy Assistance Program/Weatherization**

921 KAR 004:116. Low Income Home Energy Assistance Program or "LIHEAP". (Filed with Emergency)

### **Child Welfare**

922 KAR 001:300. Standards for child-caring facilities. (Amended After Comments)

922 KAR 001:380. Standards for emergency shelter child-caring facilities. (Not Amended After Comments)

922 KAR 001:390. Standards for residential child-caring facilities. (Not Amended After Comments)

### **Division of Child Care**

922 KAR 002:160E. Child Care Assistance Program. (Filed with Ordinary) (Emergency Amended After Comments)

922 KAR 002:160. Child Care Assistance Program. (Filed with Emergency)

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

### **BOARDS AND COMMISSIONS**

#### **Board of Licensure for Long-Term Care Administrators**

201 KAR 006:020. Other requirements for licensure.

#### **Board of Dentistry**

201 KAR 008:520. Fees and fines. (Comments Received, SOC ext., due 10-15-2021)

#### **Board of Embalmers and Funeral Directors**

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

201 KAR 015:030. Fees. (Filed with Emergency) (Deferred from October)

### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

#### **Board of Education**

##### **General Administration**

702 KAR 001:195E. Face coverings in school facilities. ("E" expires 05-09-2022) (Emergency only) (Impacted by 2021 Legislation)

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

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

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

~~902 KAR 002:213E. Childcare standards for covering the face in response to declared national or state public health emergency. ("E" expires 05-09-2022) (Emergency Only) (Impacted by 2021 Legislation)~~

---

*\*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 30 KAR 006:011E

This emergency administrative regulation is being promulgated to meet an imminent threat to public health, safety, or welfare. This administrative regulation will provide the procedure for those persons identified in the Address Confidentiality Program apply and receive the benefit enacted by legislation. This is being filed as an emergency administrative regulation to ensure the procedures are in effect during the Special Elections on November 2, 2021. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
MICHAEL G. ADAMS, Secretary of State

## SECRETARY OF STATE (New Emergency Administrative Regulation)

### 30 KAR 006:011E. Kentucky address confidentiality program.

RELATES TO: KRS 14.300, 14.302, 14.304, 14.306, 13.310  
STATUTORY AUTHORITY: KRS 14.304(2), (4), 14.306(3), (5), 14.318(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318(2) authorizes the Secretary of State to promulgate administrative regulations implementing KRS 14.300 to 14.310, 14.314, and 14.316. This administrative regulation implements KRS 14.300, 14.302, 14.304, 14.306, and 14.310.

Section 1. Definitions. (1) "Address" is defined by KRS 14.300(1).

(2) "Applicant" is defined by KRS 14.300(2).

(3) "Filer" means a person who is:

- (a) A:
  1. Parent or guardian acting on behalf of a minor;
  2. Guardian acting on behalf of a person who is declared incompetent; or
  3. Designee of an applicant or a parent or guardian of a minor or a guardian of a person declared incompetent who cannot apply independently; and

(b) Applying to the Secretary of State to have an address designated by the Secretary of State serve for voting purposes as the address of the minor, incompetent person, or applicant.

(4) "Program Participant" is defined by KRS 14.300(5).

Section 2. Requirements for Application for Certification to Participate in the Address Confidentiality Program. (1) Application for certification to participate in the address confidentiality program shall be made to the Secretary of State by submitting a completed Application for Certification to Participate in Address Confidentiality Program.

(2) The Application for Certification to Participate in Address Confidentiality shall be:

- (a) Notarized; and
- (b) In English.

Section 3. Certification in the Address Confidentiality Program.

(1) The Secretary of State shall approve an Application for Certification to Participate in Address Confidentiality Program and certify the applicant as a program participant if the applicant and the Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.

(2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in Address Confidentiality Program was denied or the applicant was certified as a program participant.

(a) If an Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.

(b) If an applicant is certified as a program participant, the Secretary of State shall:

1. Assign to the program participant a participant number and designated address to be used for voting purposes; and
2. Issue to the program participant an Address Confidentiality Program Participant Card reflecting the participant number, designated address to be used for voting purposes, and date on which certification expires.

(3) If an applicant is certified as a program participant, participation in the address confidentiality program shall be effective as of the date of the notification of certification.

Section 4. Change of Program Participant's Name or Address.

(1) A program participant or a filer shall notify the Secretary of State of a change in the program participant's name or address by submitting to the Office of the Secretary of State a completed Address Confidentiality Program Participant Name or Address Change form.

(2) The Address Confidentiality Program Participant Name or Address Change form shall:

- (a) Be in writing;
- (b) Be in English;
- (c) Be signed by the program participant or a filer;
- (d) Include both the program participant's new information and information as certified; and
- (e) Be considered filed on the day the Address Confidentiality Program Name or Address Change form is date-stamped received by the Office of the Secretary of State.

Section 5. Withdrawal from Participation in the Address Confidentiality Program. (1) A program participant or filer wishing to withdraw from participation in the address confidentiality program shall submit to the Secretary of State a Withdrawal from Participation in Address Confidentiality Program form.

(2) The Withdrawal from Participation in Address Confidentiality Program form shall be:

- (a) In writing;
- (b) In English;
- (c) Signed by the program participant or a filer; and
- (d) Notarized or signed by a representative of any office designated pursuant to KRS 14.310 as a referring agency who assisted in the completion of the Withdrawal from Participation in Address Confidentiality Program form.

Section 6. Confirmation by the Secretary of State of a Withdrawal from Participation in the Address Confidentiality Program. (1) Upon receiving a Withdrawal from Participation in Address Confidentiality Program form, the Secretary of State shall mail to the program participant or filer a written confirmation of withdrawal.

(2) The written confirmation shall notify the program participant or filer:

(a) Of the date on which a Withdrawal from Participation in Address Confidentiality Program form was date stamped received by the Office of the Secretary of State; and

(b) That program participation shall be terminated ten (10) days following the date of the written confirmation of withdrawal, unless the program participant or a filer notifies the Secretary of State on or before that date that the withdrawal request was not legitimate because it was not voluntarily submitted by the program

participant or a filer.

Section 7. Application for Renewal of Certification in the Address Confidentiality Program. (1) A program participant or filer wishing to renew certification in the address confidentiality program shall submit to the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires an Application for Certification to Participate in Address Confidentiality Program pursuant to Section 2 of this administrative regulation.

(2) The Application for Certification to Participate in Address Confidentiality Program shall be considered timely submitted for purposes of renewal if it is date-stamped received by the Office of the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires.

Section 8. Review by the Secretary of State of a Renewal Application for Certification to Participate in Address Confidentiality Program. (1) The Secretary of State shall approve a renewal Application for Certification to Participate in Address Confidentiality Program if the applicant and Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.

(2) The Secretary of State shall notify the program participant or filer whether the renewal Application for Certification to Participate in Address Confidentiality Program was denied or the program participant's certification was renewed within five (5) business days after it is date-stamped received by the Secretary of State.

(a) If a renewal Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the program participant or filer of the reason for denial.

(b) If a program participant's certification is renewed, the Secretary of State shall issue to the program participant a new Address Confidentiality Program Participant Card pursuant to Section 3(2)(b)2 of this administrative regulation, and the renewal shall be effective as of the date of the notification of renewal.

Section 9. Appeal from Cancellation of Certification in Address Confidentiality Program. (1) A program participant or filer wishing to appeal from a cancellation of certification in the address confidentiality program shall submit to the Secretary of State an Appeal from Cancellation of Certification in Address Confidentiality Program form.

(2) The Appeal from Cancellation of Certification in Address Confidentiality Program shall be considered timely submitted if it is date-stamped received by the Secretary of State within thirty (30) days of the date of the notice of certification cancellation.

(3) The Appeal from Cancellation of Certification in Address Confidentiality Program shall:

- (a) Be in writing;
- (b) Be in English;
- (c) Be signed by the program participant or filer; and
- (d) Include information as to why certification in the address confidentiality program should not be cancelled.

(4) If an Appeal from Cancellation of Certification in Address Confidentiality Program is not timely submitted, cancellation of certification in the address confidentiality program shall be effective upon the expiration of thirty (30) days after the date of the notice of certification cancellation.

Section 10. Review by the Assistant Secretary of State of an Appeal from Cancellation of Certification in Address Confidentiality Program. (1) The Assistant Secretary of State shall approve or deny an Appeal from Cancellation of Certification in Address Confidentiality Program within five (5) business days after it is date-stamped received by the Office of the Secretary of State.

(a) The Assistant Secretary of State shall approve an Appeal from Cancellation of Certification in Address Confidentiality Program if he or she determines that grounds for cancellation pursuant to KRS 14.306 do not exist.

(b) The Assistant Secretary of State shall deny an Appeal from

Cancellation of Certification in Address Confidentiality Program if he or she determines that grounds for cancellation pursuant to KRS 14.306 exist.

(2) The Assistant Secretary of State shall provide to the program participant or filer written notice of the decision regarding an Appeal from Cancellation of Certification in Address Confidentiality Program.

(3) If an Appeal from Cancellation of Certification in Address Confidentiality Program is timely submitted and denied pursuant to this section, cancellation of certification in the address confidentiality program shall be effective on the date on which the notice of denial is mailed.

(4) The decision of the Assistant Secretary of State shall conclude the appeal procedures pursuant to KRS Chapter 14 and this administrative regulation.

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

(a) "Application for Certification to Participate in Address Confidentiality Program", June 2014;

(b) "Address Confidentiality Program Participant Card", March 2014;

(c) "Address Confidentiality Program Participant Name or Address Change", June 2014;

(d) "Withdrawal from Participation in Address Confidentiality Program", June 2014; and

(e) "Appeal from Cancellation of Certification in Address Confidentiality Program", March 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at <http://www.sos.ky.gov>.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24, 2021, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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: Jennifer Scutchfield, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687. Email: [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Address Confidentiality Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

Address Confidentiality 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: 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: This regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record.

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

(a) List 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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Secretary of State will incur costs with mailing and printing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal.

(b) On a continuing basis: The cost is minimal.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the 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 will impact the Office of the Secretary of State and the State Board of Elections.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 14.300, 14.302, 14.304, 14.306 and 14.310.

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

(a) How much 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.

(b) How 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 administration cost is minimal.

(d) How much will it cost to administer this program for subsequent years? The administration cost will be minimal.

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 101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2022 plan year handbook for the self-insured plan offered through the Public Employee Health Insurance Program, commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a)3. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. The 2022 plan year handbook, or Benefits Selection Guide, contains the required and necessary information for public employees to make health insurance coverage decisions during open enrollment in October 2021. This administrative regulation incorporates by reference the 2022 Benefits Selection Guide that will be distributed by the Personnel Cabinet's Department of Employee Insurance to public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2021 plan year. The existing language in the Benefits Selection Guide for the 2021 plan year should remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2022 replaces this emergency administrative regulation.

ANDY BESHEAR, Governor

GERINA D. WHETHERS, Secretary

### PERSONNEL CABINET Office of the Secretary (Emergency Amendment)

**101 KAR 2:210E. 2021 and 2022 Plan Year Handbooks [Handbook] for the Public Employee Health Insurance Program.**

**EFFECTIVE:** September 15, 2021

**RELATES TO:** KRS 18A.030, 18A.225, 18A.2254

**STATUTORY AUTHORITY:** KRS 18A.030(2)(b), 18A.2254(1)(a)

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan

and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2021 and 2022 Plan Years [Year] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2021 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2022 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2022 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2022.

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

(a) "2021 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2021 edition; and

(b) "2022 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2022 edition[is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's website on the Docs, Forms and Legal Notices page at: <https://personnel.ky.gov/Pages/healthinsurance.aspx>.

GERINA D. WHETHERS, Secretary, Personnel Cabinet

APPROVED BY AGENCY: September 3, 2021

FILED WITH LRC: September 15, 2021 at 8:23 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2021 at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on 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: Chris Chamness, Staff Attorney, Office of Legal Services, Personnel Cabinet, 501 High Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6815, fax (502) 564-7603, email [Chris.Chamness@ky.gov](mailto:Chris.Chamness@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 101 KAR 2:210 E  
Contact person: Chris Chamness  
Email: [Chris.Chamness@ky.gov](mailto:Chris.Chamness@ky.gov)  
Phone: (502) 564-6815

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2022 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2022.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2022 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute that establishes the self-insured plan and mandates the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2022 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(2) If 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 an amendment. The existing administrative regulation incorporates by reference the 2021 plan year handbook, which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2021. The amendment adds and incorporates by reference the 2022 plan year handbook, which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2022.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2022. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2022 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the

2022 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 177,897 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 292,732 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2022 plan year handbook. The 2022 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2022 plan year.

(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 provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2022. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2022 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2022, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2022, employee contributions to health coverage premiums increased 3% across all plans combined, as compared to 2021 premiums. Employer premium contribution amounts increased 3% across all plans combined, as compared to 2021 premiums.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance 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: This is an amendment. This administrative regulation will not require an increase in funding or fees.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, school boards 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, school boards or school districts) for the first year? The administrative regulation 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? The administrative regulation will not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? The 2022 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2021 open enrollment season and throughout the 2022 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could continue to recognize cost savings 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:



# 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.

## KENTUCKY INFRASTRUCTURE AUTHORITY (As Amended at ARRS, September 14, 2021)

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

Emergency As Amended version effective: September 14, 2021  
Prior version:

New Emergency - [48 Ky.R. 5](#)

RELATES TO: KRS 45.031, 151.601, 151.605, 224A.011, 224A.020, 224A.035, 224A.040, 224A.050 -224A.314

STATUTORY AUTHORITY: KRS 224A.040, 224A.070(1), 224A.113, 224A.300

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

#### Section 1. Definitions.

(1) "Applicant" means a governmental agency that has submitted an application to the Authority for a grant from Authority funds.

(2) "Application" means the project information contained within the Water Resource Information System Project Profile and designated by an applicant as applying for a grant from the Drinking Water and Wastewater Grant Program funds.

(3) "Authority" means the Kentucky Infrastructure Authority, which is created by KRS Chapter 224A.

(4) "Conditional commitment letter" means a letter delivered to the applicant stating the Authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.

(6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system established in KRS 224A.306, which is used by a water or wastewater system seeking or using funds of the Authority if an alternative accounting system has not been approved by the Authority.

(7) "Project" means an infrastructure project related to drinking water or wastewater.

(8) "Unserved" means a customer who does not have access to publicly available potable drinking water or a properly functioning wastewater system.

#### Section 2. Eligible Projects.

(1) Funds available to the Authority shall be used to fund Projects.

(2) Only water or wastewater projects addressing one (1) or more of the conditions established in paragraphs (a) through (h) of this subsection shall be eligible for funding:

(a) The proposed project shall provide drinking water services to unserved rural customers.

(b) The proposed project shall address provisions in a federal consent decree related to water or wastewater.

(c) The proposed project shall address the provisions of KRS 224A.300 - 224A.314.

(d) The proposed project shall address an emergency situation.

(e) The proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community.

(f) The proposed project shall promote social, economic, or environmental benefits; but with respect to industrial sites funds may only be awarded if the site has committed occupants.

(g) Funds are needed to complete a funding package previously awarded by the Authority.

(h) Funds are needed to cover cost overrun for a project previously awarded by the Authority.

(3) Project applications meeting the guidelines established in subsection (2) shall be funded based on the Project's:

(a) Readiness to proceed;

**(b) Social, economic, and environmental benefits;** and

**(c) [(b)]** Receipt of a Project approval from a water management planning council as created in KRS 151.601.

#### Section 3. Applications.

(1) Each applicant shall submit an application to the Authority by requesting that the water service coordinator, as established in KRS 151.605, designate the project for funding. If a water service coordinator is not available, the request may be made directly to the Authority in writing and mailed.

(2) The Authority shall request additional information about the project or the applicant if needed to comply with local, state, or federal laws.

(3) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Drinking Water and Wastewater Grant Program.

Section 4. Project Priority. Eligible projects shall be funded subject to:

**(1) A project's readiness to proceed;**

**(2) A project's social, economic, and environmental benefits;**

**(3) [(c)]** The water management council's approval; **[(c)]** and

**(4) The availability of funds.**

#### Section 5. Additional Conditions to Project Funding.

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

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

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

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

#### Section 6. Terms of Financial Assistance.

(1) An application for funding shall be:

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

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

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

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

- (a) Accounting standards or financial reporting conditions;
- (b) Rate covenants;
- (c) Other federal or state legal requirements relating to the project or the applicant;
- (d) Engineering or technical requirements; and
- (e) Receipt of additional funding commitments from other sources.

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

- (a) Execution of an assistance agreement; and
- (b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.

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

- (a) Requested by an applicant; and
- (b) The staff of the Authority finds that:
  1. The additional requested amount is needed for the project; and
  2. Adequate funds are available.

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

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

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(Emergency Amendment Amended After Comments)**

**907 KAR 23:020E. Reimbursement for outpatient drugs.**

**Emergency AAC version effective:** September 15, 2021

**Prior version:**

**Emergency Amendment - [48 Ky.R. 283](#)**

RELATES TO: KRS [205.5510 to 205.5520](#), 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 42 C.F.R. 440.120, 447.500 - 447.520, 42 U.S.C. 256b, 1396a - 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish the professional dispensing fee for covered drugs. This administrative regulation establishes the Medicaid Program reimbursement requirements, including the professional dispensing fee, for covered outpatient drugs dispensed to all enrolled Medicaid recipients [~~who are not enrolled with a managed care organization~~].

Section 1. Reimbursement. Reimbursement to a pharmacy or medical provider participating in the Medicaid Program for a covered outpatient drug provided to an eligible recipient shall be

determined in accordance with the requirements established in this section. (1) A rebate agreement in accordance with 42 U.S.C. 1396r-8(a) shall be signed by the drug manufacturer, or the drug shall be provided based on an exemption from the rebate requirement established by 907 KAR 23:010, Section 5(3).

(2) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(3) Reimbursement shall not be made for more than one (1) prescription to the same recipient during the same time period for a drug with the same:

- (a) National Drug Code (NDC); or
  - (b) Drug or active ingredient name, strength, and dosage form.
- (4) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(a) In accordance with 42 C.F.R. 447.45, a claim shall be submitted to the department within twelve (12) months of the date of service.

(b) The department shall not reimburse for a claim submitted to the department after twelve (12) months from the date of service unless the claim is for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid.

(c) The department shall not reimburse a claim for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid after 365 days have lapsed from the date that the department issued the notice of retroactive eligibility.

- (5) Reimbursement shall be denied if:
  - (a) The recipient is ineligible on the date of service;
  - (b) The drug is excluded from coverage in accordance with 907 KAR 23:010; or

(c) Prior authorization is required by the department and the request for prior authorization has not been approved prior to dispensing the drug, except in an emergency supply situation.

(6) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to a third party payer if the provider has knowledge that the third party payer may be liable for payment.

(a) If a provider is aware that a Medicaid recipient has additional insurance or if a recipient indicates in any manner that the recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient may have other insurance, but the other insurance is not identified on the medical assistance identification card or by the recipient, shall notify the department's fiscal agent of the potential third-party liability.

(7) There shall be no copayment or cost-sharing for an outpatient drug[Drug copayment requirements and provisions shall be as established in 907 KAR 1:604].

(8) If a payment is made for a drug that was not administered or dispensed in accordance with 907 KAR 23:010 or the payment was not appropriately reimbursed as required by this administrative regulation, the provider shall refund the amount of the payment to the department or the department may, at its discretion, recoup the amount of the payment.

(9) Adherence to the requirements established in this section shall be monitored through an on-site audit, post payment review of the claim, a computer audit, or an edit of the claim.

Section 2. Reimbursement Methodology. (1) Drug cost shall be determined in the pharmacy program using drug pricing and coding information obtained from nationally recognized comprehensive drug data files with pricing based on the actual package size utilized.

(2) Lowest of Logic. Except as provided in Section 4 of this administrative regulation, covered outpatient drug cost shall be reimbursed at the lowest of the:

- (a) National Average Drug Acquisition Cost or NADAC, plus the professional dispensing fee;
- (b) Wholesale acquisition cost or WAC, plus the professional dispensing fee;
- (c) Federal upper limit or FUL, plus the professional dispensing fee;
- (d) Maximum allowable cost or MAC, plus the professional dispensing fee; or
- (e) The provider's usual and customary charge to the public, as

identified by the claim charge], ~~plus the professional dispensing fee~~][price].

(3) A clotting factor shall be reimbursed via the lowest of logic established in subsection (2) of this section and shall include the Average Sales Price plus six (6) percent, plus the professional dispensing fee.

(4) Pursuant to KRS 205.5510 to 205.5520:

(a) Reimbursement methodologies for the managed care population shall be subject to the terms of the awarded contract to administer the single pharmacy benefits manager or PBM for the managed care population.

(b) The single PBM for the managed care population shall not discriminate against 340B contract pharmacies via any reimbursement methodologies utilized.

Section 3. Professional Dispensing Fee. (1) Effective April 1, 2017, the professional dispensing fee for a covered outpatient drug prescribed by an authorized prescriber and dispensed by a participating pharmacy provider in accordance with 907 KAR 23:010, and pursuant to a valid prescription shall be \$10.64 per pharmacy provider per recipient per drug per month.

(2) The professional dispensing fee for a compounded drug shall be \$10.64 per pharmacy provider per recipient per drug reimbursed up to three (3) times every thirteen (13) days.

Section 4. Reimbursement Limitations. (1) Emergency supply. Dispensing of an emergency supply of a drug shall be made outside of the prescriber's normal business hours and as permitted in accordance with 907 KAR 23:010.

(2) Partial fill. If the dispensing of a drug results in partial filling of the quantity prescribed, including an emergency supply, reimbursement for the drug ingredient cost for the actual quantity dispensed in the partial fill and the completion fill for the remainder of the prescribed quantity shall:

(a) Utilize the lowest of logic established by Section 2 of this administrative regulation; and

(b) Include payment of only one (1) professional dispensing fee, which shall be paid at the time of the completion fill.

(3) Maintenance drugs. The department shall not reimburse for a refill of a maintenance drug prior to the end of the dispensing period established by 907 KAR 23:010 unless the department determines that it is in the best interest of the recipient.

(4) For a nursing facility resident meeting Medicaid nursing facility level of care criteria, and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug paid for by Medicaid shall be returned to the originating pharmacy and the department shall be credited for the drug ingredient cost.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) 340B Pharmacy Transactions.

(a) A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department no more than the actual 340B acquisition cost, plus the professional dispensing fee.

(b) For a 340B purchased drug dispensed by a pharmacy, the lowest of logic shall include the 340B ceiling price.

(c) A drug dispensed by a 340B contract pharmacy shall not be eligible as a 340B transaction and shall be reimbursed in accordance with the lowest of logic as required by Section 2 of this administrative regulation plus the professional dispensing fee.

(d) Reimbursement to a 340B in-house or contract pharmacy dispensing a 340B eligible prescription for the managed care population shall not include the 340B ceiling price in the lowest of logic.

(7) Physician administered drugs (PAD).

(a) Federal rebate required. Only covered PAD products that are federally rebateable pursuant to a manufacturer rebate agreement shall be reimbursed.

(b) Non-340B purchased PAD. Reimbursement for drug cost for a drug administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, not purchased through the 340B Program, and submitted for reimbursement as a medical benefit shall be reimbursed only for

the drug cost by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. A professional dispensing fee shall not be paid for PAD.

(c) 340B purchased PAD. For a drug purchased through the 340B Program and administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, and submitted for reimbursement as a medical benefit, the lowest of logic required by Section 2 of this administrative regulation shall include the 340B ceiling price. The covered entity shall bill no more than the actual 340B acquisition cost. A professional dispensing fee shall not be paid for PAD.[]

~~(8) Non-340B hemophilia products. Clotting factors acquired outside of the 340B Program shall be reimbursed by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. The professional dispensing fee established by Section 3 of this administrative regulation shall also be paid.]~~

Section 5. The maximum allowable cost, or MAC, shall be determined by taking into account each drug's cost, rebate status (non-rebateable or rebateable) in accordance with 42 U.S.C. 1396r-8(a), marketplace status (obsolete, terminated, or regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors considered shall include clinical indications of drug substitution, utilization, and availability in the marketplace. (1) Drug pricing resources used to compare estimated acquisition costs for multiple-source drugs shall include comprehensive data files maintained by a vendor under contract to the department, such as:

(a) NADAC as published by CMS;

(b) WAC, manufacturer's price list, or other nationally recognized sources;

(c) The Average Manufacturers Price for 5i Drugs as reported by CMS;

(d) ASP as published by CMS;

(e) Nationally recognized drug file vendors approved for use at a federal level and that have been approved by the department;

(f) Pharmacy providers; or

(g) Wholesalers.

(2) The department shall maintain a current listing of drugs and their corresponding MAC prices accessible through the department's pharmacy Web page.

(3) The process for a pharmacy provider to appeal a MAC price for a drug shall be as established in this subsection.

(a) The pharmacy provider shall email or fax a completed Kentucky Medicaid MAC Price Research Request Form to Kentucky's authorized agent in accordance with the instructions on the form.

(b) An appeal of a MAC price for a drug shall be investigated and resolved within three (3) business days.

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the MAC price.

(d) The MAC price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the claim in question, if:

1. It is determined that a manufacturer does not exist in the price range referenced in paragraph (c) of this subsection; or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider.

(e) If an adjusted MAC price becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

Section 6. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for

the reimbursement.

Section 7. Incorporation by Reference. (1) "Kentucky Medicaid MAC Price Research Request Form", 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 14, 2021

FILED WITH LRC: September 15, 2021 at 10:17 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding all outpatient drugs dispensed or administered to Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment implements 2020's SB 50 and the department's awarded request for proposals as required by that legislation. The administrative regulation is amended to clarify when the professional dispensing fee can be assessed, clarify clotting factor reimbursement, and establish professional dispensing fees for compounded drugs. Finally, the regulation is amended to remove cost-sharing and comply with Senate Bill 55's removal of all co-pays. The Emergency Amended After Comments version of the administrative regulation is amended to clarify that a professional dispensing fee is not needed when a usual and customary charge is paid for an outpatient pharmacy prescription. In addition, the regulation is amended to clarify that both in-house and contract 340B pharmacy reimbursement do not include the 340B ceiling price in the lowest of logic methodology. Finally, clotting factor reimbursement is now addressed in Section 2 of the administrative regulation, as a result, Section 4(8) became redundant and is being deleted.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to implement 2020's SB 50 and the department's awarded request for proposals as required by that legislation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment allows for the implementation of a single-state PBM as required by KRS 205.5512-.5520.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for 2020's SB 50 to be fully implemented.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All participating pharmacy providers dispensing covered drugs (approximately 1,500) and all participating medical providers administering covered drugs (approximately 46,000) will be affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to be reimbursed by the DMS, participating providers will have to submit pharmacy or medical claims for covered outpatient drugs in accordance with this administrative regulation and applicable billing rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicable providers will benefit by receiving a true drug ingredient cost based reimbursement along with a professional dispensing fee from DMS for dispensing covered outpatient drugs to all Medicaid recipients.

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

(a) Initially: DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(b) On a continuing basis: DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

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

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

fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

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

Revenues (+/-): \_\_\_\_\_  
Expenditures (+/-): \_\_\_\_\_  
Other Explanation: \_\_\_\_\_

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 447.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients shall not change compliance standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Emergency Amended After Comments)

#### 922 KAR 2:160E. Child Care Assistance Program.

Emergency AAC version effective: September 14, 2021

Prior versions:

Emergency Amendment - [48 Ky.R. 299](#)

RELATES TO: KRS 194A.060, [199.892,] 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, [199.8994,] 214.036, 314.011(5), 337.275, 600.020, 605.120(5), 620.020(10), [2016 Ky. Acts ch. 149, Part 1, G.9(7),] 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463, 45 C.F.R. Part 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C.

1261, 1401, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary [Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may affect eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status;
- (l) Beginning or ending receipt of unearned income; or
- (m) Enrollment in a certified trade school or an accredited college or university.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by 922 KAR 1:330, Section 1(5).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

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

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as



- a:
- (a) Physician;
  - (b) Physician assistant;
  - (c) Advanced practice registered nurse;
  - (d) Qualified mental health professional as defined by KRS 600.020(52); or
  - (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.
- (16) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2.
- (17) "In loco parentis" means a person acting in place of a parent, including:
- (a) A legal guardian;
  - (b) An individual related by blood, marriage, or adoption to the child; or
  - (c) A nonrelative pursuing legal custody of the child within one (1) year of application.
- (18) "Infant" means a child who is less than one (1) year old.
- (19) "Kentucky Transitional Assistance Program" or "K[-]TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.
- (20) "Parent" is defined by 45 C.F.R. 98.2.
- (21) "Part day" means child care that is provided for less than five (5) hours per day.
- (22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.
- (23) "Preventive services" is defined by KRS 620.020(12)[620.020(40)].
- (24) "Provider" means the entity providing child care services, such as:
- (a) A member of a limited liability corporation (LLC);
  - (b) The head of an organization;
  - (c) An owner of a corporation;
  - (d) A member of a partnership;
  - (e) An owner of a business;
  - (f) An individual provider; or
  - (g) A stockholder of a stock-holding company.
- (25) "Qualified alien" or "qualified immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).
- (26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.
- (27) "Related" means having one (1) of the following relationships:
- (a) Child;
  - (b) Stepchild;
  - (c) Grandchild;
  - (d) Great-grandchild;
  - (e) Niece;
  - (f) Nephew;
  - (g) Sibling;
  - (h) Child in legal custody; or
  - (i) Child living in loco parentis.
- (28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:
- (a) The natural parent, adoptive parent, or stepparent; or
  - (b) The spouse of an individual caring for a child in loco parentis.
- (29) "School-age child" means a child who has reached the sixth birthday.
- (30) "State median income" or "SMI" means the estimated median income of households in the state.
- (31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:
- (a) Defined by 7 U.S.C. 2012; and
  - (b) Governed by 921 KAR Chapter 3.
- (32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.
- (33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An

individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or

b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

a. Has a physical or mental disability; and

b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures established [described] in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, 7, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

a. Income;

b. Technical eligibility; and

c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have a minimum of [an ~~extended period to verify information not to exceed~~] three (3) months to verify information in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and

2. U.S. citizen, qualified immigrant, or qualified alien;

(b) Is under age:

1. Thirteen (13) at the time of application or recertification; or

2. Nineteen (19) at the time of application or recertification and

is:

a. Physically or mentally incapable of caring for themselves [himself], as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

a. Licensed child-care center;

b. Certified child-care home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K[-]TAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) A relative or fictive kin caregiver pursuant to 922 KAR 1:565 [the conditions of a program established by KRS 605.120(5);] who meets:

1. All requirements in this section; and

2. Income eligibility standards established in Section 8 of this administrative regulation;

(e) A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break up to [not to exceed] three (3) months; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for a minimum of [up to] three (3) months or in accordance with Section 9 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who is homeless;

(b) An applicant who is [is]

1. Is engaged in job search; [and

2. Submits a completed DCC-90P, CCAP Job Search Documentation, within the three (3) months of job search verifying a minimum of ten (10) contacts with prospective employers;]

(c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 8(6)(d) of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.

Section 5. Requirements for Protection and Permanency Eligibility Determination.

(1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 11 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

Section 6. State-Funded Workforce Training Child Care Eligibility Determination. A child shall be eligible for CCAP if the child:

(1) Resides with an applicant who is participating in the:

(a) Kentucky Works Program established [described] in 921 KAR 2:370; or

(b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2) Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination. (1) To [Effective June 28, 2019, to] the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a.(i) A certified trade school or an accredited college or university;

(ii) A full-time program that leads to a general educational development (GED); or

(iii) A program that leads to a degree or certification; and

- b. Accordance with subsection (2) of this section;
- 2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;
- 3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;
- 4. Meets income eligibility criteria of Section 8 of this administrative regulation; and
- 5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and
- (b) Meets the requirements established in Section 3 of this administrative regulation.
- (2) While an applicant is enrolled in a certified trade school or an accredited college or university:
- (a) The applicant's coursework shall be completed in-person or online; and
- (b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.
- (3) An applicant who does not complete a term at a trade school, college, or university shall be responsible for the cost of child care tuition for the term.

Section 8. Income Eligibility. (1) A child shall be eligible for CCAP if the family's income is less than or equal to:

- (a) 160 percent of the federal poverty guidelines [level] as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 [2018] at initial application; or
- (b) 200 percent of the federal poverty guidelines [level] as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 [2018] at recertification or recalculation.
- (2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.
- (3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.
- (4) Excluded income shall be:
  - (a) K[-]TAP child only payments, including back payment;
  - (b) A payment received from the kinship care program [Kinship Care Program], pursuant to 922 KAR 1:130, including back payment;
  - (c) Educational grant, loan, scholarship, and work study income;
  - (d) The value of a:
    - 1. Kentucky Works supportive services payment pursuant to 921 KAR 2:017; or
    - 2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;
  - (e) The value of United States Department of Agriculture program benefits including:
    - 1. Donated food;
    - 2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
    - 3. Special food service program for a child pursuant to 42 U.S.C. 1775;
    - 4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and
  - 5. The monthly allotment under SNAP;
  - (f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;
  - (g) In-kind income;
  - (h) Reimbursement for transportation in performance of an employment duty, if identifiable;
  - (i) Nonemergency medical transportation payment;
  - (j) Highway relocation assistance;
  - (k) Urban renewal assistance;
  - (l) Federal disaster assistance and state disaster grant;
  - (m) Home produce utilized for household consumption;
  - (n) Housing subsidy received from federal, state, or local

governments;

- (o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;
- (p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;
- (q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:
  - 1. Senior health aide; or
  - 2. Member of the:
    - a. Service Corps of Retired Executives; or
    - b. Active Corps of Executives;
- (r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:
  - 1. Volunteers in Service to America (VISTA);
  - 2. Foster Grandparents;
  - 3. Retired and Senior Volunteer Program; or
  - 4. Senior Companion;
- (s) Payment from the cabinet for:
  - 1. Child foster care; or
  - 2. Adult foster care;
- (t) Energy assistance payment made under:
  - 1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
  - 2. Other energy assistance payment made to an energy provider or provided in-kind;
- (u) The principal of a verified loan;
- (v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
- (w) The advance payment or refund of earned income tax credit;
- (x) Payment made from the Agent Orange Settlement Fund;
- (y) Payment made from the Radiation Exposure Compensation Trust Fund;
- (z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;
- (aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;
- (bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
- (cc) A payment received from the National Tobacco Growers Settlement Trust;
- (dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;
- (ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34 U.S.C. 20102(c);
- (ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;
- (gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;
- (hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);
- (ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);
- (jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;
- (kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or
- (ll) Supplemental Security Income (SSI) for a child.
- (5) Deductions from gross income shall be:
  - (a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and



(b) Operating costs to determine adjusted gross income from self-employment.

(6) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by four and one-third (4 1/3);

b. Biweekly amount by two and one-sixth (2 1/6); or

c. Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and

d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.

(e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 9. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed at each twelve (12) month recertification for a child who is placed with a relative or fictive kin caregiver. A child who is placed with a relative or fictive kin caregiver shall remain eligible pursuant to Section 5 of this administrative regulation for as long as the cabinet determines that child care is necessary in order to prevent child maltreatment or entry into the foster care system.

(3) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(4) Unless a nonrelative is approved as fictive kin pursuant to

922 KAR 1:140 or 922 KAR 1:565 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(5) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

Section 10. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate Chart, **effective October 1, 2021** [~~effective December 1, 2018~~].

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;

2. Part day;

3. Licensed Type I;

4. Licensed Type II;

5. Certified;

6. Registered;

7. Infant/Toddler;

8. Preschool child; and

9. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;

2. National Early Childhood Program Accreditation;

3. National Association for Family Child Care;

4. Council on Accreditation; or

5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or

2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

(a) With a special need; or

(b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and

2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

# VOLUME 48, NUMBER 4– OCTOBER 1, 2021

Section 11. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a

portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) **Effective October 1, 2021, the [The]** cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child		Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
				With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$0[\$2]	\$0[\$2]	\$0[\$3]	\$0[\$3]	\$0[\$2]	\$0[\$2]	\$0[\$2]	\$0[\$2]
1,000	1,099	\$0[\$3]	\$0[\$3]	\$0[\$3]	\$0[\$3]	\$0[\$2]	\$0[\$3]	\$0[\$2]	\$0[\$3]
1,100	1,199	\$0[\$4]	\$0[\$4]	\$0[\$4]	\$0[\$4]	\$0[\$3]	\$0[\$3]	\$0[\$2]	\$0[\$3]
1,200	1,299	\$0[\$4]	\$0[\$4]	\$0[\$5]	\$0[\$5]	\$0[\$4]	\$0[\$4]	\$0[\$3]	\$0[\$3]
1,300	1,399	\$0[\$5]	\$0[\$5]	\$0[\$5]	\$0[\$5]	\$0[\$5]	\$0[\$5]	\$0[\$3]	\$0[\$4]
1,400	1,499	\$6	\$5	\$6	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$12	\$10	\$11	\$9	\$10
2,300	2,399.99	\$12	\$12	\$13	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$14	\$15	\$16	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 12. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a DCC-94, Child Care Service Agreement and Certificate.

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a) DCC-94; or
- (b) DCC-90.

(4) Notification of action. (a) A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;
2. Approval of an application; or

3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;
2. Discontinuance of a CCAP benefit;
3. Reason for adverse action;
4. Citation from an applicable state administrative regulation; and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

- (a) Discontinued from CCAP benefits; and
- (b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 14(1)(c) of

this administrative regulation.

Section 13. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care center licensure;

(c) 922 KAR 2:100, Certification of family child-care homes;

(d) 922 KAR 2:120, Child-care center health and safety standards;

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) 922 KAR 2:190, Civil penalties;

(g) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

(h) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) A child in the custody of the cabinet;

(e) K[-]TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(f) Teen parents attending high school or pursuing a general equivalency degree (GED);

(g) A K[-]TAP recipient attempting to transition off assistance through employment;

(h) A parent whose K[-]TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(i) A low income working parent; or

(j) A parent in education or training programs leading to self-sufficiency.

Section 14. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance

Record, or a cabinet approved electronic billing system in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed or electronically recorded legibly with first and last name by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E or electronic daily attendance record upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care center licensure;

3. 922 KAR 2:100, Certification of family child-care homes;

4. 922 KAR 2:120, Child-care center health and safety standards;

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

6. 922 KAR 2:190, Civil penalties;

7. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes[~~upon its adoption~~]; and

8. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; [and]

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP; and

(f) Complete, retain on file, and provide to the CCAP billing section documentation demonstrating completion of cabinet approved training on billing once during each year of operation or upon change of the staff member submitting billing information.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 2:090 and 922 KAR 2:120; or

b. For a certified family child-care home, 922 KAR 2:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the

previous provider will be involved in the new provider's operations in any capacity.

Section 15. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8 of this administrative regulation may be eligible for:

- (1) Child care payments;
- (2) Enrollment fees;
- (3) Activity or day trip fees;
- (4) Material fees;
- (5) Transportation fees; or
- (6) Other items relating to child care services with prior approval of the cabinet.

Section 16. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 17. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;
2. An illness of the:

- a. Child; or
- b. Applicant; or

3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 11 of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 14(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 14(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 13(8) of this administrative regulation.

Section 18. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

- (a) 922 KAR 2:260; or
- (b) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

- (1) KRS 194A.060;
- (2) 45 C.F.R. 98.90(e); and
- (3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 7/2019;

(b) ["DCC-90P, CCAP Job Search Documentation", 10/17;

(c) "DCC-94, Child Care Service Agreement and Certificate", 07/21[10/17];

(d)[(e)] "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(e)[(f)] "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(f)[(g)] "DCC-94C, Provider Notification Letter", 10/17;

(g)[(h)] "DCC-94E, Child Care Daily Attendance Record", 7/13;

(h)[(i)] "DCC-97, Provider Billing Form", 04/13;

(i)[(j)] "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(j)[(k)] "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 10/21 [07/21] [12/18].

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 7, 2021

FILED WITH LRC: September 14, 2021 at 8 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner that is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

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

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

incorporates the appropriated General Fund moneys in the amount of \$12,000,000 in fiscal year 2021-2022 to the Department for Community Based Services to provide a \$2 per child increase in the Child Care Assistance Program provider reimbursement rate for full-day care. This amendment is consistent with House Bill 405 (2021 Regular Session, Acts Chapter 176) and is reflected in the incorporated material - the DCC-300, Kentucky Child Care Maximum Payment Rate Chart. The amendment also requires CCAP-participating child care providers to complete annual training on billing and makes other necessary updates and technical corrections in accordance with KRS Chapter 13A. This administrative regulation is being further amended in response to comment to increase the CCAP provider reimbursement rate to the eightieth percentile for Type I and Type II licensed child care centers and certified family child care homes, to increase the CCAP provider reimbursement rate for registered child care providers, and to cover the cost of the CCAP co-payment for families with a monthly income at or below \$1,399.00 through the utilization of federal American Rescue Plan Act (ARPA) funds. The amendment also allows providers to use a cabinet-approved electronic system for keeping attendance as an alternative to the DCC-94E form.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to obligate additional funds from the General Fund appropriation to the Department for Community Based Services to provide a \$2 per child increase in the Child Care Assistance Program provider reimbursement rate for full-day care. The purpose of this appropriation was included in House Bill 405 (2021 Regular Session, Acts Chapter 176).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children. This amendment specifically conforms with an appropriations bill passed in the 2021 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of CCAP in accordance with federal and state laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2021, there were 12,750 families and 23,346 children enrolled in CCAP, and over 1,600 child care providers participating in CCAP.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Participating providers will need to complete the cabinet approved training on billing and the DCC-94E annually or upon a change in their billing staff. This will allow providers to receive a refresher on how to submit billing and become aware of any updates, allowing for a smoother reimbursement process. The amended after comments version of this administrative regulation allows providers to use a cabinet-approved electronic system for attendance keeping as an alternative to using the DCC-94E.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from increased provider reimbursement rates.

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

(a) Initially: The amendment to this administrative regulation

will be implemented within available federal and state appropriations for CCAP. An additional \$12 million in General Funds has been appropriated to implement this increase in provider reimbursement rates.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state General Funds.

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

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Any local government or school district operating a child care program that receives CCAP will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will be implemented with appropriated General Fund moneys in the amount of \$12 million. In SFY 2019, \$21,491,449.45 was used from General Funds to provide CCAP.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. In total, the projected impact of this specific amendment is approximately \$12 million annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

BOARDS AND COMMISSIONS  
Board of Pharmacy  
(As Amended at ARRS, September 14, 2021)

201 KAR 2:270. Expungement.

RELATES TO: KRS 315.121(6), 315.191(1)(a)  
STATUTORY AUTHORITY: KRS 315.121(6), 315.191(1)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to subject matters governed by KRS Chapter 315. ~~[pharmacists.]~~ KRS 315.121(6) requires the board to promulgate administrative regulations to establish violations that are considered minor and subject to expungement. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.

Section 1. Definition. **(1)** "Expungement" means ~~[that]~~:  
**(a)** ~~[(1)]~~ The affected records shall be sealed;  
**(b)** ~~[(2)]~~ The proceedings to which they refer shall be deemed not to have occurred; and  
**(c)** ~~[(3)]~~ The affected party may properly represent that no record exists regarding the matter expunged.

Section 2. Minor Violations and Expungement Procedure. (1) The following violations **shall [are to]** be considered minor in nature:

(a) Any unlicensed~~[-unregistered]~~ or unpermitted practice occurring no more than seven (7) days after the expiration of the license ~~[registration,]~~ or permit due to failure to timely renew a license~~[-registration,]~~ or permit;  
(b) Failure to timely obtain required continuing education; and  
(c) Failure to comply with any provisions of 201 KAR 2:106 for licensed or permitted facility ~~[pharmacy, manufacturer, or distributor]~~ closures; **or,]**

(d) At the discretion of the board, any other offense:  
**1. Not involving the diversion of controlled substances;**  
**2. Not demonstrating a serious inability to practice the profession or to assist in the practice of pharmacy;**  
**3. Not adversely affecting public health, safety, or welfare;**  
**4. Not resulting in economic or physical harm to a person; and**  
**5. Not creating a significant threat of economic or physical harm.**

(2) **In accordance with KRS 315.121(6),** a licensee, registrant, or permit holder seeking expungement of a record of a disciplinary action resulting from a violation designated in subsection (1) of this section shall ~~[-in accordance with KRS 315.121(6)]~~:

(a) Not have been the subject of a subsequent violation of the same nature for a period of three (3) years after the date of completion of disciplinary sanctions imposed for the violation sought to be expunged; and  
(b) Submit a written request to the board.

(3) The board shall consider each request and shall, if the conditions of subsection (2) of this section are satisfied, expunge every record under its custody relating to the subject disciplinary order.

(4) **The expungement of a record under this administrative regulation is limited to the removal of records in the board's custody and shall [does] not guarantee expungement of a record previously reported to the National Practitioner's Data Bank.**

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

BOARDS AND COMMISSIONS  
Board of Pharmacy  
(As Amended at ARRS, September 14, 2021)

201 KAR 2:360. Naloxone dispensing.

RELATES TO: KRS 217.186  
STATUTORY AUTHORITY: KRS 217.186, KRS 315.191(1)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.186 requires the Board of Pharmacy to promulgate administrative regulations governing dispensing of naloxone by a pharmacist pursuant to a physician-approved protocol. This administrative regulation establishes the minimum requirements for the pharmacist to be able to dispense naloxone pursuant to a physician-approval protocol.

Section 1. Certification. (1) A pharmacist desiring to achieve certification to initiate the dispensing of naloxone shall complete and submit an Application for Pharmacist Certification for Naloxone Dispensing, Form 1, with the board and provide the following:

(a) Name;  
(b) Address;  
(c) Phone number; and  
(d) Pharmacist license number ~~[-and]~~ **[(e)] [Proof of education and training in the use and dispensing of naloxone for treatment of opioid overdose pursuant to Section 5 of this administrative regulation.]**

(2) The board shall issue the certification to a pharmacist ~~[who meets the requirements of subsection (1) of this section]~~ within thirty (30) days of the receipt of the application.

Section 2. Procedures for Dispensing of Naloxone. A pharmacist may initiate the dispensing of naloxone under the following conditions:

(1) The pharmacist has met the requirements of Section 1 of this administrative regulation;  
(2) The pharmacist has received his or her certification;  
(3) The pharmacist has a physician-approved protocol that meets the minimum requirements of Section 3 of this administrative regulation; and  
(4) The pharmacist documents the dispensing event in the pharmacy management system including:

(a) Documentation as required in 201 KAR 2:171~~[470]~~ for the dispensing of prescription medication; and

(b) Documentation that the individual receiving naloxone was provided with the required training and education pursuant to Section 4 of this administrative regulation, **unless the recipient of the Naloxone is a person or agency operating a harm reduction program.**

**(5) A [The] pharmacist may dispense naloxone to any person or agency who provides training on the mechanism and circumstances for the administration of naloxone to the public as part of a harm reduction program, regardless of whom the ultimate user of the naloxone may be. The documentation of the dispensing of naloxone to any person or agency operating a harm reduction program shall satisfy any general documentation or recording requirements.**

Section 3. Protocol Minimum Requirements. A physician-approved protocol authorizing a pharmacist to initiate the dispensing of naloxone shall contain:

(1) Criteria for identifying persons or agencies eligible to receive naloxone under the protocol;

(2) Naloxone products authorized to be dispensed, including:

(a) Name of product;  
(b) Dose; and

- (c) Route of administration;
- (3) Specific education to be provided to the person whom the naloxone is dispensed;
- (4) Procedures for documentation of naloxone dispensation, including procedures for notification of the physician authorizing the protocol, if desired by the physician in accordance with KRS 217.186(5)(b)3;
- (5) The length of time the protocol is in effect;
- (6) The date and signature of the physician approving the protocol; and
- (7) The names and work addresses of pharmacists authorized to initiate dispensing of naloxone under the protocol.

Section 4. Education to be Provided to Person Receiving Naloxone Prescription Under Protocol. A pharmacist dispensing naloxone to a person or agency not operating a harm reduction program shall provide verbal counseling and written educational materials~~[,]~~ appropriate to the dosage form of naloxone dispensed~~[, including:~~

- ~~(1) Risk factors of opioid overdose;~~
- ~~(2) Strategies to prevent opioid overdose;~~
- ~~(3) Signs of opioid overdose;~~
- ~~(4) Steps in responding to an overdose;~~
- ~~(5) Information on naloxone;~~
- ~~(6) Procedures for administering naloxone; and~~
- ~~(7) Proper storage and expiration of naloxone product dispensed].~~

Section 5. ~~[Pharmacist Education and Training Required for Certification. A pharmacist who applies for certification to initiate dispensing of naloxone shall have received education and training related to the safe dispensing of opioids and use of naloxone as rescue therapy for opioid overdose, including:~~

- ~~(1) Risk factors for opioid abuse and overdose;~~
- ~~(2) Opioid overdose prevention;~~
- ~~(3) Recognizing and responding to opioid overdoses;~~
- ~~(4) Indications for use of naloxone as rescue therapy;~~
- ~~(5) Contraindications for use of naloxone;~~
- ~~(6) Administration of naloxone;~~
- ~~(7) Adverse effects associated with naloxone rescue therapy;~~
- ~~(8) Identification of a patient who meets the criteria for provision of naloxone;~~
- ~~(9) Required education to provide to persons receiving naloxone;~~
- ~~(10) Required elements of protocol to initiate dispensing of naloxone; and~~
- ~~(11) Required documentation when initiating dispensing of naloxone.~~

Section 6. Incorporation by Reference. (1) "Application for Pharmacist Certification for Naloxone Dispensing", Form 1, 6/2021 ~~[7/2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, [Suite 300, 125 Holmes Street,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at: https://pharmacy.ky.gov/Documents/APPLICATION%20FOR%20PHARMACIST%20CERTIFICATION%20FOR%20NALOXONE%20DISPENSING.pdf.

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

## BOARDS AND COMMISSIONS

### Board of Pharmacy

(As Amended at ARRS, September 14, 2021)

#### 201 KAR 002:420. Administration of vaccines.

RELATES TO: KRS 315.010, 315.050, [KRS] 315.136[~~], KRS 315.050]~~

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to pharmacists, pharmacist interns, and pharmacy technicians. This administrative regulation authorizes pharmacist interns~~[,]~~ and pharmacy technicians to administer vaccinations pursuant to requirements. This administrative regulation shall [does] not change the authorization for pharmacists to administer vaccinations pursuant to KRS 315.010(22).

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

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

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

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

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

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

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

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

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

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

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

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

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

## BOARDS AND COMMISSIONS

### Kentucky Board of Medical Licensure

(As Amended at ARRS, September 14, 2021)

#### 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, 311.840-311.862, 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 administrative regulation shall be interpreted to grant physician assistants authority to dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, unless otherwise authorized by KRS 311.842 [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 [or] 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.

**Section 6. Incorporation by Reference. (1) Substance Abuse and Mental Health Services Administration, "Medications for Opioid Use Disorder, Treatment Improvement Protocol (TIP) Series 63, Publication No. PEP20-02-01-006", 2020.**

**(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.

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, September 14, 2021)**

**301 KAR 1:012. Boating, swimming and water skiing and other activities on department-owned or controlled lakes.**

RELATES TO: KRS 150.090, 150.620, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas. This administrative regulation establishes the safety procedures for multiple use of state waters to ensure noninterference with the primary users, fishermen.

Section 1. Definitions. (1) "Slow speed" means speed attained with the throttle of the motor set at its slowest forward position.

(2) "Speeding and reckless operation" means any operation of a boat in any area of a lake that may endanger other persons or craft using the lake by intimidation, direct contact or by waves created by the speed or reckless operation of a boat.

Section 2. Water skiing shall be/is permitted on Guist Creek Lake and Lake Beshear beginning the third Thursday of May and continuing through September 30, annually, during the daylight hours of 10 a.m. to sunset and only in those areas designated and marked as "ski areas" by buoys or signs by the Department of Fish and Wildlife Resources. Water skiing shall be/is prohibited in coves or embayments of the lakes.

Section 3. Water skiing and the pulling of water skiers shall be/is permitted on Lake Malone beginning the third Thursday of May and continuing through October 31, annually, but only during the daylight hours of 10 a.m. to sunset and only in those areas designated and marked as "ski areas" by buoys or signs by the Department of Fish and Wildlife Resources. Water skiing and pulling of a water skier shall be/is prohibited in coves or embayments of Lake Malone.

Section 4. Water skiing and tubing shall be/are prohibited on Cedar Creek Lake.

Section 5. Boat speeding and reckless operation of a boat shall be prohibited [is not permitted] at any time in any area of any lake owned or controlled by the Department of Fish and Wildlife Resources including the ski zones. All boats, except those being operated in the designated skiing areas during the annual summer water skiing period, shall, in all areas of any lake, maintain slow speed as defined in Section 1 of this administrative regulation [subsection (1) of this section] when passing any other boat in which the occupants are actively engaged in fishing.

Section 6. Swimming in any lake controlled or owned by the Department of Fish and Wildlife Resources shall be [is] prohibited, except in areas specifically set aside for swimming at which a qualified lifeguard is on duty, or while entering or exiting the water for purposes of water skiing.

Section 7. Camping shall be/is prohibited on property owned or controlled by the Department of Fish and Wildlife Resources that surrounds a lake owned or controlled by the Department of Fish and Wildlife Resources, except as designated by a department sign.

Section 8. All officers and agents of the Department of Fish and Wildlife Resources shall have full authority to enforce the provisions of this administrative regulation. Failure to comply with the rules and specifications established in this administrative regulation shall constitute grounds for revocation of the rights and privileges of any person to admittance to and to the use of these public waters.

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, September 14, 2021)**

**301 KAR 1:016. Use of lands and waters on lakes owned or controlled by the department.**

RELATES TO: KRS 150.090, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation governs all private structures on property owned or controlled by the department, the private use of public lake water, and permitted and prohibited activities on department-owned or controlled land surrounding department-owned waters.

Section 1. Definitions. (1) "Adjacent landowner[property owner]" means the owner of real property that shares a common boundary with department property.

(2) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(3) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers, and is permanently affixed to an approved boat dock so that it is visible from the lake.

(4) "Department property" means lands or waters controlled by the department through ownership, lease, license, easement, or cooperative agreement at the department-owned lakes listed in Section 2 of this administrative regulation.

(5) "Existing structure" means an exempted[a grandfathered] access or nonaccess structure built on department property prior to the effective date of this administrative regulation.

(6) "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(7) "Permanent dwelling" means a private residence on an adjacent landowner's land that is both fixed in location and of durable permanent construction, but does not include tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(8) "Rebuild" means to totally reconstruct.

(9) "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

Section 2. Boat Docks, Boat Dock Applications, and Boat Dock Construction Approval. (1) A boat dock may be constructed on department property by an adjacent landowner if the adjacent property:

(a) Shares at least a fifty (50) foot boundary with the department property if the adjacent boundary lines were extended to the water's edge; and

(b) Is located at one (1) of the following lakes:

1. Beaver Lake;
2. Boltz Lake;
3. Bullock Pen Lake;
4. Carpenter Lake;
5. Corinth Lake;
6. Elmer Davis Lake;
7. Guist Creek Lake;
8. Kincaid Lake;

9. Kingfisher Lakes; or
10. Lake Malone.

(2) Prior to constructing a boat dock, an adjacent landowner shall submit a completed Boat Dock Application to the department, accompanied by the permit fee for the dock as established in 301 KAR 3:022, except that the fee shall be prorated for every year remaining in the ten (10) year permit period.

(3) Boat dock construction shall not begin until:

(a) An on-site inspection by an authorized department employee has been completed; and

(b) The applicant has obtained written approval from the department to begin construction.

(4) Boat dock construction approval shall be valid for one (1) year from the date of issuance.

(5) A boat dock applicant shall:

(a) Report to the department when construction of a new boat dock is complete, an existing boat dock has been rebuilt, or an existing dock has been brought into compliance; and

(b) Allow inspection of the boat dock by an authorized department employee.

(6) An adjacent landowner with an existing boat dock on Bullock Pen Lake shall be required to obtain a Boat Dock Permit, but shall not be required to pay the permit fee until 2018.

Section 3. Boat Dock Permits. (1) The department shall issue a Boat Dock Permit and Boat Dock Tag to an adjacent landowner:

(a) Who has satisfied the boat dock application requirements in Section 2 of this administrative regulation;

(b) Who has a boat dock that has passed a final inspection by an authorized department employee;

(c) Whose permit has not been revoked pursuant to Section 8 of this administrative regulation; and

(d) Who remains compliant with all the provisions of this administrative regulation.

(2) The Boat Dock Tag issued with the boat dock permit shall be affixed to the front edge of the dock facing the lake.

(3) A Boat Dock Permit shall:

(a) Be valid for a ten (10) year period, with the current permit period expiring December 31, 2017 and the next permit period beginning January 1, 2018;

(b) Be renewed within ninety (90) days of the termination date by:

1. Paying the fee as established in 301 KAR 3:022; and

2. Submitting an affidavit that no unauthorized addition or modification has been made to the boat dock;

(c) Be transferable at no additional cost, if ownership changes, for the remainder of the ten (10) year period; **[and]**

(d) Not be renewed by the department if the boat dock is out of compliance, except as established in Section 4 or Section 7 of this administrative regulation; **and**

(e) Prohibit the permittee from renting, leasing, or licensing the dock to another person for any purpose.

(4) An adjacent landowner who owns multiple contiguous properties adjacent to department property shall:

(a) Not be issued more Boat Dock Permits than the number of completed permanent dwellings on those properties; or

(b) Qualify for one (1) Boat Dock Permit if there is no completed permanent dwelling on any of the contiguous properties.

(5) An adjacent landowner shall only be eligible for one (1) Boat Dock Permit per adjacent property.

Section 4. Boat Dock Specifications and Requirements. (1) A boat dock constructed or rebuilt after the effective date of this administrative regulation shall not exceed:

(a) Eight (8) by sixteen (16) feet in dimension; and

(b) A surface area of more than 128 square feet.

(2) The longest dimension of the boat dock shall be positioned perpendicular to the shore.

(3) A boat dock shall not have more than one (1) walkway connecting the boat dock to the shore that shall:

(a) Be positioned perpendicular to the shore;

(b) Be anchored to department property by:

1. A concrete pad no larger than ten (10) square feet; or

2. Two (2) metal posts on each side of the walkway.

(c) Not be wider than four (4) feet;

(d) Be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or

2. Twenty (20) feet in length.

(e) Not be used for boat mooring.

(4) The flotation for a boat dock shall be made from materials manufactured for marine use.

(5) All wooden material on a boat dock shall be kiln-dried lumber that has been commercially pressure-treated with a wood preservative and shall not be painted.

(6) A boat dock shall moor no more than:

(a) Two (2) boats; or

(b) One (1) boat and up to two (2) personal watercraft on Lake Malone and Guist Creek Lake only.

(7) A personal watercraft mooring system that is attached to an approved boat dock at Lake Malone and Guist Creek Lake shall:

(a) Be a commercially manufactured floating system;

(b) Not exceed:

1. Six (6) feet in width and fifteen (15) feet in length if mooring a single personal watercraft; or

2. Twelve (12) feet in width and fifteen (15) feet in length if mooring two (2) personal watercraft; and

(c) Be attached to one (1) side of the boat dock, but not the front.

(8) An additional johnboat, canoe, or personal watercraft may be stored on top of a boat dock, except a personal watercraft shall only be stored on top if a commercially manufactured self-loading ramp is used.

(9) The following items shall be prohibited on boat docks:

(a) An enclosed structure;

(b) An unenclosed structure; and

(c) Any other items, structures, or deviations not identified in a previously obtained waiver, pursuant to Section 7 of this administrative regulation.

(10) A boat dock that was constructed prior to the effective date of this administrative regulation shall be exempt from the requirements established in subsections 1 through 6 of this section for the life of the boat dock.

(11) A boat dock owner who rebuilds an existing dock, including those exempted by subsection 10 of this section, shall reapply and meet all the requirements established in this section, except as established in Section 7 of this administrative regulation.

(12) A boat dock permit holder who applies to rebuild an existing, legally permitted boat dock during the ten (10) year permit period shall be exempt from paying the permit fee until permit renewal.

(13) A private community boat dock or a private multi-slip boat facility shall not be allowed except as approved by the Finance and Administration Cabinet prior to January 1, 2010.

Section 5. Access Structures and Shoreline Use Permits. (1) A shoreline use permit shall only be issued for the following lakes:

(a) Beaver Lake;

(b) Carpenter Lake;

(c) Corinth Lake;

(d) Elmer Davis Lake;

(e) Guist Creek Lake;

(f) Kincaid Lake; and

(g) Lake Malone.

(2) Shoreline Use Permits shall be valid for a fifteen (15) year period beginning January 1, 2010.

(3) An adjacent landowner with an existing structure shall apply for a Shoreline Use Permit within ninety (90) days following the effective date of this administrative regulation.

(4) Prior to constructing a new access structure, rebuilding an existing access structure, or permitting an existing structure, an adjacent landowner shall submit to the department:

(a) A completed Shoreline Use Permit Application; and

(b) The appropriate permit fee if applicable, as established in 301 KAR 3:022, except that the fee shall be prorated to the nearest five (5) year interval that remains in the fifteen (15) year permit

period.

(5) An adjacent landowner shall not begin construction of a new access structure or begin rebuilding an existing access structure until:

(a) An authorized department employee conducts an on-site visit and determines the type of access structure necessary for safe passage to the lake; and

(b) The adjacent landowner receives written approval from the department.

(6) Access structure construction approval shall be valid for one (1) year from the date of approval.

(7) A Shoreline Use Permit shall not be issued unless all shoreline structures have passed final inspection by an authorized department employee.

(8) A new access structure shall only include the following:

(a) A ground level pathway that shall:

1. Only have pretreated lumber or railroad ties as edging;

2. Not consist of asphalt, concrete, or any other permanent surface;

3. Only consist of crushed stone, wood chips, or other removable material as fill between the edging, except that local natural stones or rocks may be used as steps;

4. Not exceed five (5) feet in width including the edging; and

5. Follow the natural contour of the land if possible.

(b) A raised ground level pathway that shall:

1. Not exceed eight (8) inches in height; ~~and~~

2. Not exceed forty (40) steps, with each step not exceeding five (5) feet in width and eight (8) feet in length;

3. Only consist of pretreated, unpainted lumber; and

4. Follow the natural contour of the land if possible.

(c) A raised staircase that shall:

1. Not exceed four (4) feet in width;

2. Not have more than one (1) landing that does not exceed four (4) feet in width and four (4) feet in length;

3. Not have more than twenty (20) steps if a landing is not used;

4. Not have more than thirty (30) steps if a landing is used;

5. Only consist of pretreated, unpainted lumber; and

6. Conform to prevailing building code standards for stairs for the county of record or, if those [such] standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established by 815 KAR 7:120; or

(d) A foot bridge that shall:

1. Not exceed four (4) feet in width and twelve (12) feet in length;

2. Not use a tree as an anchoring device; and

3. Only consist of pretreated, unpainted lumber.

(9) An adjacent landowner who has an existing access structure that was constructed prior to the effective date of this administrative regulation, shall be exempt from the requirements of subsection (8) of this section for the life of the structure, if the landowner applies for and maintains a valid Shoreline Use Permit.

(10) An adjacent landowner who rebuilds an existing access structure, including those grandfathered in subsection (9) of this section, shall be exempt from the requirements established in subsection 8 of this section provided the landowner maintains a valid Shoreline Use Permit.

(11) An existing access structure:

(a) May be adequately maintained to extend the life of the structure;

(b) May be rebuilt with less than or equal to the same number of steps in the original structure;

(c) May be rebuilt with necessary landings not to exceed 4 ft. x 8 ft. in dimension; and

(d) Shall conform to prevailing building code standards for the county of record or, if those [such] standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(12) A Shoreline Use Permit shall:

(a) Be renewed every fifteen (15) years within ninety (90) days of the termination date by:

1. Paying the fee established in 301 KAR 3:022; and

2. Submitting an affidavit that an unauthorized addition or

modification has not been made to a permitted structure.

(b) Be transferable at no additional cost, if ownership changes, for the remainder of the fifteen (15) year period; and

(c) Not be renewed if the access structure is out of compliance, except if the access structure was built prior to the effective date of this administrative regulation.

(d) Be extended, by written request to the department, for an additional twelve (12) months if the property is transferred or the landowner dies during year fifteen (15) of the permit period.

(13) An existing noncompliant access structure, pursuant to Section 8 of this administrative regulation, shall be removed at the owner's expense.

(14) Nonaccess structures, such as gazebos or storage buildings, excluding existing permanent dwellings, shall be:

(a) Itemized in the adjacent landowner's Shoreline Use Permit; and

(b) Allowed to be kept and maintained by an adjacent landowner for the life of the structure provided the landowner maintains a valid Shoreline Use Permit.

(15) The Shoreline Use Permit fee, as established in 301 KAR 3:022, shall be based on the types of access structures established in subsection (8) of this section, and consist of the following three (3) tiers:

(a) A Tier I permitted structure shall include:

1. All compliant access structures pursuant to subsection (8) of this section;

2. An existing access structure with fifteen (15) or less steps that is not compliant, pursuant to subsection (8) of this section;

3. An existing footbridge; or

4. A new footbridge that is compliant, pursuant to subsection 8 of this section.

(b) A Tier II permitted structure shall include:

1. An existing access structure having thirty (30) or less concrete steps; or

2. An existing access structure that does not comply with the requirements established in subsection (8) of this section, and having sixteen (16) to thirty (30) steps.

(c) A Tier III permitted structure shall include:

1. An existing access structure, including a concrete access structure, that does not comply with the requirements established in subsection 8 of this section, and having more than thirty (30) steps;

2. A new access structure that does not comply with the requirements established in subsection (8) of this section, and requires a waiver pursuant to the requirements of Section 7 of this administrative regulation.

3. An existing staircase that has one (1) or more landings that exceed a four (4) feet in width or four (4) feet in length; or

4. An existing nonaccess structure, such as a storage shed or gazebo.

(16) If an adjacent landowner applies for a Shoreline Use Permit for multiple structures that cover more than one (1) tier, [then] a single permit will be issued at the highest tier level for which the applicant qualifies.

(17) A concrete access structure shall not be rebuilt.

Section 6. Other Activities on Department Property. (1) A person shall not be permitted to take water from the lakes listed in Section 2 of this administrative regulation, except for:

(a) Residential use by adjacent landowners;

(b) Temporary use in a time of emergency drought; or

(c) An adjacent landowner who has been given the right to do so by deed.

(2) A person, without [first] obtaining written permission from the department, shall not:

(a) Place or build any unpermitted object or structure;

(b) Plant any vegetation;

(c) Place or use any mechanical equipment;

(d) Take water from any lake listed in Section 2 of this administrative regulation;

(e) Cut, clear, burn, damage, or kill trees or shrubs greater than two (2) inches in diameter measured at ground level; or

(f) Moor a boat to the shoreline for more than forty-eight (48)

hours.

Section 7. Waivers. (1) An adjacent landowner shall **[first]** obtain a waiver from the department for any deviation to the specifications established in this administrative regulation by:

- (a) Submitting a written request to the department; and
- (b) Providing a detailed plan to the department of any planned deviation.

(2) A person shall not begin construction on a project that includes a planned deviation until the department has approved a waiver.

(3) The department, in deciding whether to grant a waiver for a new access structure, shall consider if:

- (a) The deviation is in substantial compliance with the requirements established in this administrative regulation;
- (b) The deviation poses a potential safety hazard;
- (c) Topographical or other physical features of the land necessitate a deviation;
- (d) The waiver request exceeds the staircase landing dimension or step limit by more than twenty (20) percent; and
- (e) A new staircase will conform to prevailing building code standards for the county of record or, if those standards do not exist, complies with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(4) The department, in deciding whether to grant a waiver for a boat dock, shall consider if:

- (a) The deviation is in substantial compliance with the requirements established in this administrative regulation;
- (b) The deviation poses a potential safety hazard; and
- (c) Topographical or other physical features of the land necessitate a deviation.

(5) An adjacent landowner, either individually or as a director or high managerial agent of a business organization, who violates any provision of this administrative regulation shall be denied a waiver for a new or rebuilt structure for a period of two (2) years from the date of the citation, with the waiver denial applying to:

- (a) The individual; and
- (b) Any business for which the person is a director or high managerial agent.

#### Section 8. Noncompliance, Permit Revocation, and Appeals.

(1) The department shall revoke each Boat Dock Permit and Shoreline Use Permit issued to a person if that permit holder:

- (a) Without department approval rebuilds an existing:
  - 1. Boat dock;
  - 2. Access structure; or
  - 3. Nonaccess structure.
- (b) Constructs or places a new nonaccess structure on department property;
- (c) Fails to:
  - 1. Maintain the boat dock, boat dock walkway, access structure, or nonaccess structure in a structurally sound condition; or
  - 2. Renew the Boat Dock or Shoreline Use Permit within ninety (90) days of expiration.

(2) An adjacent landowner who has a noncompliant boat dock, boat dock walkway, access structure, or nonaccess structure shall be notified in writing by the department that the landowner has sixty (60) days to come into compliance, to remove the boat dock, walkway, or structure, or to make an appeal as established in subsection 6 of this section.

(3) If the requirements of subsection (2) of this section are not met within sixty (60) days, the department shall have the authority to remove the noncompliant structure at the owner's expense and the structure shall become the property of the department.

(4) If an adjacent landowner, either individually or as a director or high managerial agent of a business organization, violates any provision of this administrative regulation for a second time, **[then]** the department shall revoke for a period of three (3) years from the date of the second citation all Boat Dock Permits and Shoreline Use Permits issued to:

- (a) The adjacent landowner;
- (b) Any business organization for whom the individual adjacent

landowner is a director or high managerial agent; and

(c) Any director or high managerial agent of the adjacent landowner who is a business organization.

(5) The following shall apply for any adjacent landowner whose permit is revoked pursuant to subsection (4) of this section:

(a) All structures shall be removed at the owner's expense within thirty (30) days of revocation if an appeal is not filed.

(b) If the structures are not removed by the owner within thirty (30) days and no appeal is filed, **[then]** the department shall have the authority to remove the structure at the owner's expense; and

(c) All structures removed pursuant to paragraph (b) of this subsection shall become the property of the department.

(6) An adjacent landowner whose waiver request is denied or whose permit is denied or revoked may appeal the decision in accordance with the provisions of KRS Chapter 13B.

(a) The department shall appoint a hearing officer and conduct the hearing in accordance with the provisions of KRS Chapter 13B;

(b) The hearing officer shall make a recommendation to the Department of Fish and Wildlife Resources' Commission;

(c) The commission shall make a decision by majority vote; and

(d) An appeal of the Commission's decision shall be in accordance with the provisions of KRS Chapter 13B; and

(e) At the conclusion of all appeals or at the expiration of any appeal period for which an appeal has not been made:

1. The owner shall remove any unauthorized structure within ten (10) days, at the owner's expense;

2. An unauthorized structure that has not been removed by the owner within ten (10) days shall be removed by the department at the owner's expense; and

3. Each structure removed pursuant to subparagraph (2) of this paragraph shall become the property of the department.

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

- (a) "Boat Dock Permit Application, 2010"; and
- (b) "Shoreline Use Permit Application, 3/2010".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Fisheries Division, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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, September 14, 2021)**

#### **301 KAR 1:018. Use of boating access areas.**

RELATES TO: KRS 150.620, 235.315, 433.757

STATUTORY AUTHORITY: KRS 150.025, 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620

**authorizes[grants]** the department **[authority]** to establish public shooting and fishing grounds and similar or related recreational facilities. KRS 235.280 **requires[authorizes]** the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of the waters of this state. This administrative regulation establishes the activities that are not allowed at boating access areas.

Section 1. Definitions. (1) "Boating access area" means property owned or managed by the department and identified by signs as a public facility for launching and retrieving boats, including:

- (a) Ramps, parking lots, courtesy docks, and access roads; and
- (b) A zone extending fifty (50) feet into the water adjacent to

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

the department property described in paragraph (a) of this subsection.

(2) "Camp" means ~~the erecting off[te-pitch]~~ a tent or ~~shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the apparent purpose of[te-remain]~~ overnight occupancy~~[in a vehicle or trailer]~~.

Section 2. At a boating access area, a person shall not:

- (1) Engage in an activity that would interfere with:
  - (a) Launching or retrieving a boat; or
  - (b) Parking a vehicle used to transport a boat to the area;
- (2) Except as necessary to launch or retrieve a boat:
  - (a) Swim or wade;
  - (b) Moor or anchor watercraft; or
  - (c) Operate watercraft at greater than idle speed;
- (3) Discharge firearms;
- (4) Build or maintain a fire;
- (5) Camp;
- (6) Without permission from the department:
  - (a) Solicit; or
  - (b) Advertise; ~~[or]~~
- (7) Engage in a commercial activity;
- (8) Park in a way that obstructs the normal flow of traffic; or
- (9) Consume alcoholic beverages or possess open alcoholic beverages containers.

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, September 14, 2021)

#### 301 KAR 1:019. Cedar Creek Lake.

RELATES TO: KRS 150.025, 150.620, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 and 150.620 authorize the department to promulgate administrative regulations restricting the use of state recreational areas. This administrative regulation establishes the safety procedures for multiple use of state waters to ensure noninterference with the primary users, fishermen.

Section 1. Definitions. (1) "Buffer zone" means the area from the lake pool level of Cedar Creek Lake to [a] the marked boundary.

Section 2. Prohibited Activities in the Buffer Zone. A ~~person[No one]~~ shall not construct, alter, or place any structure of any kind within the buffer zone. The following structures and items are specifically prohibited:

- (1) Private boat ramps;
- (2) Private stairways or permanent steps;
- (3) Private boat docks, boat houses, or fishing piers;
- (4) Roadways, turnarounds, or parking for vehicular traffic;
- (5) Motorized vehicular traffic, including all-terrain vehicles;
- (6) Electric lines, water lines, or other public or private utilities without prior approval;
- (7) Removal or destruction of vegetation by any means;
- (8) Burning;
- (9) Fencing;
- (10) Painting of trees, stumps, or rock outcrops;
- (11) Picnic tables, swings, patios, or signs;
- (12) Flower or vegetable gardens;
- (13) Livestock grazing or watering;
- (14) Camping, except in designated areas; and
- (15) Use or placement of mechanical equipment.

Section 3. Footpaths that provide access to the lake and are less than five (5) feet in width shall be[are] permitted. Vegetation less than one (1) inch in diameter may be removed to develop a footpath. Only wood chips or similar natural material may be used to surface and maintain footpaths.

Section 4. Water withdrawal from Cedar Creek Lake shall be[is] prohibited for public or private purposes.

Section 5. Activities on Cedar Creek Lake. (1) Swimming shall be[is] prohibited except in designated areas.

(2) Water skiing and tubing shall be[are] prohibited on the lake.

Section 6. Boat Restrictions. (1) Boat and motor restrictions for the lake are established in 301 KAR 1:015[Only monohull boats that do not exceed a maximum center length of twenty-two (22) feet are permitted on the lake. Pontoon boats are permitted on the lake, but their length shall not exceed thirty (30) feet.]

(2) Personal watercraft and houseboats are not permitted on the lake.]

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, September 14, 2021)

#### 301 KAR 1:031. Land Between the Lakes provisions.

RELATES TO: KRS 150.025, 150.090, 150.170, 150.175, 150.250, 150.340, 150.360, 150.370, 150.470

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas. [KRS 150.025 also authorizes the department to] establish seasons for the taking of fish and wildlife, [to] regulate creel limits and methods of take, and to make these requirements apply to a limited area. The U.S. Forest Service has requested the Kentucky Department of Fish and Wildlife Resources to enforce its special fishing administrative regulations on the Land Between the Lakes National Recreation Area waters. This administrative regulation establishes the conditions and provisions under which fishing is permitted in the Land Between the Lakes area. [and] This administrative regulation provides for enforcement by state conservation officers, and]. This administrative regulation provides compliance with the U.S. Forest Service.

Section 1. Fishing shall be permitted in Land Between the Lakes in accordance with the following requirements:

- (1) Energy Lake.
  - (a) Fishing from a boat or the bank shall be permitted year-round except in the waterfowl refuge area.
  - (b) The waterfowl refuge area shall be the western one-third (1/3) of the lake and it shall be open to fishing from March 16 through October 31.
- (2) Honker Lake.
  - (a) Fishing from a boat or the bank shall be permitted from March 16 through October 31.
  - (b) Fishing shall be permitted year-round in the portion of Honker Lake which extends from near the end, as indicated by signs, of the Long Creek Walk handicap trail to the base of the Hematite Lake spillway.
- (3) Hematite Lake.
  - (a) Fishing from a boat or the bank shall be permitted from March 16 through October 31.
  - (b) ~~[Fishing from a boat shall be permitted from March 16 through October 31.]~~
  - (c) Gas-powered motors shall not be permitted.



(4) Farm ponds. Farm ponds shall be open to fishing year-round unless posted.

(5) Lake Barkley and Kentucky Lake.

(a) Fishing shall be open year-round unless posted.

(b) Bank fishing and frogging from the shoreline shall be permitted except in areas that are posted as closed for waterfowl refuges and other special uses.

(c) Frogging shall be by gigging only.

Section 2. Frogs may be taken in farm ponds and Energy and Honker Lakes by gigs only from May 15 through May 31. Hematite Lake and other areas as posted shall be closed to frogging.

Section 3. (1) Boats shall operate at "no wake" speed on Energy and Honker Lakes.

(2) A federal permit shall not be required for fishing or frogging.

(3) All administrative regulations pertaining to fishing and limits shall apply.

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, September 14, 2021)**

**301 KAR 1:050. Small state-owned lakes, special administrative regulations of.**

RELATES TO: KRS [450.025,] 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS [43A.350,] 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. ~~[The purpose of]~~ This administrative regulation establishes notice of the department's authority [is] to set special creel, possession, and size limits on fishes. ~~It is necessary~~ to protect the fish population in small state-owned lakes.

Section 1. The Commissioner of the Department of Fish and Wildlife Resources with the concurrence of the Department of Fish and Wildlife Resources Commission declares that from time to time special creel limits, possession limits, and size limits on fishes may be necessary because of unique ~~and~~ for special needs to protect the fish populations of the smaller state-owned lakes.

Section 2. These special limits shall [administrative regulations will] be conspicuously posted on the premises of these lakes. It shall be [is] the responsibility of each individual [fisherman] fishing these lakes to become familiar [familiarize himself] with these special limits [administrative regulations] and to abide by them.

Section 3. Failure of any person to comply with the posted special limits shall [will] be a violation of this administrative regulation.

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, September 14, 2021)**

**301 KAR 1:082. Frog season; limits.**

RELATES TO: KRS [450.025,] 150.175, 150.360

STATUTORY AUTHORITY: KRS [43A.350,] 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. This administrative regulation establishes [it] ~~[is necessary to regulate]~~ the season, time, bag limit, and manner of taking for bullfrogs [in order] to utilize and conserve the bullfrog population ~~[thereof]~~. ~~[This amendment is necessary to change the opening day and time and to bring Section 3 of this administrative regulation in compliance with the gigging season.]~~

Section 1. The open season on bullfrogs shall begin at 12 noon on the 3rd Friday in May and continue until 12 midnight October 31. The daily creel limit shall be fifteen (15) bullfrogs with a possession limit of thirty (30) bullfrogs after two (2) or more days frogging. Each day for taking bullfrogs shall begin at 12 noon and end at 12 noon the following day. A person shall not [No person may] have more than fifteen (15) bullfrogs in his possession while in the field.

Section 2. Bullfrogs may be taken with gig, by hand, bow and arrow, firearm, or hook and line from public and private waters, ~~and an appropriate license is required~~. If bullfrogs are taken with firearm or bow and arrow, a hunting license is required. If bullfrogs are taken by use of a pole and line, a fishing license is required. If bullfrogs are taken with hand or by use of a gig, ~~then either~~ a fishing license or a hunting license is valid.

Section 3. ~~It [Except as provided in Section 3 of 301 KAR 1:075, it]~~ shall be illegal to possess a gig, of any type, while in a boat, or on ~~it~~, or in a stream ~~it~~, or lake, ~~from [between]~~ November 1 through [and] the last day of January of the following year, ~~both dates inclusive~~.

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, September 14, 2021)**

**301 KAR 1:120. Live fish sales and handling; licensure.**

RELATES TO: KRS [450.025,] 150.175, [450.180,] 150.190, 150.235, 150.485

STATUTORY AUTHORITY: KRS [43A.350,] 150.025(1), 150.180(6)

NECESSITY, FUNCTION, AND CONFORMITY: 150.025(1) authorizes the department to promulgate administrative regulations to regulate buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. This administrative regulation is being promulgated [is necessary in order] to control the flow of live fish from and into natural waters and commercial channels to prevent the spread of disease or undesirable species. ~~[This amendment is necessary to eliminate unnecessary and confusing wording.]~~

Section 1. All individuals or companies who sell live fish retail or wholesale shall [must] have a live fish and bait dealers license issued in the name of the individual or company that is transacting

business in this commonwealth. This license, or an exact copy thereof, shall [must] be in the possession of the individual[persons] who is[are] transporting, selling, or possessing live fish for sale in Kentucky.

Section 2. [Those] Individuals or companies transporting live fish from one (1) state to another state through Kentucky without conducting any type of business in this commonwealth shall not be [are-not] required to have a live fish and bait dealers license, but shall [must] have a valid transportation permit.

Section 3. Valid holders of commercial propagation permits and [those] individuals or companies who sell fish for food in establishments licensed by another state agency to sell retail or wholesale food stuffs shall not be [are-not] required to have a live fish and bait dealers license.

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, September 14, 2021)**

**301 KAR 1:125. Transportation of fish.**

RELATES TO: KRS 150.010, [450.025,] 150.170, [150.180, 150.235,] 150.235, 150.485

STATUTORY AUTHORITY: KRS [43A.350,] 150.025(1)(c), [(1)(h),] 150.180(6)[, 150.235, EO-2008-516]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. [EO-2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.] This administrative regulation provides for control of the transportation of fish, fish eggs, live bait, and other aquatic organisms into, through, and within the state [in-order] to protect the resident fish population.

Section 1. Definitions. (1) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) "APHIS-approved laboratory" means a laboratory authorized by a state, tribal, or federal primacy authority to analyze aquatic animal health and perform assays for the detection of the VHS virus.

(3) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and not stocked into waters of the Commonwealth.

(4) "Certified VHS free facility" means a fish-rearing facility that has been certified VHS free by an APHIS approved laboratory.

(5) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(6) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

(7) "VHS positive state" means any state in the United States, or any Canadian province, listed on the APHIS Web site [www.aphis.usda.gov](http://www.aphis.usda.gov) as being positive for Viral Hemorrhagic Septicemia (VHS).

(8) "VHS-regulated fish species" means any species of fish deemed susceptible to VHS and listed on the APHIS Web site at [www.aphis.usda.gov](http://www.aphis.usda.gov).

Section 2. A Fish Transportation Permit shall not be required [is-not-needed]:

(1) By an individual to transport aquarium species;

(2) By permitted Kentucky fish propagators as established in 301 KAR 1:115, except if transporting fish into Kentucky from outside of Kentucky[another state or country];

(3) By individuals with a sport or commercial fishing license to transport legally caught bait or fish;

(4) By individuals transporting fish purchased from a licensed live bait dealer for stocking in private waters;

(5) By agents of the department while performing their normal duties; or

(6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

Section 3. Live Fish, Live Bait, or Other Aquatic Organisms. (1) All individuals, corporations, or other business entities that transport any live fish, live bait as defined in 301 KAR 1:132, Section 1, or other live aquatic organism, except those individuals listed in Section 2 of this administrative regulation, into, within, or through Kentucky shall have in possession a:

(a) Fish Transportation Permit issued in the name of the individual, corporation, or other business entity transacting the business; and

(b) Bill of lading showing the origin and destination of the organisms being transported.

(2) An individual shall also possess a Live Fish and Bait Dealers License, as established in 301 KAR 1:132, if the organisms will [shall] be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free and any prohibited species listed in 301 KAR 1:122 shall not be present.

(4) If any VHS-regulated fish species from a VHS positive state are transported and unloaded in Kentucky, in addition to the requirements established in subsections (1), (2), and (3) of this section [of this administrative regulation], the following requirements shall apply:

(a) If the origin of the VHS-regulated fish species is from a certified VHS free facility, the individual shall possess a copy of the documentation showing that the facility is VHS free.

(b) If the origin of the VHS-regulated fish species is from a non-certified VHS free facility [then]:

1. The VHS-regulated fish species shall only be unloaded at a state inspected fish-processing plant or research and diagnostic laboratory;

2. The individual shall possess a copy of the APHIS VS 1-27 permit for Movement of Restricted Animals issued by an APHIS Veterinary Services office or by a state, tribal, or federal accredited veterinarian [shall also be in possession]; and

3. Water from the fish transportation tank shall only be discharged into a municipal sewage system that includes waste water disinfection or into a nondischarging settling pond devoid of fish.

(5) If the origin of the VHS-regulated fish species is from a VHS positive state and are only being transported through Kentucky then only the requirements established in subsections (1) and (3) of this section and Section 4 of this administrative regulation shall apply.

(6) VHS-regulated fish species being transported from a known VHS positive state into, within, or through Kentucky that do not meet all requirements established in Sections 3 and 4 of this administrative regulation shall be confiscated for disposal purposes.

Section 4. Fish Transportation Permit Application. (1) If an individual, corporation, or other business entity wants to transport fish, live bait, or other aquatic organisms into, within, or through Kentucky they [first] shall submit a completed Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR 3:022.

(2) If an individual, corporation, or other business entity wants to transport VHS-regulated fish species into or through Kentucky from a VHS positive state, in addition to the requirements established in subsection (1) of this section they shall also submit a:

(a) Copy of the documentation showing that the facility that the VHS-regulated fish species are coming from is Certified as being VHS free; or

(b) Copy of the APHIS VS 1-27 permit if the facility is not certified as being VHS free.

(3) An individual, corporation, or other business entity shall not transport fish, live bait, or other aquatic organisms into, within, or through Kentucky without an approved Fish Transportation Permit ~~[is]~~ in possession.

(4) If an individual, corporation, or other business entity desires to transport VHS-regulated fish species from a facility in a VHS positive state that is currently not listed on their Fish Transportation Permit, the permittee shall:

(a) Notify the department; and

(b) If approved by the commissioner based on risk of contagion to fish of the Commonwealth be sent an updated Fish Transportation Permit listing the approved facility.

Section 5. Transportation of Roe-Bearing Fish and Roe. (1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as established in 301 KAR 1:155 into, within, or through Kentucky, shall have in possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester's name and commercial fishing license and roe-bearing harvester's permit numbers listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155, Section 4(4)(d)3.

Section 6. All officers and agents of the department have the authority to demand of the transporter, at any time, that prohibited species listed in 301 KAR 1:122 shall not be present and proof that the transporter possesses all appropriate permits and documentation.

Section 7. Fish Transportation Permit Revocation and Nonrenewal. (1) The Department shall revoke and not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they ~~is~~:

(a) Falsify the documentation needed to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit; or

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

(2) An individual, corporation, or other business entity whose Fish Transportation Permit has been denied or ~~is~~ revoked ~~or not renewed~~ may request an administrative hearing pursuant to KRS Chapter 13B.

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(4) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(5) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 8. Incorporated by Reference. (1) "Application for Fish Transportation Permit", 2008 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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, September 14, 2021)**

**301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.**

RELATES TO: KRS 150.010(32), 150.450(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate the size or type of devices and methods used to take fish and wildlife, including the places where they may be taken. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes ~~[is necessary to establish]~~ restrictions on the use of gill and trammel nets at Kentucky and Barkley Lakes.

Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(2) "Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.

(3) "Permit" means a special commercial fishing permit.

(4) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin.

(5) "Rough fish" is defined by KRS 150.010 ~~(37)~~ **(32)**.

(6) "Whip set" means a gill net or a trammel net rigged so it is free-floating.

Section 2. Permit Requirements. (1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) The department shall not issue more than twenty-five (25) permits.

(3) A permit holder shall submit:

~~(a) Submit~~ a completed permit application to the department, along with the appropriate permit fee established in 301 KAR 3:022, postmarked on or before November 1 to retain the permit privilege~~;~~ and

~~(b) Ensure that mailed permit applications are postmarked on or before November 1.~~

(4) The ability to purchase a permit shall only be transferred to immediate family members.

(5) New permits shall not be issued until the total number of permits is less than twenty-five (25).

(6) A lottery drawing shall be used to select new permittees if the total number of permits is less than twenty-five (25).

(a) A person applying for a vacant permit shall submit:

~~1. Submit~~ to the department a completed Application for a Special Commercial Fishing Permit postmarked on or before ~~[by]~~ November 1, along with the appropriate fee established in 301 KAR 3:022~~;~~ ~~Section 4(2)(a) or (b).~~

~~2. Ensure that a mailed permit application is postmarked on or before November 1.~~

(b) The maximum number of permits issued to nonresidents shall be seven (7).

Section 3. Permit Requirements. (1) A person shall possess and carry a valid permit and a valid commercial fishing license:

(a) If using a gill net or trammel net to take rough fish:

1. From November 1 through March 31 at both Kentucky and Barkley Lakes; and

2. In the portions of Kentucky and Barkley Lakes open to commercial fishing as established in 301 KAR 1:150.

(b) If transporting a gill net or trammel net; and

(c) If selling fish taken with a gill net or trammel net.

(2) A person shall:

(a) Tag a gill net or trammel net as established in KRS 150.175(4);

(b) Not use a gill net or trammel net with a bar mesh size

smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:

1. A whip set may have a minimum bar mesh size of three (3) inches; and

2. Beginning on November 15 and running through March 31 at both Kentucky and Barkley Lakes, gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5) may be used in stationary sets only;

(c) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;

(d) Tend each net, except whip sets, at least once every twenty-four (24) hours;

(e) Not leave whip sets unattended;

(f) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;

(g) Not dispose of any commercially caught rough fish at public boat launch areas; and

(h) Not harvest paddlefish at both Kentucky and Barkley Lakes during the special commercial fishing season if the paddlefish are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.

(3) A permit holder may be accompanied by two (2) unlicensed helpers, who shall be:

(a) In the same boat with the permit holder if fishing with a gill net or a trammel net; or

(b) Accompanied by the permit holder if transporting or selling fish taken under the permit.

(4) A permit holder shall:

(a) Maintain an accurate record of daily fishing activity; and

(b) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section 4. Paddlefish Harvest Requirements. (1) A person who possesses a valid permit shall be allowed to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Commercial Roe-bearing Fish Harvester's Permit.

(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all Commercial Roe-bearing Fish Harvester Permit reporting requirements established in 301 KAR 1:155, Section 4(4).

#### Section 5. Permit Suspension, Revocation, and Renewal.

(1) The department shall suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee by the following methods:

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) If a third or subsequent time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.

(3) The department shall revoke or not renew a person's permit for a period of two (2) years, for the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area;

(c) Harvesting prohibited species of fish;

(d) Commercially fishing, as established by 301 KAR 1:150, in waters not open to commercial fishing; or

(e) Knowingly falsifying commercial harvest data.

(4) A person whose permit has been revoked or denied[not renewed] shall be eligible to enter the lottery drawing following the revocation period only if a permit is available based on the twenty-five (25) permit restriction established in Section 2 of this administrative regulation.

(5) A person whose permit has been revoked or denied may request an administrative hearing pursuant to KRS Chapter 13B [if a permit is:

(a) Denied;

(b) Suspended;

(c) Not renewed; or

(d) Revoked].

(6) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(7) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(8) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

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

(a) "Application for a Special Commercial Fishing Permit", 2007;

(b) "Monthly Report of Commercial Fish Harvest in Kentucky", 2008; and

(c) "Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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, September 14, 2021)**

#### **301 KAR 1:152. Harvest and sale of Asian carp.**

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the harvest and sale of Asian carp beyond the requirements of 301 KAR 1:155.

#### Section 1. Definitions. (1) "Asian carp" means:

(a) Bighead carp;

(b) Black carp;

(c) Grass carp; or

(d) Silver carp.

(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program" means Asian Carp and Scaled Rough Fish Harvest Program.

(4) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp and Scaled Rough Fish Harvest

Program; and

(b) Fishing in restricted water.

(5) "Restricted water" means those areas, as established in 301 KAR 1:140, 1:146, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; ~~or~~

(b) Commercial fishing with gill or trammel nets is prohibited; or

(c) Commercial fishing with gill or trammel nets of restricted net mesh size is prohibited.

(6) "Scaled rough fish" means any scaled fish that is not an Asian carp, sport fish as established in 301 KAR 1:060, roe bearing fish, or a species ineligible for commercial harvest as established in 301 KAR 1:155~~[any scaled fish that is not an Asian carp or sport fish as established in 301 KAR 1:060].~~

(7) "Unlicensed helper" means a person without a commercial fishing license who is assisting a program participant~~"Whip net set" means a gill or trammel net that is set to encircle and harvest Asian carp and scaled rough fish.~~

Section 2. Program Participant Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program; and

(2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:

(1) Call the department at 270-226-4192~~[800-858-1549]~~ at least twenty-four (24) hours prior to the requested fishing date and provide the information established in paragraphs (a) through ~~(f)~~~~(e)~~ of this subsection:

(a) The participant's name;

(b) The fish buyer's name ~~[and phone number];~~

(c) Date requested;

(d) Restricted water body to be fished;

(e) The location in the restricted water body to be fished, listed as river miles or embayment; and

~~(f)~~~~(e)~~ The name or location of the boat ramp that will be used;

(2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisherman whose license fee has been waived as established in Section 4 of this administrative regulation shall only harvest Asian carp and not retain any scaled rough fish or by-catch;

(3) Only fish:

(a) On dates approved by the department; and

(b) At a location approved by the department;

(4) ~~[Immediately]~~ Notify the department and receive approval prior to changing~~[if the participant changes]~~ the:

(a) Fishing location in the restricted water body; or

(b) Boat ramp being used;

(5) Only use gill or trammel nets~~[a whip net set]~~:

(a) With a minimum bar mesh size of three (3) inches;

(b) That are~~is~~ always tended by a program participant when set less than three (3) feet below the surface of the water;

(c) That are~~is~~ not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and

(d) That are~~is~~ not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;

(6) Visibly mark each end of net sets or gangs of nets with floating buoys;

(7) Harvest, possess, and transport fish claimed under this program separately than fish harvested by any other method;

(8) Complete ~~[and submit to the department]~~ a Daily Harvest and Release Summary Card ~~[immediately]~~ after each day's fishing and submit all cards to the department at the end of each month;

~~(9)~~~~(7)~~ Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 and 3 of this administrative regulation;

~~(10)~~~~(8)~~ Immediately release all by-catch; and

~~(11)~~~~(9)~~ Report all harvest on a Monthly Report of Commercial Fish Harvest form, as established in 301 KAR 1:155~~;~~ and

~~(10) Be suspended from the program:~~

~~(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and~~

~~(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.]~~

Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 3:022, shall be waived for a program participant who only harvests Asian carp in restricted or unrestricted waters.

Section 5. Department Program Requirements. (1) The department shall:

(a) Maintain a list of program participants and their contact information, which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly; and

(b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.

(2) The department shall approve a qualified fishing request by assigning:

~~(a)] a fishing location and boat ramp to a program participant[, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and~~

~~(b) The time period when fishing may occur, not to exceed a three (3) consecutive day period].~~

(3) The department shall not approve a fishing request for reasons established in paragraphs (a) and (b) of this subsection:

(a) Higher than normal by-catch is likely to occur at that location and time; or

(b) Excessive user conflicts would occur~~[Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time].~~

Section 6. Unlicensed Helpers.

(1) A program participant shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A program participant shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed program participant while using commercial fishing gear; and

(b) Be permitted to transport Asian carp in the absence of a program participant with a Fish Transportation Permit as established in 301 KAR 1:125.

(4) A program participant whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:

(a) Be listed as a helper by a licensed Kentucky commercial fisherman or another program participant; or

(b) Assist a licensed Kentucky commercial fisherman or program participant in harvesting or transporting fish.

Section 7. Program Suspension and Disqualification. (1) A program participant whose commercial fishing license becomes revoked or suspended as established in 301 KAR 1:155 shall be disqualified from participating in the Asian Carp and Scaled Rough Fish Harvest Program while that license is revoked or suspended.

(2) A program participant shall be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section 3(2) are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

(3)(2) Any participant who is disqualified or suspended from participation in the program may appeal the decision in accordance with KRS Chapter 13B.

(4) To appeal the disqualification or suspension, the participant shall provide a written request for a KRS Chapter 13B hearing, postmarked or delivered in person to the department no later than

thirty (30) days after notification of the disqualification or suspension.

Section 8.[Section 7.] Non-commercial Asian Carp Harvest and Sale. Any person possessing a valid Kentucky sport fishing license[A person harvesting Asian carp using legal fishing methods as established in 301 KAR 1:201 and 1:410]:

(1) May harvest Asian carp using legal fishing methods as established in 301 KAR 1:201;[f.] and

(2) May sell harvested Asian carp[; and

(2) Shall possess a valid Kentucky sport fishing license].

Section 9.[Section 8.] Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

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, September 14, 2021)**

**301 KAR 2:050. Land Between the Lakes hunting requirements.**

RELATES TO: KRS 150.010, 150.025, 150.170, 150.250, 150.360, 150.640, 150.680

STATUTORY AUTHORITY: KRS 150.025[; ~~150.680~~]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations establishing requirements for hunting. [This administrative regulation pertains to general rules for hunting on the Kentucky portion of Land Between the Lakes as defined in KRS 150.680.] This administrative regulation establishes[is necessary to specify] special hunting rules at Land Between the Lakes and authorizes[to authorize] conservation officers to enforce Land Between the Lakes hunting rules.**

Section 1. License Requirements. (1) Hunters shall have:

(a) A Land Between the Lakes hunting permit; and

(b) Unless exempted by KRS 150.170(3) through (7), a valid Kentucky hunting license.

(2) Permits **shall be[are]** nontransferable and may be cancelled if rules and administrative regulations are violated or if the holder is careless with firearms.

(3) Permits may be obtained at any information station or at the Administrative Office, Golden Pond, Kentucky 42211, or through any KDSS agent.

(4) Unless exempted by KRS 150.170(3) through (7):

(a) Deer hunters shall possess a valid Kentucky deer tag.

(b) Turkey hunters shall possess a valid Kentucky turkey tag.

Section 2. General Requirements. **[(1) Except as noted, state and federal regulations shall apply.**

**(2)]** Persons shall not:

**(1)[(a)]** Take or molest wildlife except as authorized **in KRS Chapter 150 or 301 KAR Chapter 2;[f.]**

**(2)[(b)]** Target practice, except at designated ranges and with Land Between the Lakes approval;[f.]

**(3)[(c)]** Operate motorized vehicles, except:

**(a)** Within the designated off-highway vehicle area; and

**(b)** On Land Between the Lakes legal roads as designated by signs and listed on a map available free of charge from Land Between the Lakes;[f.]

**(4)[(d)]** Drive in woods, fields, foot trails, or utility rights of way; or

**(5)[(e)]** Block access to roads, trails, or entryways.

Section 3. Firearms, Crossbows, and Archery Equipment. (1) Persons shall not:

(a) Carry handguns on their person except during legal hunting hours while participating in authorized gun hunts.

(b) Carry firearms, crossbows, or bows and arrows, except target and fishing arrows, except during authorized hunts by legally licensed and permitted hunters.

(c) Transport in vehicles firearms with ammunition in either the chamber or magazine.

(2) Hunters camping on Land Between the Lakes may possess legal hunting firearms, crossbows, or archery equipment one (1) day prior to, during, and one (1) day after an authorized hunt.

(3) Firearms, crossbows, and archery equipment shall conform to **301 KAR Chapter 2[applicable administrative regulations]** for the species being hunted.

Section 4. Hunting and Chasing. (1) Persons shall not hunt in developed public use areas, safety zones, or posted areas unless the area is designated by signs as open to hunting.

(2) A state permit shall be required to conduct a field trial.

(3) Between sunrise and sunset, persons shall not:

(a) Hunt raccoon or opossum; or

(b) Chase foxes with dogs.

(c) Raccoons may be bagged or taken for restocking.

(5) Dogs shall be removed by 8 a.m.

(6) Persons participating in deer quota hunts:

(a) Shall be selected for each hunt by computerized drawing.

(b) Shall not submit more than one (1) application.

(c) If under sixteen (16) years old, shall apply with an adult unless participating in a youth quota hunt.

(d) Shall not hunt except on dates assigned to them.

(e) Shall not change hunt dates.

(f) Shall remain in assigned areas.

(g) Shall take the sex of deer specified on the permit.

Section 5. Tree Stands. (1) Nails, spikes, tree climbers, screw-in devices, or wire shall not be used for attaching stands or for climbing trees.

(2) Existing permanent stands shall not be used.

(3) Portable stands and climbing devices that do not injure trees may be used.

(4) Portable stands shall:

(a) ~~Not~~[Shall not] be placed on trees more than two (2) weeks prior to the hunting season;[f.]

(b) ~~Be~~[Shall be] removed within one (1) week following a hunting season or portion of a split season; and[;]

(c) ~~Display~~[Shall display] the name and address of the owner.

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, September 14, 2021)**

**301 KAR 2:230. Shoot-to-retrieve field trial permits and procedures.**

RELATES TO: KRS 150.025(1), 150.170, 150.175(1)(p), 150.330

STATUTORY AUTHORITY: KRS 150.025(1), 150.175 **(16)[(1)(p)]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 **(16)[(1)(p)]** authorizes the department to require permits for shoot-to-retrieve field trials. KRS 150.025(1) authorizes the department to set seasons and limits, and to promulgate

VOLUME 48, NUMBER 4– OCTOBER 1, 2021

administrative regulations necessary to carry out the provisions of KRS Chapter 150. This administrative regulation establishes seasons, permit application procedures, game bird marking, and other requirements for conducting a shoot-to-retrieve field trial.

Section 1. Definitions. (1) "Field trial" means an organized event at which hunting dogs are worked and judged.

(2) "Game birds" means quail, chukar, mallard duck, or pheasant species.

(3) "Shoot to retrieve field trial" means a field trial where game birds are taken.

(4) "Take" is defined by KRS 150.010(42)(37).

Section 2. (1) A person may conduct a shoot-to-retrieve field trial:

(a) From August 15 through May 15 for quail; and

(b) Year-round for other game birds.

(2) Daily bag or possession limits shall not apply to birds taken during a shoot-to retrieve field trial.

Section 3. A person conducting a shoot-to retrieve field trial shall:

(1) Apply for a permit at least thirty (30) days before the event to the:

(a) Department law enforcement officer in the county where the event will be conducted; or

(b) Department's law enforcement captain in the wildlife district where the event will be conducted.

(2) A permit application shall:

(a) Be made on the Shoot-to-Retrieve Field Trial Application [a form provided the department]; and

(b) Include:

1. The fee specified in 301 KAR 3:022; and

2. Permission from the landowner or manager of public land where the event will be conducted.

(3) Provide pen-raised game birds for the trial.

(4) If the date or location of the trial changes:

(a) Notify the person from whom the permit application was obtained; and

(b) If the location changes, submit written permission to hold the trial at the new location.

Section 4. A person participating in a shoot-to-retrieve field trial shall not:

(1) Knowingly take a game bird that was not:

(a) Raised in captivity; and

(b) Provided by the organizer of the event.

(2) Hunt on land not specified in the permit.

Section 5. Incorporation by Reference. (1) "Shoot-to-Retrieve Field Trial Application", 5/19[5/98] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [It may be copied, inspected or obtained] at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane[Game Farm Road], Frankfort, Kentucky 40601, from 8 a.m. through 4:30 p.m. eastern time on normal business days or at <https://fw.ky.gov/Licenses/Documents/shootToRetrieveFieldTrialApplicationIncludesFees.pdf>.

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, September 14, 2021)

301 KAR 2:260. Crow hunting season.

RELATES TO: KRS 150.105, 150.170, 150.175, 150.235, 150.330, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025[150.015], 150.105, 150.170, 150.175, 150.340, [150.600, 150.630]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations establishing requirements for hunting. This administrative regulation establishes seasons and other requirements for the taking of crow.[This administrative regulation pertains to seasons for the taking of crow. The framework of this administrative regulation falls within the season guidelines prescribed by the United States Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of crows within reasonable seasonal restrictions based upon an adequate supply.]

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit, or anchored, stationary, or drifting boat from which hunting occurs.

(2) "Decoy" means any type of visual device used to entice crows[birds] into shooting range.

(3) "Call" means any type of auditory device used to attract crows into shooting range.

(4) "Depredation" means any act committed by crows which would result in a damage or economic loss of ornamental or shade trees, agricultural crops, livestock, or wildlife, or when crows are concentrated in [such] numbers that[as to] constitute a health hazard or other nuisance.

Section 2. Crow Hunting Requirements. (1) Seasons: September 1 through November 7 and January 4 through the last day of February.

(2) Shooting hours: one-half (1/2) hour before sunrise until sunset.

(3) Individuals[Persons] taking crows shall[must] have a valid hunting license.

(4) Crow hunters may use mechanical or electronic calling devices during the open season.

Section 3. Acts of Depredation. (1) Individuals[Persons] may take crows committing or about to commit acts of depredation during the closed season.

(2) Persons taking depredating crows shall not use blinds, decoys, calls, or other means of luring the birds into shooting range during the closed season.

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.

TRANSPORTATION CABINET  
Motor Vehicle Commission  
(As Amended at ARRS, September 14, 2021)

605 KAR 1:030. Applications.

RELATES TO: KRS 190.010-190.080

STATUTORY AUTHORITY: KRS 190.020, 190.030, 190.035, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 provides for the issuance of various licenses to engage in the activity of a motor vehicle dealer. KRS 190.020 requires the commission, under administrative regulations promulgated by it, to issue the licenses provided for by KRS 190.010 to

**190.080. KRS 190.073 requires the commission to promulgate appropriate and reasonable administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190.**  
This administrative regulation allows the Motor Vehicle Commission to provide for an orderly procedure for the submission and content of applications to facilitate processing of applications and the issuance of the license.

Section 1. **Application and Renewal.** [Definitions. In this administrative regulation "established place of business" means, in addition to those requirements of KRS 190.010(18), a dealership sales facility which has the following:

- (1) A business office which:
  - (a) Is underpinned and on a permanent foundation;
  - (b) Has electricity;
  - (c) Has a file cabinet used for the storage of business records;
  - (d) Has a working business telephone;
  - (e) Has a desk and chairs for the use of the business;
  - (f) Has at least 100 square feet of floor space;
  - (g) Shall be located on or immediately adjacent to the vehicle storage or display lot;
  - (h) Is not part of a residence;
  - (i) Is used exclusively as a licensee business office; and
- (2) A vehicle storage or display lot which:
  - (a) Has a hard surface lot (gravel, asphalt, concrete or other suitable covering);
  - (b) Is at least 2,000 square feet in size;
  - (c) Is used exclusively for the display and showing of vehicles for sale and licensee customer parking;
  - (d) Is a distinctively defined area, from that which surrounds it. The dealership business office need not be a separate walled enclosure.]

Section 2. **(1) An Application for Motor Vehicle Dealer License, form TC 98-1, shall be submitted on behalf of an [the] individual or entity wishing to obtain a license using a name that is not the name of a current licensee. Applicants shall provide additional information in support of the application if requested by the commission or its staff. The application shall not be considered complete until the additional information is received. [Upon receipt of a completed application, a review of the application will be made, including an appropriate investigation as to the applicant's compliance with the appropriate statutory and regulatory provisions governing the issuance of a license.]**

**(2) Renewal of a dealer license shall be submitted by completing a Dealer License Renewal Application available on the commission's website at <https://mvc.ky.gov/Pages/Online-Renewal.aspx>.**

Section 2[3]. The applicant [Applicant] **shall [will]** be notified in writing of the acceptance or rejection of the [his] application. If [; and if] the application is rejected, the reason or reasons for rejection shall be specifically stated, and the rejected applicant shall be notified of the [his] right to a hearing before the commission in accordance with the rules and administrative regulations of the commission.

Section 4. A motor vehicle dealer, other than a wholesale dealer, shall display on his premises a sign with lettering not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business. The business name on the sign must be the same as that on the license application.

Section 5. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this administrative regulation provided he has suitable space and adequate facilities to conduct the business of a motor vehicle dealer.]

Section 3[6]. All applicants shall **[comply with the following]:**

- (1) Submit a financial statement;[;]

(2) Submit at least six (6) different photographs of the premises to be occupied by the applicant;[;]

(3) Submit a detailed drawing of the [his] premises in relation to the nearest roadway, **which shall. This drawing is to** include the location and size of the office and the[;] display area, and the location of the dealership sign;[;]

(4) Furnish a personal data sheet, **employment history, and photograph for [on] each individual owning a portion of the business, [and] officers of a corporation, or members and managers of a limited liability company;[; including a photograph and an employment history of each such person.]**

(5) **[Every applicant, partner, [or] corporate officer, and manager or managing member of a limited liability company shall] Sign a statement authorizing the Motor Vehicle Commission to make inquiries or investigations concerning [that individual's] [the applicant's] employment, credit, or criminal records of the applicant or any partner, corporate officer, and manager or managing member of a limited liability corporation; and[;]**

(6) **[The applicant] [Applicant] [shall] Obtain garage liability insurance and file with the commission a certificate of insurance [form TD 95-99] in the exact name in which it applies for a license.]**

Section 7. Every applicant who conducts an automobile salvage or junk business on the same premises shall be in compliance with all state administrative regulations regarding junkyard operations. Applicant shall have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

Section 8. If an applicant operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where the repairs are made shall be allocated for the licensed activity.

Section 9. Not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business.]

Section 4. An Applicant for a new, used, motorcycle, automotive mobility dealer, or motor vehicle leasing dealer license **shall [must]** demonstrate that they possess a minimum of \$50,000 in unencumbered cash or unencumbered inventory.

Section 5. (1) An Applicant for a new, used, motorcycle, automotive mobility dealer, or motor vehicle leasing dealer license who demonstrates that they possess between \$50,000 and \$100,000 of unencumbered cash or unencumbered motor vehicle inventory may be granted a license only if the applicant also obtains a commercial bond, as set forth in KRS 190.030(9), in the amount of the difference between the unencumbered cash and unencumbered motor vehicle inventory and the \$100,000 amount.

(2) The commission may require a commercial bond, as set forth in KRS 190.030(9), for an applicant with a net worth above the \$100,000 amount if the information submitted by the applicant indicates reasonable cause to doubt the financial responsibility or the applicant's compliance with the provisions of KRS Chapter 190.

Section 6[40]. Every licensee shall obtain a sales tax permit number from the Department of Revenue [Cabinet].

**Section 7. Incorporation by Reference. (1) "Application for Motor Vehicle Dealer License, TC 98-1", 6/2021 edition is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky, 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.**

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).



**TRANSPORTATION CABINET  
Motor Vehicle Commission  
(As Amended at ARRS, September 14, 2021)**

**605 KAR 1:035, Facilities requirements.**

RELATES TO: KRS 190.010 (19), 190.035

STATUTORY AUTHORITY: KRS 190.020, 190.035, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.035 provides for dealers to have an established place of business with sufficient space and attributes consistent with the activity of the license applied for as established by regulations issued by the commission. KRS 190.073 requires the commission to promulgate appropriate and reasonable administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190. This administrative regulation establishes those requirements and standards.

Section 1. In addition to ~~the [those]~~ requirements of KRS 190.010(19), the established place of business of a dealership shall ~~[have the following]:~~

(1) ~~Have~~ a business office which:

(a) Is underpinned and on a permanent foundation. The dealership business office need not be a separate walled enclosure;

(b) Has electricity;

(c) Has adequate facilities for the physical or electronic storage of business records;

(d) Has a working business telephone used exclusively for the sale of motor vehicles;

(e) Has a desk and chairs for the use of the business;

(f) Has at least 100 square feet of floor space;

(g) ~~Is [Shall be]~~ located on or immediately adjacent to the vehicle storage or display lot;

(h) Is not part of a residence;

(i) Is used exclusively as a licensee business office and has a separate postal street address.

(2) ~~Have~~ a vehicle storage or display lot which:

(a) Has a hard surface lot (gravel, asphalt, concrete, or other suitable covering);

(b) Is at least 2,000 square feet in size;

(c) Is used exclusively for the display and showing of vehicles for sale and licensee customer parking; and

(d) Is a distinctively defined area from that which surrounds it.

Section 2. A location otherwise meeting the requirements of this administrative regulation may be used by more than one ~~(1)~~ business or licensee, provided that each licensee ~~[he]~~ has sufficient rights to suitable space and adequate facilities to conduct the separate business of a motor vehicle dealer. Notwithstanding the provisions of this section, not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business if the licensee ~~shares [must share]~~ any of the facilities listed in Section 1 with another licensee or business in order to meet the minimum facility requirements.

Section 3. A motor vehicle dealer, other than a wholesale dealer, shall display on his premises a sign with lettering not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business. The business name on the sign ~~shall [must]~~ be the same as that on the license application.

Section 4. Every licensee who conducts an automobile salvage or junk business on the same premises shall be in compliance with all state administrative regulations regarding junkyard operations. The licensee shall have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

Section 5. If a licensee operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for

the display of vehicles separate and apart from the area where the repairs are made shall be allocated for the licensed activity.

Section 6. The requirements in this administrative regulation shall not apply to a non-profit motor vehicle dealer.

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email Suzanne.Baskett@ky.gov.

**TRANSPORTATION CABINET  
Motor Vehicle Commission  
(As Amended at ARRS, September 14, 2021)**

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

RELATES TO: KRS 190.030

STATUTORY AUTHORITY: KRS 190.030, 190.073

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

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

(1) For new motor vehicle dealers, \$200 for each office or branch or agent thereof, plus \$200 for a supplemental license for each used car lot not immediately adjacent to the office or to a branch;

(2) For used motor vehicle dealers, \$200 for each office or branch or agent thereof;

(3) For motor vehicle leasing dealers, \$200 for each office or branch or agent thereof;

(4) For restricted motor vehicle dealers, \$200 for each office or branch or agent thereof;

(5) For motorcycle dealers, \$200 for each office, branch, or agent thereof;

(6) For motor vehicle manufacturers, \$200; and for each factory branch in this state, \$200;

(7) For distributors, motor vehicle auction dealers or wholesalers, \$200;

(8) For motor vehicle or recreational vehicle salespersons, forty dollars (\$40), to be paid by the licensed dealer for every salesperson the dealer employs;

(9) For factory representatives, or distributor branch representatives, \$200;

(10) For automotive mobility dealers, \$200;

(11) For nonprofit motor vehicle dealers, \$200;

(12) For nonprofit motor vehicle dealer salespersons, a license fee shall not be imposed;

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

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

Section 2. Renewal and Renewal Fees. (1) Pursuant to KRS 190.030(5) all licenses expire December 31 of the calendar year for which they are granted. Licenses in good standing and ~~that do not have[which have no]~~ outstanding fines or charges owed to the commission may be renewed by the licensee for the next calendar year. Renewal shall be by submitting a Dealer License Renewal Application, as established in 605 KAR 1:030,[renewal application] and the appropriate fee to the Motor Vehicle Commission prior to December 31. Licenses that have outstanding fines or charges owed to the commission, have been revoked, suspended, or are not in good standing ~~shall[may]~~ not be renewed.

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

(3) A license shall[~~may~~] not be renewed for a new calendar year if events established in[~~described~~] KRS 190.030(7)(a) (change of location) or 605 KAR 1:070 (change of ownership) have occurred that[~~which~~] have not been approved by the commission. In such case, the licensee shall[~~must~~] submit a new Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030[~~application~~] reflecting the changes in order to obtain a license for the new calendar year.

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email Suzanne.Baskett@ky.gov.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Kentucky Department of Education**  
**(As Amended at ARRS, September 14, 2021)**

**707 KAR 1:340. Procedural safeguards and state complaint procedures.**

RELATES TO: KRS 156.035, 157.200, 157.220, 157.224, [157.226,] 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419, 42 U.S.C. 11431

STATUTORY AUTHORITY: KRS 156.035, 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015, 34 C.F.R. 300.100, 20 U.S.C. 1407, 1412

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to promulgate[~~adopt rules and~~] administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

Section 1. Parent Participation in Meetings. (1) A parent of a child with a disability shall be afforded an opportunity to:

(a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and

(b) Participate in all ARC meetings concerning his child.

(2) An LEA shall provide parents a written notice of ARC meetings in accordance with this administrative regulation.

(3) A LEA may conduct an ARC meeting without a parent in attendance if the LEA is unable to convince the parent to attend. The LEA shall keep a record of its attempts to arrange a mutually agreed on time and place. These records may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; or

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(4) LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, or unscheduled conversations on issues which may include:

(a) Teaching methodology;

(b) Lesson plans;

(c) Coordination of service provision; or

(d) Preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be

discussed at a later ARC meeting.

Section 2. Independent Educational Evaluation. (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

(2) If a parent requests an independent educational evaluation, the LEA shall provide information to the parent about where an independent educational evaluation may be obtained and the LEA's applicable criteria for independent educational evaluations.

(3) If a parent requests an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the LEA, the LEA shall, without unnecessary delay:

(a) Initiate a due process hearing to show that its evaluation is appropriate; or

(b) Ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria.[;]

(4) The LEA may ask for the parent's reasons why he objects to the LEA's evaluation; however, the parent shall not be required to respond and the LEA shall not delay its action under subsection (3) of this section while waiting for a response from a parent.[; and]

(5) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation. Aside from these criteria, the LEA shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.

(6) A parent shall be entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parents disagree.

(7) If the LEA initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the LEA's evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(8) If the parent obtains an independent educational evaluation at public or private expense and it meets the agency criteria, results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free, appropriate public education (FAPE) to the child.

(9) If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

Section 3. ARC Meeting Notice to Parents. (1) Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide written notice to the parents of a child with a disability at least seven (7) days before an an [ARC] [a] meeting [in which the LEA];

(2) For meetings concerning a safety issue or disciplinary change in placement due to a violation of a student code of conduct, an LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before an ARC meeting.

(3) The meeting notice described in subsections (1) and (2) of this section shall:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance;

(b) Inform the parents of the ability to invite other individuals who have knowledge or special expertise regarding the child as appropriate; and

(c) For a child with a disability, beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger if determined appropriate by the ARC, the notice shall indicate:

1. That a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child;

2. That the LEA will invite the student; and

3. Any other agency that will be invited to send a representative.

Section 4. Prior Written Notice to Parents.

(1) An LEA shall provide written notice to the parents of a child with a disability within a reasonable time before the LEA implements:

(a) A proposal [Proposes] to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(b) A refusal [Refuses] to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) ~~An LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.~~

(3) ~~The notice required by subsection[s] (1) [and (2)] of this section shall include:~~

(a) A description of the action proposed or refused by the LEA;

(b) An explanation of why the LEA proposes or refuses to take the action;

(c) A description of any other options that the LEA considered and the reasons why those options were rejected;

(d) A description of each evaluation procedure, assessment [test], record, or report the LEA used as a basis for the proposed or refused action;

(e) A description of any other factors that are relevant to the LEA's proposal or refusal;

(f) A statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 C.F.R. 300.504, and if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and

(g) Sources for the parents to contact to obtain assistance in understanding the provisions of this section.

(3) ~~[(4)]~~ The notice required by ~~subsections (1) and (2) of~~ this section shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of the translation.

Section 5. [Section 4.] Procedural Safeguards Notice. (1) A

copy of the procedural safeguards notice, ~~including [the] parent's rights, [and]~~ shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:

(a) Upon initial referral or parent request for evaluation;

(b) Upon the receipt of the first state written complaint;

(c) Upon the receipt of the first filing of a due process hearing in a school year;

(d) In accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and

(e) Upon request by a parent.

(2) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 C.F.R. 300.504.

Section 6. [Section 5.] Parental Consent. (1) An LEA shall

obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

(2) If the parent of a child with a disability refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the LEA may pursue the initial evaluation by using the procedures in this administrative regulation for mediation, dispute resolution meeting, or a due process hearing. However, the LEA shall still be considered to be in compliance with 707 KAR 1:300, Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation.

(3) If the child is in the custody of the state and is not residing with the child's parent, the LEA is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the child if:

(a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);

(b) The rights of the parent(s) have been terminated by a court of competent jurisdiction; or

(c) The rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

(4) In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parent(s), the LEA shall keep a record of its attempts which may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) If the parent of a child refuses to give consent for the provision of initial specially designed instruction and related services or fails to respond to a request for consent, the LEA shall not provide these[such] services and shall not use a due process hearing or mediation procedures in order to obtain agreement or a ruling that the services may be provided to the child.

(6) The LEA shall obtain consent before conducting a reevaluation of a child with a disability. If the parent refuses to consent, the LEA may pursue the reevaluation by using the procedures in this administrative regulation for mediation, dispute resolution meeting, or a due process hearing.

(7) Parental consent for reevaluation shall not be required if the LEA can demonstrate that:

(a) It made reasonable efforts to obtain this[such] consent and followed the procedures in subsection (4) of this section [of this administrative regulation] to show those efforts; and

(b) The parent failed to respond.

(8) Parental consent shall not be required before:

(a) Reviewing existing data as part of an evaluation or reevaluation; or

(b) Administering a test or other evaluation that is administered to all children unless consent is required of all parents before the administration of the test or evaluation.

(9) The LEA shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the LEA [IEA] decides not to pursue the consent through due process procedures set out in Sections 9 and 12 ~~[and 14]~~ of this administrative regulation and the LEA shall not be required to convene an ARC meeting or develop an IEP if the parent of the child:

(a) Fails to respond or refuses to consent to a request for evaluation;

(b) Fails to respond or refuses to consent to a request for services; or

(c) Refuses to consent to a reevaluation.

Section 7. [Section 6.] Representation of Children. (1) If the

child is a foster child and does not reside with the child's parents, the LEA shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The LEA shall not be required to obtain this consent if:

(a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent;

(b) The rights of the parents have been terminated in accordance with state law; or

(c) The rights of the parents to make educational decisions have been subrogated by a court in accordance with state law and the consent for initial evaluation has been given by someone appointed by the court [judge] to represent the child.

(2) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent under 707 KAR 1:280(43), shall be presumed to be the

parent for purposes of 707 KAR Chapter 1 unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in Section 1(43)(a) through (d) of 707 KAR 1:280 to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(3) An LEA shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

(a) No individual can be identified as a parent as defined in 707 KAR 1:280;

(b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents;

(c) The child is a ward of the state; or

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431.

(4) The LEA shall keep a record of the reasonable efforts it made to discover the whereabouts of the parents, such as:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part B of IDEA, 34 C.F.R. Part 300, and 707 KAR Chapter 1, to make decisions about educational issues for a child.

(6) An LEA shall have a procedure for selecting surrogates. A surrogate:

(a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other agency that is involved in the education or care of the child;

(b) Shall not have any personal or professional interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in until a surrogate parent can be appointed that meets all the requirements of this section.

(9) An LEA shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the LEA that the child needs a surrogate.

(10) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(11) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. An LEA shall notify the child with a disability and the parents of the transfer of the rights.

**Section 8.[Section–7.] State Complaint Procedures.** (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.151 through 300.153:

(a) The Kentucky Department of Education shall have [of] sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;

(b) The complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;

(c) The LEA shall have an opportunity to respond to the complaint including, at least:

1. A proposal to resolve the complaint; and

2. An opportunity for the parent who has filed the complaint and the LEA to voluntarily engage in mediation;

(d) The department shall review [of] all relevant information; and

(e) The department shall issue a written decision addressing each allegation in the complaint and containing the findings of fact and conclusions and the reasons for the final decision.

(2) Any organization or individual including someone from outside the state may file a signed written complaint under this administrative regulation.

(3) The complaint shall include:

(a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 KAR Chapter 1 or IDEA[**administrative**] regulations;

(b) The facts on which the statement is based;

(c) A signature and contact information for the complainant;

(d) Name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431;

(e) Name of the school the child is attending;

(f) A description of the nature of the problem, including facts related to the problem;

(g) A proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and

(h) Information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.

(4) The party filing the complaint shall forward a copy to the LEA.

(5) The complainant, parent, or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.

(6) The Kentucky Department of Education shall allow an extension of the time limit under subsection (1)(a) of this section **[only]** if:

**(a)** Exceptional circumstances exist **as established in accordance with 34 C.F.R. 300.152(b)(1);** or

**(b) [if]** The parent and the LEA agree to extend the time line to engage in mediation or other alternative means of dispute resolution.

(7) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:

(a) Technical assistance activities;

(b) Negotiations; or

(c) Corrective actions.

**Section 9.[Section–8.] Right to Mediation and Due Process Hearings.** (1) An LEA and parent of a child with a disability shall have the right to request mediation from the Kentucky Department of Education to resolve any disputes that may arise under 707 KAR Chapter 1.

(2) A parent or an LEA may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child or the refusal to initiate or change the identification, evaluation, or educational placement of the child.

(3) When a hearing is initiated, the LEA shall inform the parent of the availability of mediation to resolve the dispute.

(4) The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or LEA initiates a hearing.

**Section 10.[Section–9.] Mediation Rights.** (1) The mediation process, if chosen, shall:

(a) Be voluntary;

(b) Not be used to deny or delay a parent's right to a due

process hearing under Sections 9 [8] and 12 [44] of this administrative regulation or 34 C.F.R. 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and

(c) Be conducted by a qualified and impartial mediator trained in effective mediation techniques.

(2) The Kentucky Department of Education shall maintain a list of qualified mediators who shall:

(a) Not be an employee of the Kentucky Department of Education or the LEA that is involved in the education or care of the child;

(b) Be chosen at random for the mediation process; and

(c) Not have a personal or professional conflict of interest.

(3) The Kentucky Department of Education shall bear the cost of the mediation process.

(4) The sessions in the mediation process shall be:

(a) Scheduled in a timely manner not to exceed sixty (60) days; and

(b) Held at a location that is convenient to both parties to the dispute.

(5) In a mediation session in which a resolution is reached by the parties, a legally-binding written agreement shall be executed that:

(a) Sets forth the resolution and a timeline in which it shall be implemented;

(b) States that all discussions that occurred in the mediation process shall be confidential; and

(c) May not be used as evidence in any subsequent due process hearing or civil proceeding.

(6) Both the parent and a representative of the LEA who has the authority to bind the LEA shall sign the agreement. The agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

(7) Mediation may address issues surrounding the education of the child, including ongoing alleged violations of IDEA, compensatory education, or any other issue related to the child's enrollment in the school district.

Section 11.~~[Section 10.]~~ Dispute Resolution. (1) Within fifteen (15) days of receiving notice of parental request for a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the LEA shall determine the relevant ARC members to attend the resolution session. A representative of the LEA who has decision-making authority on behalf of the LEA shall also attend this meeting. An attorney for the LEA shall not attend the meeting unless an attorney accompanies the parent.

(2) The purpose of this meeting is:

(a) To allow the parents to discuss their due process hearing request;

(b) To discuss the facts that formed the basis of the request; and

(c) To give the LEA an opportunity to resolve the complaint.

(3) This meeting shall not take place if the parents and the LEA agree in writing to waive the meeting or agree to use the mediation process.

(4) If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is: [;]

(a) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and

(b) Is enforceable in any state court of competent jurisdiction or a district court of the United States.

(5) The dispute resolution agreement may be voided by either party within three (3) business days of the agreement's execution.

(6) If the LEA has not resolved the complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process hearing request, the due process hearing may occur.

(7) The timeline for issuing a final decision pursuant to 34 C.F.R. 300.515 shall begin at the expiration of the thirty (30) day timeline referred to in subsection (6) of this section, except for adjustments allowed in subsections (11) and (12) of this section.

(8) The failure of the parent who filed the due process hearing

request to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held unless the parties have jointly agreed to waive the resolution process or use mediation.

(9) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may request, at the conclusion of the thirty (30) day period, that a hearing officer dismiss the parent's due process hearing request.

(10) The LEA shall keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of any visits made to the parent's home or place of employment and the results of those visits.

(11) If the LEA fails to hold the resolution meeting within fifteen (15) days of receiving the notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the forty-five (45) day due process hearing timeline in 34 C.F.R. 300.515.

(12) The forty-five (45) day timeline for the due process hearing in 34 C.F.R. 300.515 starts the day after one (1) of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or

(c) If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later the parent or the LEA withdraws from the mediation process.

Section 12.~~[Section 14.]~~ Hearing Rights. (1) The parent of a child with a disability or the attorney representing the child, or the LEA that files a request for a hearing shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:

(a) The name of the child;

(b) The address of the residence of the child;

(c) The name of the school the child is attending;

(d) A description of the nature of the problem; and

(e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

(2) The Kentucky Department of Education shall provide a model form entitled "Request for a Due Process Hearing", that meets these requirements to assist parents in filing a request for a due process hearing.

(3) A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that contains the information listed in subsection (1) of this section. This notice shall be provided to the other party and to the Kentucky Department of Education.

(4) The procedures included in KRS Chapter 13B and IDEA Subpart E shall apply to a due process hearing.

Section 13.~~[Section 12.]~~ Appeal of Decision. (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal, within thirty (30) calendar days of the date of the hearing officer's decision.

(2) A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

(3) Except as provided in Sections 15 [44] and 16 [45] of this administrative regulation, during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the child involved in the hearing or appeal shall

remain in the child's current educational placement, unless the LEA and the parent agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint involves an application for initial services for a child who is transitioning from the early intervention program into preschool and the child is no longer eligible for the early intervention program due to age. In that case the LEA shall not be required to provide the early intervention services the child had been receiving but would be required to provide any special education and related services that the child is eligible for and that are not in dispute between the parent and the LEA.

(4) If the hearing involves an application for initial admission to public school, and if there is consent of the parents, the child shall be placed in the public school until the proceedings are final.

**Section 14.**~~[Section 13.]~~ Discipline Procedures. (1) The ARC may consider any **relevant** circumstances **[on a case-by-case basis]** when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(2) School personnel may remove a student with a disability who violates a code of student conduct from the student's placement to an appropriate interim alternative education setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities).

(3) School personnel may remove a student with a disability from the student's current placement for additional periods of time of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change in placement because of disciplinary removals.

(4) If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability (as described in Section 15 [44] of this administrative regulation), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities for removals that would exceed ten (10) consecutive school days.

(5) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described in subsection (6)(a) and (b) of this section shall be provided during any subsequent days of removal.

(6) A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days shall:

(a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications~~[-]~~ that are designed to address the behavior violation so that it does not recur.

(7) The services described in subsection (6) of this section may be provided in an interim alternative educational setting.

(8) An LEA shall be required to provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.

(9) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement because of disciplinary removals, school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which educational services explained in subsection (6) of this section are needed.

(10) If a removal is a change in placement because of disciplinary removals, the child's ARC shall convene within ten (10) school days after the change of placement is made and shall determine the appropriate educational services for the child. If the

student has been placed in an interim alternative educational setting, the LEA shall invite staff from that alternative setting to the ARC meeting.

**Section 15.**~~[Section 14.]~~ Manifestation Determination. (1) Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the relevant members of the child's ARC, as determined by the LEA and the parent, shall convene a meeting to review all relevant information in the student's file, including the child's IEP, any teacher observations, teacher-collected data, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either of the conditions in subsection (1)(a) or (b) of this section was met.

(3) If the ARC determines that the condition described in subsection (1)(b) of this section was met, the LEA shall take immediate steps to remedy those deficiencies.

(4) If the ARC determines that the conduct was a manifestation of the child's disability, the ARC shall:

(a)1. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or

2. Review the behavioral intervention plan, ~~[[if one had already been developed,]]~~ and modify it, as necessary, to address the behavior; and

(b) Return the child to the placement from which the child was removed unless the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in subsection (5) of this section.

(5) School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child's disability, if the child:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA.

(6) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA shall notify the parents of the decision and provide the parents with a copy of the procedural safeguards in accordance with Section 5 [4] of this administrative regulation.

(7) The ARC of the child shall determine the interim alternative educational setting and the services for any child removed under Sections 14(4), 14(10), and 15(5) ~~[13(4), (10) and 14(5)]~~ of this administrative regulation.

**Section 16.**~~[Section 15.]~~ Appeals from Placement Decisions.

(1) The parent of a child with a disability who disagrees with any decision regarding placement under Section 14 or 15 ~~[13 or 14]~~ of this administrative regulation or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others may request a hearing by filing using the procedures contained in Sections 9 and 12 ~~[8 and 11]~~.

(2) A hearing officer shall hear and make a determination regarding an appeal requested pursuant to subsection (1) of this section.

(3) In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may:

(a) Return the child to the placement from which the child was removed; or

(b) Order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others.

(4) ~~If~~**[When]** an appeal has been requested pursuant to this section, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time provided for in subsection (3)(b) of this section, whichever occurs first, unless the parent and the LEA agree otherwise.

(5) An appeal under this section shall:

(a) Be conducted in an expedited manner;

(b) Shall occur within twenty (20) school days from the date the request is filed; and

(c) Shall result in a determination within ten (10) school days after the hearing.

**Section 17.**~~[Section 16.]~~ Basis of Knowledge. (1) An LEA shall be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has expressed concern in writing, ~~or orally if the parent cannot express it in writing,~~**[or orally if the parent cannot express it in writing,]** to supervisory or administrative personnel of the appropriate LEA or to the teacher of the child, that the child is in need of special education and related services;

(b) The parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or

(c) The teacher of the child, or other personnel of the LEA, has expressed concern about a pattern of behavior or performance of the child directly to the director of special education or other supervisory personnel of the LEA.

(2) An LEA shall not be deemed to have knowledge that a child is a child with a disability if, after receiving information that the child may have a disability:

(a) The LEA conducted an evaluation and determined the child was not a child with a disability;

(b) The LEA determined an evaluation was not necessary and provided notice to the parents of these determinations; or

(c) The parents refused to consent to an evaluation or refused initial services.

(3) If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities.

(4) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

**Section 18.**~~[Section 17.]~~ Reporting to Law Enforcement Agencies. (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.

(2) If an LEA reports a crime committed by a child with a disability, it shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g.

**Section 18.** Incorporation by Reference. (1) "Request for a Due Process Hearing", February 2007, is incorporated by reference.

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Exceptional Children Services, Department of Education, Capital Plaza Tower,~~

~~500 Mero Street, Eighth Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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](mailto:regcomments@education.ky.gov).

## LABOR CABINET

### Department of Workers' Claims

(As Amended at ARRS, September 14, 2021)

#### 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 342.038, 342.039, 342.260, 342.340

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.]~~**[The department requires approved vendors to communicate the required data.]** This administrative regulation establishes the procedure to become an approved **Electronic Data Interchange** 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 ~~([I]AIABC[.])~~. 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 ~~([F]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, and that person's email, phone number, and mailing address.~~;~~~~]~~

(g) ~~[The applicant shall]~~ Submit data for no less than eight ~~(ten-10)~~ insurance carriers.~~;~~~~]~~

(h) ~~[The applicant shall]~~ Be and remain a member of the IAIABC.~~;~~~~and~~~~]~~

(i) ~~[The applicant shall]~~ Comply with the provisions of KRS Chapter 342 and 803 KAR Chapter 25~~[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 shall/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) ~~If~~~~[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.

(a) The email shall contain the name and FEIN of the new insurance carrier.

(b) Attached to the email shall be an updated carrier list that includes that new insurance carrier.

(c) Upon confirming with the Department of Insurance that the new insurance carrier is authorized to transact the business of workers' compensation in Kentucky, the Department of Workers' Claims shall send an email to the vendor~~[receipt of an email confirmation from the Department of Workers' Claims]~~ approving the transmittal of data for the new insurance carrier, and 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 if the 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]; or~~

(4) ~~[The vendor]~~ No longer meets the requirements contained in Section~~[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>.

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, September 14, 2021)

### 803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

RELATES TO: KRS 342.038, 342.039

STATUTORY AUTHORITY: KRS 342.039

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.039 requires the Commissioner ~~[Executive Director]~~ of the Department ~~[Office]~~ of Workers' Claims to promulgate administrative regulations by which each insurance company writing workers' compensation policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC). This administrative regulation establishes the requirements for filing claims information with the Department ~~[Office]~~ of Workers' Claims.

Section 1. Definitions. (1) "Carrier" is defined by/in KRS 342.0011(6).~~]~~

~~(2) "Data collection agent" means a business or entity that keys information in an electronic format and transmits the resulting data to a value added network used by the Office of Workers' Claims.]~~

(2)~~[(3)]~~ "Commissioner" ~~["Executive director"]~~ is defined by/in KRS 342.0011(9).

(3) "Vendor" means an entity that transcribes information into an electronic format, accepts electronic data transmissions, and sorts the resulting data for delivery to and from the Department of Workers' Claims.]

~~(4) "Value added network" means a business or entity that accepts electronic data transmissions and sorts the transmissions for delivery to various addressees.]~~

Section 2. Reporting Requirements. (1) Each carrier shall file the information required on the Form IA-1 through ~~[with]~~ a vendor approved ~~[data collection agent or a value added network designated]~~ by the Department ~~[Office]~~ of Workers' Claims, in electronic format, according to the time periods established~~[prescribed]~~ by KRS 342.038.

(2) Each carrier shall file the information required on the Form IA-2 through ~~[with]~~ a vendor approved ~~[data collection agent or a value added network designated]~~ by the Department ~~[Office]~~ of Workers' Claims, in electronic format:

(a) As soon as practicable and not later than one (1) week from the date payments to an employee are commenced, terminated, changed, or resumed; and

(b) Every sixty (60) days during temporary total disability.

Section 3. Vendors. The Department of Workers' Claims shall maintain a directory of approved vendors approved as established in 803 KAR 25:165. The directory may be accessed



## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

at <https://labor.ky.gov/Documents/VendorList%20Info.pdf>. [Data Collection Agents. (1) If a carrier is unable to transmit the information required under this Office of Workers' Claims using its own facilities and resources, it shall employ a data collection agent capable of transmitting the information to a value-added network utilized by the Office of Workers' Claims.

(2) The Office of Workers' Claims shall maintain a directory of authorized data collection agents and value-added networks. The directory may be accessed at <http://labor.ky.gov/dwc/getstart.htm>.]

Section 4. Acknowledgements. An acknowledgement of an accepted filing made pursuant to this administrative regulation, or a request by the Department [Office] of Workers' Claims for resubmission of a report due to incomplete or incorrect information, shall be made in electronic format through the same vendor [data collection agent or value-added network] used for the filing.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Form IA-1," [(October 10, 1995 edition)]; and
- (b) "Form IA-2," [(October 10, 1995 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, 3<sup>rd</sup> Floor, 500 Mero Street, [Prevention Park, 657 Chamberlain 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, September 14, 2021)

#### 803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

RELATES TO: KRS 342.0011(22), 342.340(2)

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.340 requires an insurance carrier to file proof of workers' compensation insurance coverage for an employer and notice of policy change or termination in a format [on a form] established[prescribed] by the commissioner [executive director]. KRS 342.260(1) requires the commissioner [executive director] to promulgate administrative regulations necessary to carry on the work of the department [office]. This administrative regulation establishes the requirements for filing proof of coverage and policy change or termination of coverage.

Section 1. Definition. "Insurance carrier" is defined by/in] KRS 342.0011(22).

Section 2. Reporting Requirements. (1) Each insurance carrier shall file the information required on the Form POC-1 for each new policy or a change or termination of a policy.

(2) The information required on the [completed] Form POC-1 shall be filed electronically with the Department of Workers' Claims by a/an approved] vendor approved pursuant to 803 KAR 25:165[with the Department] [Office] [of Workers' Claims].]

(3) An electronic transmission of data shall have:

- (a) Demonstrated its reliability in tests rendered by the office; and
- (b) Received the approval of the executive director].

Section 3. (1) The Department [Office] of Workers' Claims shall acknowledge a filing in an electronic format with either an acceptance or rejection through the vendor used for filing [to the carrier or its agent].

(2) A report that is incomplete or provides incorrect information shall be rejected and not be considered in compliance with KRS 342.340(2) until the information is completed or corrected and refiled with the department [Office of Workers' Claims].

Section 4. Incorporation by Reference. (1) "Form POC-1", December 1996 Edition, Department [Office] of Workers' Claims, is incorporated by reference.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [Office] of Workers' Claims, Mayo-Underwood Building, 3<sup>rd</sup> Floor, 500 Mero Street, [Prevention Park, 657 Chamberlain Avenue], Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 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, September 14, 2021)

#### 803 KAR 25:185. Procedure for e-mail notification of cancellation or removal of location of specific workers' compensation coverage.

RELATES TO: KRS 342.0011(9), (16), 342.260, 342.340

STATUTORY AUTHORITY: KRS 342.260(2), 342.340

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(2) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to establish[~~on or before December 31, 2015, establishing~~] information necessary to be received to create an e-mail notification system for a person to enter his or her e-mail address into the Insurance Coverage Look-up database and be notified of any cancellation of a specific business' workers' compensation coverage. This administrative regulation establishes procedures and standards for email notification of cancellation of specific business workers' compensation coverage to persons registered with the Department of Workers' Claims Insurance Coverage Look-up database.

Section 1. Definitions. (1) "Cancellation of coverage" means coverage lapse notice or an employer location has been removed from the policy.

(2) "Commissioner" is defined by KRS 342.0011(9).

(3) "Insurance Coverage Look-up database" means a location in Department of Workers' Claims (DWC) Litigation Management System (LMS) Web site that links a subscriber to the DWC Insurance Coverage database.

(4) "Litigation Management System" or "LMS" means the electronic filing system utilized in the filing and processing of workers' compensation claims in the Commonwealth of Kentucky.

(5) "Person" is defined by KRS 342.0011(16).

(6) "Workers' compensation coverage" means the insurance required by KRS 342.340(1)(a).

Section 2. Subscription Requirements. (1) Any person who wishes to receive electronic mail notification of cancellation of a specific business' workers' compensation coverage shall subscribe with the Department of Workers' Claims through [at] its Web site/website] [Web \_\_\_\_\_ site] at <https://kyworkersclaims.lms.ky.gov/CoverageLookup>. [www.labor.ky.gov/workersclaims by using the specific link to the LMS.]

(a) The subscriber shall provide through the link the name and address of each business whose policy is to be monitored.

(b) The subscriber shall provide through the link the e-mail address to which notices of cancellation of coverage are to be sent.

(2)(a) The term for a specific subscriber shall be for a period of one (1) year from the date of subscription.

(b) There shall not be a limit as to how many times subsequent consecutive subscriptions may occur.

Section 3. Notification by the Commissioner. Upon notification from the insurance carrier that the specific policy selected has been cancelled or that the selected location has been removed from the policy, the commissioner shall notify the subscriber by e-mail to the registered e-mail address within five (5) days of the receipt of a notification of cancellation or removal by the Department of Workers' Claims.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3<sup>rd</sup> Floor, 500 Mero Street, Frankfort, Kentucky 40601, Phone (502) 782-4404, Fax (502) 564-0681, email Dale.Hamblin@ky.gov.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
(As Amended at ARRS, September 14, 2021)**

**806 KAR 4:010. Fees of the Department [Office] of Insurance.**

RELATES TO: KRS 18A.225, 61.874, 304.2-110, 304.2-150, 304.3-150, 304.4-010, 304.9-053, 304.9-105, 304.9-130, 304.9-140, 304.9-150, 304.9-160, 304.9-200, 304.9-260, 304.9-270, 304.9-280, 304.9-295, 304.9-300, 304.9-320, 304.9-430, 304.9-432, 304.9-485, 304.9-505, 304.9-780, 304.10-120, 304.11-020, 304.15-700, 304.15-720, 304.17A-300, 304.19-080, 304.29-231, 304.32-120, 304.32-270, 304.38-040, 304.38-060, 304.38-200, 304.38A-070, 304.45-140, 304.49-150

STATUTORY AUTHORITY: KRS 61.874(4), 304.2-110(1), 304.4-010(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [Executive Director] of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.4-010(1) requires the Commissioner [Executive Director] of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. KRS 61.874(4) authorizes an agency to charge fees based on costs for public records used for commercial purposes. This administrative regulation establishes[shall prescribe] [prescribes] [these] services for which the Department [Office] of Insurance shall [will] charge fees and the amounts of those fees.

Section 1. The commissioner shall collect [in-advance] fees as follows:

- (1) Annual statement.
  - (a) Filing each year, \$100.
  - (b) Filing additional or supplemental statement in the same year, \$100.
- (2) Filing charter documents.
  - (a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, \$100.
  - (b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, fifty (50) dollars.
- (3) Certificate of authority.
  - (a) Issuance of original certificate, \$500.
  - (b) Amending, to add a line, fifty (50) dollars.
  - (c) Renewal, each year, \$100.
- (4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of [such] permit, \$200.
- (5) Self insurer.
  - (a) Application to become self insurer under KRS Chapter 304 Subtitle 39, \$200.
  - (b) Notification of self-insurance program under KRS Chapter

304 Subtitle 32, fifty (50) dollars.

(6) Agent license, line of authority, license renewal, appointment, appointment renewal, and late renewal penalty. Each individual agent and each business entity agent.

- (a) License and line of authority:
  1. Resident individual license, forty (40) dollars and an additional forty (40) dollars for each line of authority;
  2. Nonresident individual license, fifty (50) dollars and an additional fifty (50) dollars for each line of authority;
  3. Resident business entity license, \$100 and an additional \$100 for each line of authority; and
  4. Nonresident business entity license, \$120 and an additional \$120 for each line of authority.
- (b) Temporary license as agent, twenty (20) dollars.
- (c) License renewal, biennial:
  1. Resident individual license renewal:
    - a. [(a)] If no active appointment, forty (40) dollars; and
    - b. [(b)] If one (1) or more active appointments, zero dollars;
  2. Nonresident individual license renewal:
    - a. [(a)] If no active appointment, fifty (50) dollars; and
    - b. [(b)] If one (1) or more active appointments, zero dollars;
  3. Resident business entity license renewal:
    - a. If no active appointment, \$100; and
    - b. If one (1) or more active appointments, zero dollars; and
  4. Nonresident business entity license renewal:
    - a. If no active appointment, \$120; and
    - b. If one (1) or more active appointments, zero dollars.
- (d) Appointment, per foreign or alien insurer represented:
  1. Resident individual appointment, for each form filed:
    - a. Property, casualty, and personal lines of authority of agent, forty (40) dollars;
    - b. Life, health, and variable life and variable annuity lines of authority, forty (40) dollars; and
    - c. All other lines of authority of agent, forty (40) dollars each;
  2. Nonresident individual appointment, for each form filed:
    - a. Property, casualty, and personal lines of authority of agent, fifty (50) dollars;
    - b. Life, health, and variable life and variable annuity lines of authority, fifty (50) dollars; and
    - c. All other lines of authority of agent, fifty (50) dollars each;
  3. Resident business entity appointment, for each form filed:
    - a. Property, casualty, and personal lines of authority of agent, \$100;
    - b. Life, health, and variable life and variable annuity lines of authority, \$100; and
    - c. All other lines of authority of agent, \$100 each; and
  4. Nonresident business entity appointment, for each form filed:
    - a. Property, casualty, and personal lines of authority of agent, \$120;
    - b. Life, health, and variable life and variable annuity lines of authority, \$120; and
    - c. All other lines of authority of agent, \$120 each.
- (e) Appointment renewal, biennial, per foreign or alien insurer:
  1. Resident individual appointment renewal, forty (40) dollars;
  2. Nonresident individual appointment renewal, fifty (50) dollars;
  3. Resident business entity appointment renewal, \$100; and
  4. Nonresident business entity appointment renewal, \$120.
- (f) Appointment and biennial appointment renewal, per fraternal benefit society, KRS Chapter 304 Subtitle 32 corporation, health maintenance organization, or limited health service organization represented:
  1. Resident individual, forty (40) dollars;
  2. Nonresident individual, fifty (50) dollars;
  3. Resident business entity, \$100; and
  4. Nonresident business entity, \$120.
- (g) Late penalty for license renewal and appointment renewal:
  1. Resident individual, forty (40) dollars;
  2. Nonresident individual, fifty (50) dollars;
  3. Resident business entity, \$100; and
  4. Nonresident business entity, \$120.
- (7) (a) Pharmacy benefit manager license, or annual license

renewal, \$1,000; ~~and~~

~~(b) Late renewal penalty \$500.~~

~~(8) Portable Electronics Insurance Retailer License:~~

~~(a), (1) One (1) to twenty (20) locations in Kentucky, \$100 per location; and~~

~~(b) Twenty-one (21) or more locations in Kentucky, \$2,500 dollars total.~~

~~(9)(7) Surplus lines broker, consultant, reinsurance intermediary, or managing general agent license, biennial license renewal, or late renewal penalty, \$100 each.~~

~~(10)(8)(a) Adjuster license, biennial license renewal, or late renewal penalty, fifty (50) dollars each.~~

~~(b) Temporary license as apprentice adjuster, twenty-five (25) dollars.~~

~~(11)(9) Administrator's license, biennial license renewal, or late renewal penalty, fifty (50) dollars each.~~

~~(12)(10)(a) Individual life [viatical] settlement broker license, biennial license renewal, or late renewal penalty, \$250 each.~~

~~(b) Business entity life [viatical] settlement broker license, biennial license renewal, or late renewal penalty, \$750 each.~~

~~(13)(11)(a) Individual life [viatical] settlement provider license, biennial license renewal, or late renewal penalty, \$500 each.~~

~~(b) Business entity life [viatical] settlement provider license, biennial license renewal, or late renewal penalty, \$1,500 each.~~

~~(14)(12) Approval of preclicensing training course, fifty (50) dollars; biennial renewal, fifty (50) dollars.~~

~~(15)(13) Approval of instructors, five (5) dollars per instructor; biennial renewal, five (5) dollars per instructor.~~

~~(16)(14) Filing agent continuing education course for:~~

~~(a) Approval, five (5) dollars per hour of continuing education credit in addition to initial fee of ten (10) dollars remitted with filing; and~~

~~(b) Biennial renewal, five (5) dollars per hour of continuing education credit; minimum of ten (10) dollars.~~

~~(17)(15) Examination for agents, life settlement [viatical] brokers, adjusters, and consultants, fifty (50) dollars for each examination.~~

~~(18)(16) Annual registration fee of unauthorized insurer under KRS 304.11-020(2), \$500.~~

~~(19)(17)(a) Rental vehicle insurance license, biennial license renewal, and late license renewal penalty:~~

~~1. Rental vehicle agent, \$100 each; and~~

~~2. Rental vehicle managing employee, individual, forty (40) dollars each.~~

~~(b) Rental vehicle agent and managing employee appointment, biennial appointment renewal, and late appointment renewal penalty, per insurer represented:~~

~~1. Resident individual, forty (40) dollars each;~~

~~2. Nonresident individual, fifty (50) dollars each;~~

~~3. Resident business entity, \$100 each; and~~

~~4. Nonresident business entity, \$120 each.~~

~~(c) Rental vehicle location registration or biennial location registration renewal, fifty (50) dollars per location.~~

~~(18)(a) Specialty credit insurance license, biennial license renewal, and late license renewal penalty:~~

~~1. Specialty credit producer, \$750; and~~

~~2. Specialty credit managing employee, forty (40) dollars each.~~

~~(b) Specialty credit producer and managing employee appointment, biennial appointment renewal, and late appointment renewal penalty, per insurer represented:~~

~~1. Resident individual, forty (40) dollars each;~~

~~2. Nonresident individual, fifty (50) dollars each;~~

~~3. Resident business entity, \$100 each; and~~

~~4. Nonresident business entity, \$120 each.~~

~~(c) Specialty credit location registration or biennial location registration renewal, \$250 per location.~~

~~(20)(19) Registration fee of industrial insureds, government entity insureds, and exempt commercial policyholders under KRS Chapter 304 Subtitle 11, \$100.~~

~~(21)(20) Advisory organizations, statistical agents, and form providers.~~

~~(a) Application for license, \$500.~~

~~(b) Annual renewal, \$100.~~

~~(22)(24) Rate and form filings.~~

~~(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner [executive director], \$100.~~

~~(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, \$100.~~

~~(c) Other rate and form filings, five (5) dollars per rate and form.~~

~~(23)(22) Insurance premium finance companies.~~

~~(a) Application for license, \$500.~~

~~(b) Annual renewal, \$100.~~

~~(24)(23) Cost of administering KRS Chapter 304 Subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.~~

~~(25)(24) Computer printouts of lists, computer printouts of mailing labels, and electronic or digital media:~~

~~(a) Agents with lines of authority for:~~

~~1. Property, casualty, and personal lines, for computer print-outs of lists or mailing labels, \$300, for electronic or digital media, \$265;~~

~~2. Life, health, and variable life and variable annuity for computer print-outs of lists or mailing labels, \$300, for electronic or digital media, \$265;~~

~~3. All other lines, \$100;~~

~~4. Listing for each ZIP code, fifty (50) dollars; and~~

~~5. Appointments (activity) of a specific agent, five (5) dollars.~~

~~(b) Adjusters, consultants, managing general agents, surplus lines brokers, reinsurance intermediaries, rental vehicle agents and managing employees, [specialty credit producers and managing employees,] life [viatical] settlement brokers, life [viatical] settlement providers, and administrators, ninety (90) dollars per license classification.~~

~~(c) Insurer directories:~~

~~1. All authorized insurers, ninety (90) dollars;~~

~~2. Insurers by line of insurance, ninety (90) dollars; and~~

~~3. Appointments (activity) by a specific insurer, fifty (50) dollars.~~

~~(d) Business entity license for agent, adjuster, administrator, managing general agent, reinsurance intermediary, rental vehicle agent, [specialty credit producer,] life [viatical] settlement broker, and life [viatical] settlement provider, per license classification:~~

~~1. Business entity directory, ninety (90) dollars;~~

~~2. Business entities by line of authority, ninety (90) dollars; and~~

~~3. Appointments (activity) of a specific business entity, ten (10) dollars.~~

~~(e) Other special requests, printouts, or electronic or digital media not specified in this section, if the request is approved by the commissioner [executive director], the commissioner [executive director] shall establish the cost for the request in accordance with KRS 61.874(4)(c).~~

~~(26)(25) Provider agreement filing, twenty-five (25) dollars.~~

~~(27)(26) Subcontract agreement filing, twenty-five (25) dollars.~~

~~(28)(27) Risk-sharing arrangement filing, fifty (50) dollars.~~

~~(29)(28) Miscellaneous services.~~

~~(a) Filing other documents, each, five (5) dollars per document.~~

~~(b) Commissioner's [Executive Director's] certificate under seal, other than certificates, licenses, and other documents provided for in this section, each, five (5) dollars.~~

~~(c) For copies of any document on file with the commissioner [executive director], per page, thirty (30) cents.~~

~~(d) Copy of annual statements, per page, one (1) dollar.~~

Section 2. The biennial appointment renewal fees for agents, including managing general agent, rental vehicle agent, and rental vehicle managing employee, [specialty credit producer, and specialty credit managing employee], shall be payable as follows:

(1) Life insurers and health insurers, including health maintenance organizations, limited health service organizations, and KRS Chapter 304 Subtitle 32 corporations, shall renew their appointments on or before March 31 in odd numbered years and biennially thereafter; fraternal benefit societies shall renew their appointments on or before March 31, 2005, and biennially thereafter.

(2) All other insurers shall renew their appointments on or before March 31 in even numbered years and biennially thereafter.

(3) Original license and appointment fees shall be the amount stated and not prorated.

(4) Fee for duplicate request of appointment or renewal of appointment may be found as[deemed] earned if[when] the appointment or renewal is confirmed.

Section 3. If a statute or administrative regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as established[specified] in this administrative regulation.

CONTACT PERSON: Abigail Gall, Executive Assistant, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Agent Licensing Division**  
**(As Amended at ARRS, September 14, 2021)**

**806 KAR 9:025. [Agent] Licensing process.**

RELATES TO: KRS 165A.330, 304.4-010, 304.9-030, 304.9-105, 304.9-130, 304.9-150, 304.9-160, 304.9-230, 304.9-260/304-260, 304.9-270, 304.9-295, 304.9-320, 304.9-430, 304.14-642

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, 304.9-133, 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-280, 304.9-295

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 provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form [required] for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of prelicensing[pre-licensing] and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

**Section 1. Pre[-]Licensing Course Requirements.**

(1) An individual applying for an agent license shall complete a prelicensing[pre-licensing] course of study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

- (a) Seeking a limited line of authority under KRS 304.9-230; or
- (b) Exempt pursuant to KRS 304.9-170.

(2)(a) All prelicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A prelicensing course provider shall submit either in writing or electronically through the department's Web site, <http://insurance.ky.gov>:

- 1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;
- 2. A Form CE/PL-100, Course Approval Application, for each

course the approved provider wants to offer;

3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;

4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and

5. An outline of the content of the course of study.

(c) In approving a prelicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) [If approved,] A prelicensing course of study approved by the commissioner shall be renewed biennially.

(e) For renewals[If approved previously,] the provider and instructor approval applications shall not be ~~[are not]~~ required to be submitted with each course.

(3) A prelicensing course of study shall be ~~[is]~~ valid for one (1) year from the date of completion.

(4) The prelicensing provider shall submit proof of completion of a course of study to the department and the applicant on Form CPL-01, Certificate of Prelicensing[Pre-Licensing] Course Completion or electronically through the department's Web site, <http://insurance.ky.gov>, for each applicant.

**Section 2. Agent Licensing[Examinations].**

(1) An applicant ~~[All applicants]~~ for an individual agent ~~[a]~~ license, other than a preneed funeral agent license provided under 806 KAR 9:370, shall file with the department~~[commissioner]~~:

(a) A completed Form 8301, NAIC Individual Insurance [Producer] License Application;

(b) Documentation demonstrating successful completion of any required prelicensing course ~~[courses]~~;

(c) A completed background check through the Kentucky Administrative Office of the Courts; and

(d) Payment of the fees applicable to the license and lines of authority sought in accordance with ~~[according to]~~ KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully ~~[successfully]~~ complete an examination ~~[examinations]~~ as follows:

(a) For a life line of authority, a life examination;

(b) For a health line of authority, a health examination;

(c) For a property line of authority, a property examination;

(d) For a casualty line of authority, a casualty examination;

(e) For a personal lines line of authority~~[lines]~~, a property and casualty personal lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For a variable life and variable annuity products line of authority~~[product]~~~~[products]~~, no examination is required.

(4) An examination ~~[Examinations]~~ shall only be required for individual applicants applying for the following limited lines of authority identified in KRS 304.9-230:

(a) For a crop limited line of authority, a crop examination; and

(b) For a rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license for which ~~[required to take]~~ an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

**Section 3. Adjuster Licensing [Examinations].**

(1) An applicant for an adjuster license shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance ~~[Producer]~~ License Application;

~~(b) A completed background check through the Kentucky Administrative Office of the Courts; and~~

~~(c) The applicable fee established in 806 KAR 4:010.~~

(2) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) ~~for (8)]~~ shall:

(a) For a property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For a workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For a crop line of authority, either:

1. Successfully complete a crop adjuster examination; or

2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

(3) [(2)] Every applicant for a license for which ~~[required to take]~~ an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

#### Section 4. Consultant Licensing~~[Examination]~~.

(1) An applicant for a consultant license shall:

~~(a) File with the department:~~

~~1. [(a)] A completed Form 8301, NAIC Individual Insurance [Producer] License Application;~~

~~2. A completed background check through the Kentucky Administrative Office of the Courts; and~~

~~3. [(b)] Payment of the fees applicable to the license in accordance with KRS 304.4-010 and 806 KAR 4:010; and~~

~~(b) Successfully complete the consultant examination.~~

(2) The documents and fees required under [in] subsection (1)(a) of this section shall be submitted prior to scheduling an examination.

(3) An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination ~~[and obtain a license]~~.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

#### Section 5. Continuing Education.

(1) ~~(a)~~ Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

~~(b) [(a)] To apply for approval as a continuing education provider, an applicant [Continuing education courses providers] shall submit to the department:~~

~~1. A [a] completed Form KYP-01, Provider Approval Application; and~~

~~2. For [new] proprietary schools[education providers], documentation of licensure[approval] by the Kentucky Commission on Proprietary Education.~~

~~(c) [(b)] To apply for approval as [of] a continuing education instructor, an approved continuing education provider [Continuing education course instructors] shall submit to the department:~~

~~1. A [a] completed Form CE/PL-200, Instructor Approval Application; and~~

~~2. The applicable fee established in 806 KAR 4:010.~~

~~(d) [(c)] 1. To apply for approval of a continuing education course, an approved continuing education provider [A continuing education course] shall submit to the department [be filed by submitting the] Form CE/PL-100, Course Approval Application~~

~~[form] at least sixty (60) days in advance of advertising the course, unless good cause is demonstrated by the provider for the failure to timely submit the form [file]. If the course is offered in multiple states, the provider may, in lieu of Form CE/PL-100, submit the [use the National Association of Insurance Commissioners]; NAIC Uniform Continuing Education Reciprocity Course Filing Form [for approval].~~

~~2. After approval of the continuing education course and the determination of the number of credit hours assigned to the course, the continuing education provider shall pay to the department the applicable fee established in 806 KAR 4:010.~~

~~(e) [(d)] The commissioner shall consider the following in determining approval of a continuing education course [courses]:~~

~~1. Whether the applicant has remitted all fees due once the total credit hours are determined pursuant to 806 KAR 4:010; and~~

~~2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:~~

~~a. Insurance, annuities, and risk management;~~

~~b. Insurance laws and administrative regulations;~~

~~c. Mathematics, statistics, and probability;~~

~~d. Economics;~~

~~e. Business law;~~

~~f. Finance;~~

~~g. Taxes;~~

~~h. Agency management including all aspects of agency operations that support the long-term stability of the agency system and encourage the service and protection of customers;~~

~~i. Ethics; and [or]~~

~~j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.~~

~~(f) [(e)] The continuing education course shall:~~

~~1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;~~

~~2. Have clearly defined objectives and course completion criteria;~~

~~3. Have a written outline and study materials or texts; and~~

~~4. Include a means for evaluation.~~

~~(g) [(f)] A self-study course [Self-study courses] shall require successful completion of an examination.~~

~~(h) [(g)] Continuing education credit shall not be provided for:~~

~~1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;~~

~~2. Committee service for professional organizations;~~

~~3. Computer training to develop functional skills; and~~

~~4. Motivational or self-help courses.~~

~~(i) [(h)] The commissioner shall measure continuing education course credit hours by the following:~~

~~1. Each credit hour for live instruction courses, completed in a classroom, by video, teleconference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation; and [-]~~

~~2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the [National Association of Insurance Commissioners]; Recommended Guidelines for Online Courses.~~

~~(j) [(i)] Any material change in a previously approved continuing education course shall be filed with and approved by the commissioner prior to use.~~

~~(k) [(j)] Biennially, a continuing education provider [providers] shall request renewal [renew approval] of a continuing education course [courses] and a continuing education instructor [instructors] by submitting the information required by subsection (1)(c) [(b)] and (d) [(c)] of this section and the fee established in 806 KAR 4:010 to the department on or before [all applicable information and fee payment to the commissioner prior to] June 30 of even-numbered years.~~

~~(2) [Licensees engaging in the sale, solicitation, or negotiation of specialized products listed as noted in paragraphs (a), (b) and (c) of this subsection are subject to the following:]~~

~~(a) A resident [Resident] individual agent [licensees] selling, soliciting, or negotiating insurance products that qualify under the~~

Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care insurance training, and four (4) hours of additional training for each biennial continuing education compliance period. ~~;~~

(b) A resident individual agent ~~[Any resident licensee]~~ who holds ~~[licensed with]~~ a property and casualty line ~~[Property and Casualty lines]~~ of authority selling ~~[federal]~~ flood insurance under the National Flood Insurance Program shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207. ~~;~~ and

(c) 1. An individual agent [Any individual licensee] who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the agent [licensee] has documented the completion of substantially similar training in another state, that shall include at a minimum information on the following topics:

a. [4.] The types of annuities and various classifications of annuities;

b. [2.] Identification of the parties to an annuity;

c. How product specific annuity contract features affect consumers[3. The manner in which fixed, variable, and indexed annuity contract provisions affect consumers];

d. [4.] The application of income taxation of qualified and non-qualified annuities;

e. [5.] The primary uses of annuities; and

f. [6.] Appropriate standard of conduct, sales practices, placement, and disclosure requirements.

2. The training required by subparagraph 1. of this paragraph[~~(c)1. of this subsection~~] shall not include:

a. Marketing information;

b. Training on sales techniques; or

c. Specific information about a particular insurer's products.

3. Except as provided in subparagraph 4. of this paragraph[~~(d)1.~~] an agent who has completed an annuity training course approved by the department prior to January 1, 2022[July 1, 2021] shall, within six (6) months after January 1, 2022[July 1, 2021], complete either:

a. A new four (4) credit hour [credit] training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider; or

b. An additional one-time one (1) credit hour training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider on appropriate sales practices ~~and~~ replacement and disclosure requirements under 806 KAR 12:120.

4.[2.] A non-resident agent who has completed a training course that is substantially similar to the training course required in subparagraph 3.[1.] of this paragraph shall meet the requirements of subparagraph 3.[1.] of this paragraph.

(3) A continuing ~~[Continuing]~~ education provider ~~[providers]~~ shall:

(a) Within thirty (30) days of completion of a continuing education course, submit electronically through the department's Web site, <http://insurance.ky.gov>, ~~[to the commissioner]~~ the Continuing Education Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue ~~[the]~~ Form CE-301, Approved Continuing Education Certificate of Completion ~~[form]~~ to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

(4) A licensee shall be ~~[Licensees remain]~~ responsible for verifying that a continuing education provider has submitted a continuing education certificate of completion form to the department for a continuing education course that the licensee has successfully completed. If the continuing education provider has not submitted a continuing education certificate of completion form in accordance with subsection (3) of this section, the licensee shall submit the continuing education certificate of completion to the department within the timeframes established in KRS 304.9-260

and 304.9-295. [the timely submission of a continuing education certificates of completion to the commissioner even if the provider does not fulfill their responsibilities under this section.]

(5) A licensee ~~[Licensees]~~ may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6) If the department does not receive proof of compliance with[fulfillment of] a licensee's continuing education requirement on or before the deadline established in KRS 304.9-260 and 304.9-295, the commissioner shall:

1.[(a)] Make information of the deficiency available to the licensee; and

2.[(b)] Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

~~(b)[(7)] A licensee [Licensees] whose license is terminated pursuant to paragraph (a) of this subsection [due to the failure to submit the certification of continuing education by the required deadline established in KRS 304.9-260 and 304.9-295] shall:~~

1.[(a)] Have the license reissued within twelve (12) months of the license termination if the licensee:

a.[1.] Satisfies the delinquent continuing education requirements;

b.[2.] Submits a new application with required attachments included within Section 2(1) or Section 3(1) of this administrative regulation for a license; and

c.[3.] Submits the applicable fees established in 806 KAR 4:010; or

2.[(b)] Complete ~~[Be required to complete]~~ all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation if [after] the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

~~(7)[(8)] A licensee may seek exemption from continuing education [Continuing Education] requirements by completing a Form CE AFF 304, Affidavit for Exemption from Continuing Education [Requirement].~~

~~(b)[(a)] An agent exempted from continuing education requirements in accordance with paragraph (a) of this subsection[on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions] may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:~~

1. Completing the continuing education requirements for the immediate preceding continuing education biennium;

2. Providing a certification of completion of those continuing education requirements; and

3. Providing a signed, written statement withdrawing the affidavit.

~~(c)[(b)] The false use of Form CE AFF 304, Affidavit for Exemption from Continuing Education[a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions] for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.~~

~~(8)[(9)] Members of the Armed Forces who have been mobilized or deployed in support of their duties may[:~~

~~(a)] request an extension of time for completion, or a waiver, of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the Form MLW-01, Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment[; or~~

~~(b) Request a waiver of continuing education requirements in accordance with KRS 304.9-260(3)].~~

Section 6. Business Entity Agent Application and Designation.

(1) A business entity applying for a license in accordance with KRS Chapter 304 Subtitle 9 or Subtitle 10, other than a preneed funeral agent license provided under 806 KAR 9:370, [seeking an agent license pursuant to KRS 304.9-130] shall submit to the

department:

- (a) Form 8301-BE, NAIC[Uniform Application for] Business Entity Insurance License Application; and
- (b) The applicable fee established in 806 KAR 4:010.
- (2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form, to designate or terminate individuals authorized to act under the business entity's license or appointments.

#### Section 7. Agent Appointment.

- (1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, in accordance with [as established by] KRS 304.9-270.
- (2) An insurer seeking approval of an agent's appointment shall submit to the department:
  - (a) Form 8302-AP, Producer Appointment; and
  - (b) The [the] applicable filing fee established in 806 KAR 4:010.
  - (3) An insurer terminating an appointment pursuant to KRS 304.9-280 shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.
  - (4) The requirements of this section shall apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form to the department [with the commissioner] to make a change or update the licensee's:

- (1) Name;
- (2) Address;
- (3) Phone number;
- (4) Email address; and
- (5) Name in which the licensee is doing business.[name and address.]

#### Section 9. Material Incorporated by Reference.

- (1) The following material is incorporated by reference:
  - (a) Form CPL-01, "Certificate of Prelicensing[Pre-licensing] Course Completion," (8/2019);
  - (b) Form 8301, "NAIC Individual Insurance [Producer] License Application," (9/2021)[(11/2020)][(8/2019)];
  - (c) Form 8301-BE, NAIC[Uniform Application for] Business Entity Insurance License Application," (9/2021)[(8/2019)];
  - (d) Form 8302-AP, "Producer Appointment," (9/2021)[(8/2019)];
  - (e) Form 8302-TE, "Termination of Producer Appointment," (9/2021)[(8/2019)];
  - (f) Form 8305, "Business Entity Designation or Termination of Designation Form," (9/2021)[(8/2019)];
  - (g) Form 8304, "Examination Retake Form," (9/2021)[(8/2019)];
  - (h) Form KYP-01, "Provider Approval Application," (9/2021)[(8/2019)];
  - (i) Form CE/PL-100, "Course Approval Application," (8/2019);
  - (j) Form CE/PL-200, "Instructor Approval Application," (8/2019);
  - (k) Form CE-301, "Approved Continuing Education Certificate of Completion," (9/2021)[(12/2019)];
  - (l) Form CE AFF 304, "Affidavit for Exemption from Continuing Education," (9/2021)[(8/2019)];
  - (m) Form 8303, "Record Correction Form," (9/2021)[(8/2019)];
  - (n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," (9/2021)[(8/2019)];
  - (o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019); and
  - (p) "Recommended Guidelines for Online Courses", National Association of Insurance Commissioners, 3/2015.
- (2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street~~[245 West~~

Main Street], 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 <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

### PUBLIC PROTECTION CABINET Department of Insurance Health and Life Division (As Amended at ARRS, September 14, 2021)

#### 806 KAR 12:120. Suitability in annuity transactions.

RELATES TO: KRS 304.1-040, 304.5-030, 304.9-020(1), 304.9-025, 304.9-040, 304.9-390, 304.12-010, 304.12-030(1)(a), 304.99-020, 26 U.S.C. 401, 403, 408, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires licensees to act in the best interest of the consumer [satisfy specific requirements and standards] [act in the best interest of the consumer] when making a recommendation of an annuity and to require insurers to establish [establish] and maintain a system to supervise recommendations [standards and procedures for recommendations to consumers that result in a transaction involving annuity products] so that the insurance needs and financial objectives of consumers at the time of [during] the transaction are effectively [appropriately] addressed.

Section 1. Definitions. (1) "Agent" is defined by [in] KRS 304.9-020(1).

(2) "Annuity" is defined by [in] KRS 304.5-030.

(3) "Cash Compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

(4) [(3)] "Commissioner" is defined by KRS 304.1-050(1).

(5) "Comparable standards" means:

(a) [1.] With respect to broker-dealer and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including Regulation Best Interest and any amendments or successor regulations thereto;

(b) [2.] With respect to investment advisers registered under federal and state securities laws or investment adviser representatives, the fiduciary duties, and all other requirements imposed on [such] investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including the Form ADV and interpretations; and

(c) [3.] With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Security Act of 1974 (ERISA) or the Internal Revenue Code (IRC) and any amendments or successor statutes thereto.

(6) [(4)] "Consultant" is defined by [in] KRS 304.9-040.

(7) [(5)] "Financial professional" means a licensee that is regulated and acting as:

(a) [1.] A broker-dealer registered under federal and state securities laws or a registered representative of a broker-dealer;

(b) [2.] An investment adviser registered under federal and state securities laws or an investment adviser representative associated with the federal and state registered investment adviser; or

(c) [3.] A plan fiduciary under Section 3(21) of the ERISA or



fiduciary under Section 4975 (e)(3) of the IRC or any amendments or successor statutes thereto.

(8) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(9)[(6)] "Insurance producer" is defined by [in] KRS 304.9-020(10).

(10)[(7)] "Insurer" is defined by [in] KRS 304.1-040.

(11) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

(12)[(8)] "Licensee" means agent, or an insurer if an agent is not involved, and consultant.

(13) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation but does not include cash compensation or non-cash compensation.

(14) "Non-cash compensation" means any form of compensation that is not cash compensation.

(15) "Nonguaranteed elements" means the premium, credited interest rates including bonus, benefits, values, dividends, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. **An element shall be considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.**

(16)(a) [(9)] "Recommendation" means advice provided by a licensee to an individual consumer that results in a purchase, exchange, or replacement of an annuity in accordance with that advice.

**(b) Recommendation shall not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.**

(17) [(10)] "Replacement" is defined by [in] KRS 304.12-030(1)(a).

(18) "SEC" means the United States Securities and Exchange Commission.

(14) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation in accordance Section 3(2).]

Section 2. Exemptions. This administrative regulation shall not apply to recommendations involving:

(1) Direct response solicitations without a recommendation based on information collected from the consumer pursuant to this administrative regulation; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

(b) A plan described by 26 U.S.C. 401(a), 401(k), 403(b), 408(k), or 408(p), as amended, if established or maintained by an employer;

(c) A governmental[government] or church plan defined in 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Prepaid funeral contracts.

Section 3. Duties of Insurers and Licensees. (1) **Obligations [Best interest obligations].** A licensee, when making a recommendation of an annuity, shall **act in the best interest of the consumer[do so] [act in the best interest of the consumer]** under the circumstances known at the time the recommendation is made, without placing the licensee's or the insurer's financial interest ahead of the consumer's interest **and does so by satisfying]. A licensee shall have acted in the best interest of**

~~the consumer if he has satisfied]~~ the following obligations regarding care, disclosure, conflict of interest and documentation.

(a) 1. Care obligation. The licensee, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

a. Know the consumer's financial situation, insurance needs, and financial objectives;

b. Understand the available recommendation options after making a reasonable inquiry into options available to the licensee;

c. Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

d. Communicate the basis or bases of the recommendation.

2.a. The requirements under subparagraph 1. of this paragraph shall include **at a minimum, the following information to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives** making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

b. Consumer profile information shall include:

(i) Age;

(ii) Annual Income;

(iii) Financial situation and needs, including debts and other obligations;

(iv) Financial experience;

(v) Insurance needs;

(vi) Financial objectives;

(vii) Intended use of the annuity;

(viii) Financial time horizon;

(ix) Existing assets or financial products, including investment, annuity, and insurance holdings;

(x) Liquidity needs;

(xi) Liquid net worth;

(xii) Risk tolerance, including willingness to accept nonguaranteed elements in the annuity;

(xiii) Financial resources used to fund the annuity; and

(xiv) Tax status.

3.a. The requirements under subparagraph 1. of this paragraph shall require a licensee to consider the types of products the licensee is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives.

b. The requirements under subparagraph 1. of this paragraph shall not require analysis or consideration of any products outside the authority and license [licensee] of the licensee or other possible alternative products or strategies available in the market at the time of the recommendations.

4. The requirements under paragraph (a) of this subsection shall not create a fiduciary obligation or relationship and **shall only** create a regulatory obligation as established in this administration regulation.

5 a. Factors relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives shall include:

(i) Consumer profile information;

(ii) Characteristics of the insurer; and

(iii) Product costs, rates, benefits, and features.

b. The level of importance of each factor under the care obligation of this [the] paragraph may vary depending on the facts and circumstances of a particular case;

c. **Factors [Each factor]** shall not be considered in isolation.

6. The requirements under paragraph (a) of this subsection shall include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death[, ] or living benefit, or other insurance-related features.

7. The requirements under paragraph [subparagraph] (a) of this subsection shall apply to the particular annuity as a whole and the underlying subaccount to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product [producer] enhancements, if any.



8. The requirements under paragraph (a) of this subsection shall not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

9. The requirements under paragraph (a) of this subsection shall not mean the licensee has ongoing monitoring obligations. An obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the licensee.

10. In the case of an exchange or replacement of an annuity, the licensee shall consider the whole transaction, which shall include taking into consideration whether:

a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

c. The consumer had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty (60) months.

11. If the licensee does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses, this administrative regulation shall not be construed to require a licensee to obtain any license other than a license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including any securities license, in order to fulfill the duties and obligations contained in this administrative regulation.

(b) Disclosure obligation.

1. Prior to the recommendation or sale of an annuity, the licensee shall prominently disclose to the consumer on a form substantially similar to "Insurance Agent (Producer) Disclosure For Annuities":

a. A description of the scope and terms of the relationship with the consumer and the role of the licensee in the transaction;

b. An affirmative statement on whether the licensee is licensed and authorized to sell the following products:

(i) Fixed annuities;

(ii) Fixed indexed annuities;

(iii) Variable annuities;

(iv) Life insurance;

(v) Mutual funds;

(vi) Stocks and bonds; and

(vii) Certificates of deposit;

c. An affirmative statement describing the insurers **for which** the licensee is authorized, contracted or appointed, or otherwise able to sell insurance products **[for]** using the following descriptions:

(i) **From one (1) [One]** insurer;

(ii) **From two (2) or more** insurers; or

(iii) **From two (2) or more** insurers although primarily contracted with **one (1) insurer**.

d. A description of the sources and types of cash compensation and non-cash compensation to be received by the licensee, including whether the licensee is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other licensee, or by fee as a result of a contract for advice or consulting services; and

e. A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph 2. of this paragraph;

2. Upon request of the consumer or the consumer's designated representative, the licensee shall disclose:

a. A reasonable estimate of the amount of cash compensation to be received by the licensee, which may be stated as a range of amounts or percentages; and

b. Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as

a range of amounts or percentages.

3. Prior to or at the time of the recommendation or sale of an annuity, the licensee shall have a reasonable basis to believe: [In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to these investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there shall be a reasonable basis to believe all of the following:]

a. [(a)] The consumer has been informed of various features of the annuity, including:

(i) [1-] The potential surrender period and surrender charge;

(ii) [2-] Potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity;

(iii) [3-] Mortality and expense fees;

(iv) [4-] Investment advisory fees;

(v) [5-] Potential charges for and features of riders or other options of the annuity;

(vi) [6-] Limitations on interest returns, potential changes in nonguaranteed elements of the annuity, insurance, and investment components; **[and]**

(vii) [7-] Market risk; **and**

**(viii) Annual fees.;**

(b) The consumer would benefit from certain features of the annuity, including:

1. Tax deferred growth;

2. Annuitization; or

3. Death or living benefit;

(c) For the particular consumer, based on his or her suitability information, the transaction as a whole is suitable, including:

1. The type of annuity;

2. The underlying subaccounts to which the funds are allocated at purchase or exchange of the annuity;

3. The riders; and

4. The similar product enhancements; and

(d) If there is an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

1. The consumer shall:

a. Incur a surrender charge;

b. Be subject to the commencement of a new surrender period;

c. Lose existing benefits including death, living, or other contractual benefits; or

d. Be subject to increased fees, including:

(i) Investment advisory fees; or

(ii) Charges for riders and similar product enhancements;

2. The consumer would benefit from product enhancements and improvements; and

3. The consumer has had another annuity exchange or replacement and in particular, exchange or replacement within the preceding thirty-six (36) months.;

(c) Conflict of interest obligation. A licensee shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(d) Documentation obligation. A licensee shall at the time of recommendation or sale:

1. Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

2. Obtain a consumer signed statement on a form substantially similar to "Consumer Refusal To Provide Information" documenting:

a. A consumer's refusal to provide the consumer profile information, if any; and

b. A consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

3. Obtain a consumer signed statement on a form substantially similar to "Consumer Decision To Purchase An Annuity NOT Based **[A]** On **A** Recommendation" acknowledging the annuity

transaction is not recommended if a consumer [customer] decides to enter into an annuity transaction that is not based on the licensee's recommendation.]

(2) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain the consumer's suitability information including the following:

- (a) Age;
- (b) Annual income;
- (c) Financial situation and needs, including the financial resources used for the funding of the annuity;
- (d) Financial experience;
- (e) Financial objectives;
- (f) Intended use of the annuity;
- (g) Financial time horizon;
- (h) Existing assets, including investment and life insurance holdings;
- (i) Liquidity needs;
- (j) Liquid net worth;
- (k) Risk tolerance; and
- (l) Tax status.

(3) Except as permitted under subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.]

(e) 1. Application of the best interest [best interest] obligation. A requirement applicable to a licensee under this subsection shall apply to every licensee who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the licensee has had any direct contact with the consumer.

2. Activities providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a licensee shall not constitute material control or influence.

(2) Transactions not based on a recommendation.

(a)[(4)(a)] Except as provided under paragraph (b) of this subsection, the licensee shall not have an obligation to a consumer under this subsection or subsection (1)(a) of this section related to an annuity transaction if:

1. A consumer refuses to provide relevant [suitability] consumer profile information requested by the licensee and the annuity transaction is not recommended;

2. A consumer decides to enter into an annuity [insurance] transaction not based on a recommendation of the licensee;

3. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; or

4. No recommendation is made.

(b) An insurer's issuance of an annuity [A licensee's recommendation] subject to paragraph

(a) of this subsection shall be reasonable under all the circumstances actually known to the insurer [licensee] at the time the annuity is issued.

(3)(a) Except as permitted under subsection (2) of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.]

(5) A licensee shall at the time of sale:

(a) Make a record of any recommendation subject to section 3(1) of this administrative regulation;

(b) Obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if any; and

(c) Obtain a consumer signed statement acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the licensee's recommendation.]

(b)[(6)(a)] An insurer shall establish and maintain a system that is reasonably designed to achieve a licensee's compliance with this administrative regulation, including the following:

1. The insurer shall establish and maintain reasonable procedures to inform its licensees of the requirements of this administrative regulation and shall incorporate the requirements of this administrative regulation into relevant [insurance] licensee training manuals.

2. The insurer shall establish and maintain standards for licensee product training and shall establish and maintain reasonable procedures to require its licensees to comply with the requirements of Section 4 of this administrative regulation.

3. The insurer shall provide product-specific training and training materials that [which] explain all material features of its annuity products to its licensees.

4. The insurer shall establish and maintain procedures for the review of each recommendation, prior to issuance of an annuity, that are designed to ensure [that] there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. [a recommendation is suitable.]

a. The [These] review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review.

b. The [This] electronic or other system for review procedures may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

5. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections (1), (2), (4), and (5) of this section. [suitable.] This may include confirmation of the consumer's consumer profile [consumer suitability] information, systematic customer surveys, licensee and consumer interviews, confirmation letters, licensee statements or attestations, and programs of internal monitoring. An insurer may comply with this subparagraph by applying sampling procedures, or by confirming the consumer profile [suitability] information or other required information under this section after issuance or delivery of the annuity.

6. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, if a licensee has provided to the consumer the information required to be provided under this section.

7. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

8. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph shall not prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

9. [6.] The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(c)[(b)]1. An insurer may contract for performance of a function, including maintenance of procedures, required under subsection (3) [paragraph (2)][(a)] of this subsection.

2. An insurer's supervision system under this subsection [paragraph 4.] shall include supervision of contractual performance under this subsection. This shall include the following:

a. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

b. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager represents, that the function is properly performed; and

3. If an insurer contracts for performance of a function and supervises the performance of the contract in accordance with subparagraph (c)2. [subsection (c)1] [(6)(b)2.] of this section, the insurer shall remain responsible for taking appropriate corrective

action and may be subject to sanctions and penalties pursuant to Section 5 of this administrative regulation.

(d)1. [(e)] An insurer shall not be required to include in its system of supervision a licensee's recommendations to consumers of products other than the annuities offered by the insurer; ~~or~~.]

2. Include consideration of or comparison to options available to the licensee or compensation relating to those options other than annuities or other products offered by the insurer.

(4)[(7)] Prohibited practices. A licensee or an insurer shall not attempt to influence a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of **the consumer profile [suitability]** information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(5)(a)1. Safe Harbor. Recommendations and sales of annuities ~~[(8)(a)1. Sales] made in compliance with comparable standards [FINRA requirements pertaining to suitability and supervision of annuity transactions] shall satisfy the requirements under this administrative regulation.~~

2. This subsection shall apply to ~~[FINRA broker-dealer] all recommendations and sales of [variable annuities and fixed] annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if the [such] standard would not otherwise apply to the product or recommendation at issue [if the suitability and supervision is similar to those applied to variable annuity sales.]~~

3. This subsection shall not limit the commissioner's ability to investigate and enforce the provisions of this administrative regulation.

(b) Nothing in paragraph (a) of this subsection shall limit the insurer's obligation to comply with subsection (3)(a) of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c)[(b)] For paragraph (a) **of this subsection** to apply, an insurer shall:

1. Monitor the ~~[FINRA member broker-dealer] relevant conduct of the financial professional seeking to rely on paragraph (a) of this subsection~~ or the entity responsible for supervising the licensee, such as the licensee's broker-dealer or investment adviser registered under federal securities laws, using information collected in the normal course of an insurer's business; and

2. Provide to the ~~[FINRA member broker-dealer] entity responsible for supervising the licensee seeking to rely on paragraph (a) of this subsection~~, such as the financial professionals broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist ~~[the FINRA member broker-dealer] the [such] entity to maintain its supervision system.~~

(6) [(9)] The requirements of this section are intended to supplement and not replace the disclosure requirements in 806 KAR 12:150.

Section 4. Licensee Training. (1) An agent shall not sell, solicit, or negotiate an annuity product unless the agent has **adequate knowledge of the product to recommend the annuity and completed training in accordance with 806 KAR 9:025[806 KAR 9:220, Section 5.]**

(2) A consultant shall not advise an individual regarding an annuity unless the consultant has **adequate knowledge of the product to recommend the annuity and** completed the training in accordance with **806 KAR 9:025 [806 KAR 9:220, Section 5.]**

(3) A licensee shall maintain records documenting compliance with the training requirements in subsection (1) and (2) of this section, which shall be available:

(a) To the department, if requested; and

(b) For a period not less than five (5) years.

(4) An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

Section 5. Mitigation of Responsibility. (1) An insurer shall be responsible for compliance with this administrative regulation. If a

violation occurs, due to the action or inaction of the insurer or its licensee, the commissioner may require:

(a) An insurer to take appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer[insurer's], an entity contracted to perform the insurer's supervisory duties, or by its licensees [licensee's][agent's, violation of this administrative regulation];

(b) A licensee [an agent] to take appropriate corrective action for any consumer harmed by the licensee's ~~[insurance agent's]~~ violation of this administrative regulation; or

(c) A supervising licensee ~~[insurance producer] that employs or contracts with another licensee [an insurance agent] to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the licensee's [agent's] violation of this administrative regulation;~~

(2) The commissioner may require a consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(3) Any applicable penalty under KRS 304.99-020 for a violation of ~~[Section 3(1), (2), or (3) of]~~ this administrative regulation may be reduced or eliminated, if corrective action for the consumer is taken promptly after a violation is discovered.

Section 6. Recordkeeping. Licensees shall maintain records of the information collected from the consumer, disclosure made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2:070. An insurer may maintain documentation on behalf of a licensee.

Section 7. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or **January 1, 2022 [July 1, 2021]** [January 1, 2012], whichever is later.

**Section 8. Scope. This administrative regulation shall not create or imply a private cause of action for violation of this administrative regulation.**

**Section 9. Material Incorporated by Reference.**

(1) The following material is incorporate by reference:

(a) "Insurance Agents (Producer) Disclosure For Annuities", (7/2020);

(b) "Consumer Refusal To Provide Information", (7/2020); and

(c) Consumer Decisions To Purchase An Annuity NOT Based on A Recommendation", (7/2020).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

**PUBLIC PROTECTION CABINET**  
Department of Insurance  
Division of Property and Casualty  
(As Amended at ARRS, September 14, 2021)

**806 KAR 13:150. Property and casualty rate and rule filings.**

RELATES TO: KRS 304.1-010, 304.1-050, 304.4-010(2), 304.13-011, 304.13-021[304.13-022,] 304.13-031, 304.13-051, 304.13-061, 304.13-081, 304.21-010, 304.22-020, 304.23-010

STATUTORY AUTHORITY: KRS 304.2-110, 304.13-061 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner ~~[executive—Director]~~ to promulgate administrative regulations necessary for or as an aid to

the effectuation of any provision of the Kentucky Insurance Code, defined in KRS 304.1-010. This administrative regulation establishes rate and rule filing procedures for property, casualty, surety, title, and mortgage guaranty insurance.

Section 1. Definitions. (1) "Advisory organization" is defined by/in KRS 304.13-011(9).

(2) "Commissioner" ["Executive director"] is defined by/in KRS 304.1-050(1).

(3) [(2)] "Department" is defined by/in KRS 304.1-050(2).

(4) "Loss cost" means the loss cost per unit of exposure excluding all loss adjustment expenses.[]

(3) "Office" is defined in KRS 304.1-050(2).[]

(5) [(4)] "Rate" is defined by/in KRS 304.13-011(22).

(6) [(5)] "Statistical agent" is defined by/in KRS 304.13-011[922](24).

(7) "Supplementary rating information" is defined by/in KRS 304.13-011(2).

Section 2. (1)[(a)] Paper filings shall include two (2) full document sets, on 8 1/2" x 11" white paper, with three (3) copies of Form PC TD-1, ["Property & Casualty Transmittal Document"] and a self-addressed stamped envelope. ~~The[This]~~ interactive version of this form is available on the National Association of Insurance Commissioners Web site at [https://content.naic.org/industry\\_rates\\_forms\\_trans\\_docs.htm](https://content.naic.org/industry_rates_forms_trans_docs.htm).

~~(b) Section 12(1)(f) through (nn) of this administrative regulation shall be used, as appropriate, for guidance in conjunction with filing the Form PC TD-1, ["Property & Casualty Transmittal Document"].~~

(2) A property and casualty insurance company, advisory organization, or statistical agent may file a rate or supplementary rating information on the commissioner's electronic system for rate and form filings via the Web site [www.serff.com](http://www.serff.com). An electronic filing shall be in lieu of a paper filing.

Section 3. (1) Every insurer, other than a life or health insurer, [insurers,] required by law or licensed advisory organization, or statistical agent permitted by law to file rates, loss costs, supplementary rating information, statistical plans, advertising and sales materials, or other documents shall file with these documents a completed and signed Form PC TD-1, ["Property and Casualty Transmittal Document"].[]

(2) If the filing is being made by a third party, a signed letter of authorization from the insurer shall be submitted.

Section 4. (1) A filing may include any number of documents, filed together on a particular date, pertaining to a single type of insurance identified on [from] the ["Uniform Property and Casualty Product Coding Matrix"].[] This form is available electronically on the National Association of Insurance Commissioners Web site at <https://content.naic.org/sites/default/files/inline-files/2021%20PC%20PCM.pdf>.

(2) Rates, loss costs, and supplementary rating information shall be filed separately from forms.

Section 5. All rate, loss cost, or supplementary rating information filings shall be accompanied by Form PC RRFS-1. ["Rate/Ruling Filing Schedule. This form is available electronically at https://insurance.ky.gov/PPC/Documents/NAICPropCasFormFilingSched102708.pdf."]

Section 6. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, rate filings referencing loss costs formulated by an advisory organization shall be accompanied by Form LC-1 P & C, ["Calculation of Loss Cost Multiplier"]. This form is available electronically at https://insurance.ky.gov/PPC/Documents/LC-1%202007.pdf.

(b) A rate filing referencing loss costs formulated by an advisory organization in which an expense constant is used shall be accompanied by Form LC-2 P & C, ["Expense Constant Supplement"], Calculation of Loss Cost Multiplier. This form is

available electronically at https://insurance.ky.gov/PPC/Documents/LC-2%20P&C%202007.pdf.

(2) A rate filing to which this section applies shall include separate Forms LC-1 P & C; Calculation of Loss Cost Multiplier; and LC-2 P&C; Expense Constant Supplement, Calculation of Loss Cost Multiplier for each company included in the filing.

Section 7. (1)(a) An insurer filing rates or supplement rating information regarding personal automobile insurance shall submit premium comparison information on-line via the Department [Office] of Insurance Web site, <https://insurance.ky.gov/doeservices/UserRole.aspx>, if any rate or supplementary rating information change impacts the premium information previously submitted.

(b) If there is not an impact to premium information previously submitted, an explanatory statement shall be included in Form PC TD-1, ["Property and Casualty Transmittal Document"].[]

(2)(a) An insurer filing rates or supplemental rating information regarding homeowners' insurance shall submit premium comparison information on-line via the Department [Office] of Insurance Web Site, <https://insurance.ky.gov/doeservices/UserRole.aspx>, if any rate or supplementary rating information change impacts the premium information previously submitted.

(b) If there is not an impact to premium information previously submitted on-line, an explanatory statement shall be included in Form PC TD-1 ["Property and Casualty Transmittal Document"].[]

(3) A filing to which this section applies shall include a separate premium comparison information for each company included in the filing.

Section 8. (1) A property and casualty rate or supplementary rating information filing may include rates or supplementary rating information for a particular insurance company or group of insurance companies.

(2) If the filing is made for a group of insurance companies, Form PC TD-1, ["Property and Casualty Transmittal Document"] shall identify all companies included in the filing.

Section 9. (1) Filing fees shall be paid on a per company basis.

(2) Pursuant to KRS 304.4-010(2), all fees and charges payable under the insurance code, KRS Chapter 304, shall [are required to] be collected by the department pursuant to 806 KAR 4:010[in advance].

(3) The period of time in which the commissioner [executive director] may affirmatively approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee are received by the department [office].

Section 10. (1) An insurer that is a member, subscriber, or service purchaser of an advisory organization or statistical agent may choose to adopt all or some of the loss costs, supplementary rating information, or statistical plans of that advisory organization or statistical agent.

(2) If an insurer chooses to adopt only a specific filing of an advisory organization or statistical agent, it shall do so in accordance with the procedures established in subsection (3) of this section [this administrative Regulation], and shall clearly identify which filing of the advisory organization or statistical agent it is adopting.

(3)(a) If an insurer chooses to adopt all of the current and future loss costs, supplementary rating information, or statistical plans of an advisory organization or statistical agent, it shall:

1. Provide written authorization to the advisory organization or statistical agent to notify the commissioner [executive director] that the insurance company shall adopt all of the loss costs, supplementary rating information, or statistical plans that the advisory organization or statistical agent files on its behalf; or

2. File written notice with the commissioner [executive director] that the insurer is adopting by reference all of the current and future loss costs, supplementary rating information, or statistical

plans that the advisory organization or statistical agent files.

(b)1. If required by law to file its rates, an insurer may file a loss cost multiplier, in accordance with this section and Sections 2 through 9 of this administrative regulation, to adopt the prospective loss costs filed by an advisory organization.

2. The insurer shall:

a. Apply its loss cost multiplier to a specific loss cost filing; or

b. Elect to have its multiplier apply to all future loss costs filed by the advisory organization.

(c)1. The advisory organization or statistical agent shall file the written notice of authorization referred to in paragraphs (a) and (b) of this subsection with the commissioner [executive director] and shall pay the appropriate fee, pursuant to KRS 304.4-010 and 806 KAR 4:010.

2. The fee shall be paid for each company sending a written authorization and on the basis of each line of insurance.

(d)1. If an insurer that previously authorized an advisory organization or statistical agent to file loss costs, supplementary rating information, or statistical plans on its behalf chooses to not adopt certain loss costs, supplementary rating information, or statistical plans as filed on its behalf by the advisory organization or statistical agent, or changes its loss cost multiplier, the insurer shall file a notice of the nonadoption or change of its loss cost multiplier with the commissioner [executive director] and shall pay the appropriate filing fee, pursuant to KRS 304.4-010 and 806 KAR 4:010.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or statistical agent filing, it shall submit a letter requesting the revised date upon which it will adopt the filing.

b. The delayed adoption date shall be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted, requesting a revised delayed adoption date.

d. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization or statistical agent.

3. If an insurer fails to adopt the advisory organization or statistical agent filing within one (1) year of the original effective date as filed by the advisory organization or statistical agent, the insurer shall submit a filing indicating it is not adopting.

Section 11. A property and casualty insurance company, advisory organization and statistical agent may file its prospective loss cost or rate on the commissioners' electronic system for rate and form filings via the Web site [www.serff.com](http://www.serff.com). An electronic filing shall substitute for any physical filing.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Property and Casualty Product Coding Matrix", 01/2021 [(March 1, 2007)];

(b) Form PC TD-1, "Property and Casualty Transmittal Document", 01/2020 [(March 1, 2007)];

(c) Form PC RRFS-1, "Rate/Rule Filing Schedule", 3/2007 [(March 1, 2007)];

(d) LC-1 P&C, "Calculation of Loss Cost Multiplier", 10/2007 [(October 2007)];

(e) LC-2 P&C, "Expense Constant Supplement, Calculation of Loss Cost Multiplier with Expense Constant", 10/2007 [(October 2007)];

(f) "Kentucky Office of Insurance Review Requirements Checklist, Auto Guaranty and Home Warranty", (2nd Edition, 2/2008);

(g) "Kentucky Office of Insurance Review Requirements Checklist, Motor Vehicle Extended Warranty Reimbursement Insurance", (2nd Edition, 2/2008);

(h) "Kentucky Office of Insurance Review Requirements Checklist, Aviation", (2nd Edition, 02/2008);

(i) "Kentucky Office of Insurance Review Requirements Checklist, Boatowners", (2nd Edition, 02/2008);

(j) "Kentucky Office of Insurance Review Requirements Checklist, Boiler & Machinery (Equipment Breakdown)", (2nd

Edition, 02/2008);

(k) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Auto", (2nd Edition, 02/2008);

(l) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Farm", (2nd Edition, 02/2008);

(m) "Kentucky Office of Insurance Review Requirements Checklist, Commercial General Liability", (2nd Edition, 02/2008);

(n) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Inland Marine", (2nd Edition, 02/2008);

(o) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Property", (2nd Edition, 2/2008);

(p) "Kentucky Office of Insurance Review Requirements Checklist, Commercial Umbrella (Excess Liability)", (2nd Edition, 02/2008);

(q) "Kentucky Office of Insurance Review Requirements Checklist, Credit (Vendor Single/Dual Interest; Unemployment/Layoff; Collateral Protection; Property; GAP)", (2nd Edition, 2/2008);

(r) "Kentucky Office of Insurance Review Requirements Checklist, Crime", (2nd Edition 2/2008);

(s) "Kentucky Office of Insurance Review Requirements Checklist, Crop", (2nd Edition, 2/2008);

(t) "Kentucky Office of Insurance Review Requirements Checklist, Earthquake (monoline)", (2nd Edition, Revised 2/2008);

(u) "Kentucky Office of Insurance Review Requirements Checklist, Employment Practices Liability", (2nd Edition, Revised 2/2008);

(v) "Kentucky Office of Insurance Review Requirements Checklist, Flood (monoline)", (2nd Edition, Revised 2/2008);

(w) "Kentucky Office of Insurance Review Requirements Checklist, Glass (Monoline)", (2nd Edition, Revised 2/2008);

(x) "Kentucky Office of Insurance Review Requirements Checklist, Livestock, Equine and Pet Insurance", (2nd Edition, 2/2008);

(y) "Kentucky Office of Insurance Review Requirements Checklist, Medical Professional Liability (Physicians & Dentists; Hospital & Health Facilities; Other Medical)", (2nd Edition, 2/2008);

(z) "Kentucky Office of Insurance Review Requirements Checklist, Mortgage Guaranty", (2nd Edition, 2/2008);

(aa) "Kentucky Office of Insurance Review Requirements Checklist, Motorcycle", (2nd Edition, 2/2008);

(bb) "Kentucky Office of Insurance Review Requirements Checklist, Motor Home", (2nd Edition, 2/2008);

(cc) "Kentucky Office of Insurance Review Requirements Checklist, Personal Dwelling, Homeowners, Mobile homeowners, and Farm owners including primary residence", (2nd Edition, Revised 2/2008);

(dd) "Kentucky Office of Insurance Review Requirements Checklist, Personal General Liability and Personal Umbrella/Excess", (2nd Edition, Revised 2/2008);

(ee) "Kentucky Office of Insurance Review Requirements Checklist, Personal Inland Marine and Recreational Vehicle not requiring vehicle registration", (2nd Edition, Revised 2/2008);

(ff) "Kentucky Office of Insurance Review Requirements Checklist, Personal Auto", (2nd edition, Revised 2/2008);

(gg) "Kentucky Office of Insurance Review Requirements Checklist, Pollution Legal Liability (Environmental Legal Liability)", (2nd Edition, 2/2008);

(hh) "Kentucky Office of Insurance Review Requirements Checklist, Professional Liability (Directors & Officers; Physicians & Dentists; Other Medical Personnel; (Misc. Professional; Lawyers; Hospital & Health Facilities)", (2nd Edition, 2/2008);

(ii) "Kentucky Office of Insurance Review Requirements Checklist, Service Contract Reimbursement Insurance", (2nd Edition, 2/2008);

(jj) "Kentucky Office of Insurance Review Requirements Checklist, Stop Loss/Excess of Loss (Self-Funded Workers' Compensation; HMO & Managed Care; General Liability; Professional Liability & Misc. Stop Loss) (Stop loss for Self-Funded Health Plans must be filed with the Health Division of KOI even if the filer holds a P&C Certificate of Authority)", (2nd Edition, 2/2008);

(kk) "Kentucky Office of Insurance Review Requirements

Checklist, Surety (Fidelity, Suretyship and Financial Institution Bonds)", (2nd Edition 2/2008);

(ll) "Kentucky Office of Insurance Review Requirements Checklist, Title", (2nd Edition, 2/2008);

(mm) "Kentucky Office of Insurance Review Requirements Checklist, Travel & Accident", (2nd Edition, 2/2008); and

(nn) "Kentucky Office of Insurance Review Requirements Checklist, Workers' Compensation", (2nd Edition, 2/2008)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department [Office] of Insurance, The Mayo-Underwood Building, 500 Mero Street, 2 SE 11, [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Internet Web site at: <https://insurance.ky.gov/ppc/CHAPTER.aspx?http://insurance.ky.gov/> [http://doi.ppr.ky.gov] or the Web site of the National Association of Insurance Commissioners at [www.naic.org](http://www.naic.org).

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(As Amended at ARRS, September 14, 2021)**

**806 KAR 17:070. Filing procedures for health insurance rates.**

RELATES TO: KRS 304.14-120, 304.14-130, 304.17-380, 304.17A-005(22)

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) [KRS 304.2-110] authorizes [provides—that] the Commissioner [Executive Director] of Insurance to promulgate [may make reasonable rules and] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010 [through KRS 304.99-154]. [The purpose of] This [This] administrative regulation establishes[is to provide] [provides] additional filing procedures for health insurance rates.

**Section 1. Definitions.**

(1) "Accumulated value" means the amount of which a sum of money would have increased as of the valuation date, if invested at a specific date in the past, subject to the investment earnings attributable to the policies.

(2) Insurer is defined by KRS 304.1-040.

(3) "Loss ratio" means the ratio of the sum of incurred losses divided by the earned premiums.

(4)[(3)] "Present value" means the amount of money needed as of the valuation date to produce, when accumulated at interest, a specified amount on a specific future date. The "present value of future benefits" and "present value of future premiums" are the sums of those[such] values that [which] [should] take into account not only the interest assumption, but the assumed persistency and mortality of the business.[

(2) "Accumulated value" means the amount of which a sum of money would have increased as of the valuation date, if invested at a specific date in the past, subject to the investment earnings at attributable to the policies.

(3) "Loss ratio" means the ratio of the sum of incurred losses and the change in policy reserves divided by the earned premiums.]

(5)[(4)] [A] "Qualified actuary" means[is] a member of the American Academy of Actuaries, a fellow or associate of the Society of Actuaries, the Institute of Actuaries, the Faculty of Actuaries, the Casualty Actuarial Society, or a fellow or member of the Conference of Actuaries in Public Practice that is compliant with continuing professional development in the area of health insurance.

**Section 2. Scope. This administrative regulation shall apply to individual health insurance products and Medicare supplement plans. This administrative regulation shall not apply to health benefit plans as defined by KRS 304.17A-005(22).**

**Section 3. Classification of Policies.** For the purposes of this administrative regulation, policies are classified by type of benefit, renewal clause, and average annual premium.

(1) Types of benefits recognized are:

(a) Medical expense, including hospital indemnity policies, as well as hospital, surgical, major medical, cancer, critical illness, or any other policies providing insurance against the expenses resulting from accident or sickness, as well as indemnity or lump sum benefits payable upon a medical event or diagnosis;

(b) Medicare supplement policies; and

(c) Loss of income; and

(d) All other policies that [which may be designated by] the commissioner [executive director] may designate].

(2) Categories of renewal clause are as follows:

OR	Optionally renewable: renewal of individual policies is at the option of the <u>insurer[insurance company]</u> .
CR	Conditionally renewable: renewal can be declined by the <u>insurer[insurance company]</u> only for <u>a stated reason [reasons]</u> other than deterioration of health.
GR	Guaranteed renewable: renewal cannot be declined by the <u>insurer[insurance company]</u> for any reason, but the <u>insurer[insurance company]</u> can revise rates on a class basis.
NC	Noncancellable: renewal cannot be declined nor can rates be revised by the <u>insurer[insurance company]</u> .

(3) Recognized categories by average annual premium per policy are:

(a) Less than \$250 [\$400];

(b) A minimum of at [At] least \$250 [\$400] but less [no more] than [less than] \$500 [\$200]; and

(c) \$500 [\$200] or more.

**Section 4.[3.] Filing of Rates.** Every policy, rider, or endorsement form affecting benefits that are [which is] submitted for approval shall be accompanied by a rate filing unless the[such] rider or endorsement form does not directly or indirectly produce a change in the benefit level. Any subsequent addition to or change in rates applicable to the[such] policy, rider, or endorsement shall also be filed.

(1) The following items shall be included in individual health insurance rate filing submissions for rates on a new product:

(a) Policy form, application, endorsements, HIPMC-F1 incorporated by reference in 806 KAR 14:007,["face sheet and verification form"] and filing fee.

(b) Rate sheet.

(c) Actuarial memorandum including[;]

1. A brief description of the type of policy, benefits, renewability, general marketing method, and issue age limits.

2. A brief [Brief] description of how rates were determined, including the general description and source of each assumption used. If assumptions are materially different from the insurer's[company's] experience on similar policies, the reasons for their choice shall[should] be explained. Margins, both implicit and explicit, shall[should] be estimated. For expenses, show those that [which] are percent of premium, dollars per policy and[and/or] dollars per unit of benefit, separately, by policy year.

3. Estimated average annual premium per policy.

4. Anticipated loss ratio, including a brief description of how it was calculated, and a projection of year-by-year expected loss ratios.

5. Anticipated loss ratio presumed reasonable according to Section 5[4] of this administrative regulation.

6. If subparagraph 4 of this paragraph is less than subparagraph 5 of this paragraph, supporting documentation for the use of the proposed premium rates shall[must] be filed.

7. An actuarial report signed by a qualified actuary as to

whether or not, to the best of the actuary's knowledge and judgment, the rate submission is in compliance with the applicable laws and administrative regulations of the state, the Actuarial Standards of Practice available at <http://www.actuarialstandardsboard.org/standards-of-practice/>, and that the premiums[benefits] are:

a. Reasonable in relation to the **benefits[premiums]**;

b. Adequate;

c. Not excessive; ~~f.~~ and

d. Not unfairly discriminatory [and the benefits are reasonable in relation to the premiums].

8. A comparison [Comparison] of the rates with those of any similar policies currently or recently issued by the insurer[company].

(d) A statement as to the status of the filing in the insurer's[company's] home state, and a statement as to any variations in rates or and/or loss ratio assumptions required by or used in other states.

(2) The following items shall be included in individual health insurance rate filing submissions for rate increases on an existing product:

(a) New rate sheet, HIPMC-F1 incorporated by reference in 806 KAR 14:007["face sheet and verification form"], and filing fee.

(b) Actuarial memorandum including:—

1. A brief [Brief] description of the type of policy, benefits, renewability, general marketing method, issue age limits, the first and last year the policy form was issued, and the anticipated loss ratio of its original rates.

2. The scope [Scope] and reason for rate revision including a statement of whether the revision applies only to new business, only to in-force business, or to both, and outline of all past rate increases on this form.

3. The estimated [Estimated] average annual premium per policy, before and after rate increase and a: comparison of proposed rate scale with current rate scale.

4. Past experience, [in the format of the "experience reporting form,"] the statistical credibility of the experience data and any other available data the insurer may wish to provide. If policy reserves are other than net level reserves based on the rate assumptions underlying the existing rates, an estimate of the effect of using the[such] reserves shall [should] be provided.

5. A brief [Brief] description of how revised rates were determined, including the general description and source of each assumption used. For expenses, include percent of premium, dollars per policy, and/or dollars per unit of benefit as separate items, and [Also,] the unamortized initial expenses to be recovered from future premiums shall[should] be shown.

6. The anticipated future loss ratio described in Section 5[4](2)(a) of this administrative regulation and a description of how it was calculated.

7. The anticipated loss ratio that [which] combines cumulative and future experience described in Section 5[4](2)(b) of this administrative regulation, and a description of how it was calculated.

8. Anticipated loss ratio presumed reasonable according to Section 5[4] of this administrative regulation.

9. If subparagraphs 6 or 7 of this paragraph is less than subparagraph 8 of this paragraph, supporting documentation for the use of the[such] premium rates.

10. An actuarial report signed by a qualified actuary as to whether or not, to the best of the actuary's knowledge and judgment, the rate submission is in compliance with the applicable laws and administrative regulations of the state, the Actuarial Standards of Practice available at <http://www.actuarialstandardsboard.org/standards-of-practice/>, and that the premiums[benefits] are:

a. Reasonable in relation to **benefits[premiums]**;

b. Adequate;

c. Not excessive; ~~f.~~ and

d. Not unfairly discriminatory [and the benefits are reasonable in relation to the premiums].

11. The number of policies in force in Kentucky and

approximate annual premiums.

(c) A statement as to the status of the filing in the insurer's[company's] home state, and a statement as to any variations in rates or and/or loss ratio assumptions required by or used in other states.

Section 5[4] Reasonableness of Benefits in Relation to Premiums. (1) New forms.

(a) With respect to a new form other than a Medicare supplement form under which the average annual premium, as defined in the table below [(as defined below)] is expected to be at least \$500 [\$200], benefits shall be found as[deemed] reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

Type of Coverage	Renewal Clause			
	OR	CR	GR	NC
Medical Expense	60%	55%	55%	50%
Loss of Income and Other	60%	55%	50%	45%

(b) For a policy form, including riders and endorsements, under which the expected average annual premium per policy is \$250 [\$400] or more but less than \$500 [\$200], subtract five (5) percentage points from the numbers in the table above, or less than \$250 [\$400], subtract ten (10) percentage points.

(c) The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

(d) The loss ratio for a Medicare supplement policy shall be as provided in 806 KAR 17:570 [806 KAR 17:060], regardless of renewal clause or average premium.

(2) Rate revisions. Except[Excepting] as provided in subsection (3) of this Section[below], with respect to filings of rate revisions for a previously approved form, benefits shall be determined[deemed] reasonable in relation to premiums if[provided that] both of the following loss ratios meet the [above] standards for new forms as established in subsection (1) of this Section and the loss ratio described in paragraph (b) of this subsection meets[meet] or exceeds[exceed] the initial filed expected loss ratio.

(a) The anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage;

(b) The anticipated loss ratio derived by dividing "A" by "B" where:

1. a. "A" is the sum of the accumulated value of the benefits, from the original effective date of the form or the effective date of this administrative regulation, whichever is later, to the effective date of the revision, and the present value of future benefits ; and

b. [2.] "B" is the sum of the accumulated value of the premiums from the original effective date of the form or the effective date of the administrative regulation, whichever is later, to the effective date of the revision, and the present value of future premiums.

2. [.] The[such] present values shall[to] be taken over the entire period that [for which] the revised rates are computed to provide coverage, and the values shall be calculated[such accumulated benefits and premiums, and premiums] from the last date that [as of which an] accounting has been made to the effective date of the revision.

(3) Anticipated loss ratios other than those indicated in subsection (1) or (2) of this section shall[will] require justification based on the special circumstances that may be applicable.

(a) [Examples of] Coverages for which a lower loss ratio may receive special consideration are as follows:

1. Accident only;
2. Short term nonrenewable, e.g., airline trip, student accident;
3. Specified peril, e.g., common carrier; and
4. Other special risks.

(b) [Examples of other] Factors for which lower loss ratios may receive special consideration are as follows:

1. Marketing methods, giving due consideration to acquisition

and administration costs and to premium mode;

2. Extraordinary expenses;

3. High risk of claim fluctuation because of the low loss frequency or the catastrophic, or experimental nature of the coverage;

4. Product features such as long elimination periods, high deductibles and high maximum limits;

5. The industrial or debit method of distribution; and

6. Forms issued prior to the effective date of these guidelines.

(c) Insurers[Companies] shall [are urged to] review their experience periodically and [to] file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of unacceptable large rate increases. For rate increases of more than thirty (30) percent, insurers[companies] may[will] be requested to implement the increase[rate increases of more than thirty (30) percent] over two (2) or more years.

(d) An example [Examples] of factors for which higher loss ratios may be required:

1. A form [Forms] on which all initial expenses have been amortized.

2. A form [Forms] on which rates have been increased to at least double their original level.

3. A form on which insurers[Companies] have not filed rate increases in a timely manner pursuant to subsection 3(c) of this section[Section 4(3)(c)].

(e) When rates are submitted for new forms, the Department may require subsequent filings to demonstrate that the loss ratio required by subsection (1)(a) of this section[Section 4(1)(a)] is being met.

Section 6.[5.] Miscellaneous Considerations. (1) Additional data that [which] may be included in the support of rate filings includes data such as the[, but is not limited to,] substitution of actual claim run-offs for claim reserves and liabilities, in order to avoid the problems of short-term developments, accident-year loss ratios supporting trends, the operation of any experience funds or stabilization reserves, and the adjustment of premiums to an annual mode basis.

(2) All additional data shall[must] be reconciled, as appropriate, to the required data, and any missing data explained.

Section 7.[6.] Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this administrative regulation and the application of the[such] provision to other persons or circumstances shall not be affected thereby.

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.

# PUBLIC PROTECTION CABINET

## Department of Insurance

### Division of Health and Life Insurance and Manager Care (As Amended at ARRS, September 14, 2021)

**806 KAR 17:085. Minimum standards for short-term nursing home insurance policies.**

RELATES TO: KRS 304.6-070, 304.6-130, 304.6-180, 304.12-010, 304.12-020, 304.14-650-304.14-675, 304.17-080

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [Executive—Director] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in [as defined in] KRS 304.1-010 [through KRS 304.99-154] [KRS 304.1-010]. KRS 304.14-660 requires[authorizes] [requires] the Commissioner [Executive Director] of Insurance to promulgate administrative regulations to establish the [establishing] requirements for short-term nursing

home insurance policies. [The purpose of] This [This] administrative regulation establishes[is to establish] the [establishes] minimum standards for short-term nursing home insurance policies.

Section 1. Definitions. [As used in this administrative regulation:]

(1) "Applicant" means:

(a) For an individual short-term nursing home insurance policy, the person who seeks to contract for benefits; and

(b) For a group short-term nursing home insurance policy, the proposed certificate holder.

(2) "Association" means entities eligible for group health insurance pursuant to KRS 304.18-020["Attained age rating" means a schedule of premiums starting from the issue age that [which] may increase [increases] at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50)].

(3) "Benefit trigger" means a contractual provision in the insured's[insureds] policy conditioning the payment of benefits on a determination of the insured's[insureds] ability to perform activities of daily living and on cognitive impairment.

(4) [(3)] "Certificate" means any certificate issued under a group short-term nursing home insurance policy, which has been delivered or issued for delivery in Kentucky.

(5) [(4)] "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(6) [(5)] "Commissioner" is defined by KRS 304.1-050.

(7) [(6)] "Compensation" means pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of short-term nursing home insurance or certificates, including bonuses, gift, prizes, awards, and finders fees.

(8) [(7)] "Elimination period" means the time that elapses[shall elapse] before benefits commence under a short-term nursing home insurance policy or certificate.

(9) [(8)] "Insurer" means an entity authorized to issue short-term nursing home insurance in Kentucky.

(10) [(9)] "Maintenance or Personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically-ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(11) [(10)] "Policy" means any policy, contract, subscriber agreement, enrollment agreement, rider, or endorsement delivered or issued for delivery in Kentucky.

(12) "Qualified short-term nursing home insurance contract" is defined by 26 U.S.C. §7702B.

[(13)][(14)] "Short-term nursing home insurance policies" is defined by[in] KRS 304.14-650.

Section 2. Policy Requirements. A short-term nursing home insurance policy delivered or issued for delivery in Kentucky shall not use the terms set forth below unless the terms are defined in the policy as follows:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means that the individual is medically unstable. The individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain health status.

(3) "Adult day care" means a program for four (4) or more individuals, of social or health-related, or both, services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgement as it relates to



safety awareness.

(6) "Continence" means the ability to maintain control of bowel and bladder function; or [if], when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

(10) "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.

(11) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Pub.L. 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(12) "Mental or nervous disorder" means[shall] not including[be defined to include] more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(13) "Personal care" or maintenance means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care", "intermediate care", "personal care", "home care", "specialized care", "assisted living" and other services means being[shall be] defined in relation to the level of skill required, the nature of the care, and the setting in which care is to[shall] be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of bed, chair, or wheelchair.

Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual short-term nursing home insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this administrative regulation.

(a) A short-term nursing home insurance policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable".

(b) The term "guaranteed renewable" may be used only if the insured has the right to continue the short-term nursing home insurance in force by the timely payment of premiums and if the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only if the insured has the right to continue the short-term nursing home insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the scheduled premium rate.

(d) The term "level premium" may only be used if the insurer does not have the right to change the premium.

(2)(a) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as a short-term nursing home insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

1. Preexisting conditions or diseases as defined in Section ~~5(8)(7)~~ through ~~(10)(9)~~ of this administrative regulation;

2. Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;

3. Alcoholism and drug addiction;

4. Illness, treatment, or medical condition arising out of:

a. War or act of war (whether declared or undeclared);

b. Participation in a felony, riot, or insurrection;

c. Service in the armed forces or auxiliary units;

d. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

e. Aviation (this exclusion shall apply only to nonfare-paying passengers);

5. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(b) This subsection shall not prohibit exclusions and limitations by type of provider or territorial limitations.

(3) Continuation or conversion.

(a) Group short-term nursing home insurance issued in Kentucky on or after the effective date of this administrative regulation shall provide:

1. A covered individual with a basis for continuation or conversion of coverage without underwriting upon termination of coverage; and

2. A converted policy or continued coverage including benefits identical to or benefits determined by the Commissioner [executive director] to be substantially similar to or in excess of those provided under the group policy from which conversion or continued coverage is made.

(b) Written application for the converted policy or continued coverage shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days following notice of continuation or conversion rights under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

~~(4) [The premium charged to an insured for short-term nursing home insurance shall not increase due to either:~~

~~— (a) The increasing age of the insured at ages beyond sixty-five (65); or~~

~~— (b) The duration the insured has been covered under the policy.~~

~~(5)~~ Extension of benefits. Termination of short-term nursing home insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the short-term nursing home insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the short-term nursing home insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefit and may be subject to any policy waiting period, and all other applicable provisions of the policy.

~~(5)(6)~~ Discontinuance and replacement. If a group short-term nursing home insurance policy is replaced by another group short-term nursing home insurance policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:

(a) Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) Vary or otherwise depend on the individual's health or disability status, claim experience or use of short term care services.

~~(6)(7)~~ Premium changes.

(a) The premium charged to an insured for short-term nursing home insurance shall not increase due to either:

1. The increasing age of the insured at ages beyond sixty-five (65); or

2. The duration the insured has been covered under the policy.

~~(7) Coverage of dependents. A short-term nursing home~~

policy may be issued that jointly covers the life of the policyholder and his or her spouse.

Section 4. Unintentional Lapse. An insurer offering short-term nursing home insurance shall, as a protection against unintentional lapse, comply with the following:

(1) Notice before lapse or termination. An individual short-term nursing home policy or certificate shall not be issued until the insurer has received from the applicant either a written:

(a) Designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or

(b) Waiver, dated and signed by the applicant, electing not to designate additional persons to receive notice.

(2) Lapse or termination for nonpayment of premium:

(a) An individual short-term nursing home policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to subsection (1)(a) of this section, at the address provided by the insured for purposes of receiving notice of lapse or termination; and

(b) Notice shall:

1. Be given by first class United States mail, postage prepaid;

2. Not be given until thirty (30) days after a premium is due and unpaid; and

3. Be found[deemed] to have been given as of five (5) days after the date of mailing.

(3) Reinstatement. A short-term nursing home policy shall contain a reinstatement provision as required in KRS 304.17-080.

Section 5. Required Information and Disclosure Provisions.

(1) Renewability.

(a) Individual short-term nursing home insurance policies shall contain a renewability provision.

(b) The provision shall:

1. Be appropriately captioned;

2. Appear on the first page of the policy; and

3. State clearly that:

a. The coverage is guaranteed renewable and that premium rates are subject to change; or

b.[that] the coverage is noncancellable.

(c) All short-term nursing home policies or certificates issued in the commonwealth of Kentucky shall state in (16) sixteen point bold type print on the front page of the policy the following statement: This is a short-term nursing home product that offers benefits for less than twelve (12) months. This is not a long-term care policy.

(2) Riders and endorsements.

(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual short-term nursing home insurance policy, riders or endorsements added to an individual short-term nursing home insurance policy after date of issue, reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, a rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of benefits. A short-term nursing home insurance policy or certificate shall clearly define how benefits will be paid.

(4) Limitations. If a short-term nursing home insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations".

(5) Other limitations or conditions on eligibility for benefits. A short-term nursing home insurance policy or certificate containing

any limitations or conditions for eligibility including any elimination period shall be clearly defined in the policy or certificate and the paragraph shall be labeled [the paragraph] "Limitations or Conditions on Eligibility for Benefits".

(6) Benefit triggers. (a) Activities of daily living and cognitive impairment shall be:

1. Used to measure an insured's[insureds] need for short-term nursing home care;

2.[shall be] Described in the policy or certificate in a separate paragraph;[,] and

3.[shall be] Labeled "Eligibility for the payment of benefits."

(b) Any additional benefit triggers shall also be explained in this section.

(c) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.

(d) If an attending physician or other specified person shall[must] certify a certain level of functional dependency in order to be eligible for benefits, this [too] shall be specified.

(7)[(6)] A provider of service shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

(8)[(7)] Short-term nursing home policies or certificates shall not use a definition of preexisting condition that [which] is more restrictive than the following: "Preexisting condition means a condition for which medical services or treatment is [was] recommended by, or received from, a provider of health care services within six (6) months preceding the effective date of coverage of an insured person."

(9)[(8)] A short-term nursing home policy or certificate shall not exclude coverage for a loss or confinement which is the result of a preexisting condition unless that loss or confinement begins within six (6) months following the effective date of coverage of the insured person.

(10)[(9)] A short term nursing home policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting conditions or physical conditions beyond the preexisting condition periods described in subsections (8)[(7)] and (9)[(8)] of this section.

(11)[(10)] Insurers shall offer an option to purchase [disclose whether or not] inflation protection [is offered] at a minimum of three (3) percent[%] compounded annually with any short-term nursing home policy or certificate.

(12)[(11)] Short-term nursing home policies shall contain on the front page of the policy or certificate the following statement: "Notice to buyer: This policy may not cover all of the costs associated with nursing home care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations".

(13)[(12)] An elimination period shall be calculated based upon consecutive calendar days, beginning the first day eligible services are received by the individual, and ending the first day benefits are payable.

Section 6. Prohibition Against Post-claims Underwriting. (1)(a) If an application for short-term nursing home insurance contains a question that [which] asks if [whether] the applicant has had medication prescribed by a physician, it shall also ask the applicant to list all medication that has been prescribed.

(b) If the medications listed in the application are [were] known by the insurer, or should have been known at the time of application, to be directly related to a medical condition that [for which] coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(2) The following language, or language substantially similar to the following, shall be set out conspicuously on the short-term nursing home insurance policy or certificate no later than when it is delivered: "Caution: The issuance of this short-term nursing home insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) [(is enclosed or was retained by you when you

applied[)]. If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer may have the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."

(3) A copy of the completed application or enrollment form, whichever is applicable, ~~[(whichever is applicable)]~~ shall be delivered to the insured no later than when the policy or certificate is delivered unless it was retained by the applicant at the time of application.

Section 7. Reserve Standards. (1)(a) If short-term nursing home insurance benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.

(b) Claim reserves shall also be established if the policy or rider is in claim status.

(c) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations that may ~~[which]~~ have an impact on projected claim costs.

(d) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) If short-term nursing home benefits are provided other than as described in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

#### Section 8. Loss Ratio.

(1) Rate filings shall follow the filing procedures contained in 806 KAR 14:007 and 806 KAR 17:070.

(2) Initial premium rate schedules shall be calculated so that[using] ~~[such that]~~ the present value of future projected incurred claims, without the inclusion of active life reserves, shall ~~[will]~~ not be less than the present value of future projected earned premiums times sixty (60) percent.

(3) Premium rate schedule increases shall be calculated so that[using] ~~[such that]~~ the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, excluding ~~[without the inclusion of]~~ active life reserves, shall ~~[will]~~ not be less than the sum of the following:

(a) The accumulated value of the initial earned premiums times sixty (60) percent;

(b) Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(c) The present value of future projected initial earned premiums times sixty (60) percent; and

(d) Eighty-five (85) percent of the present value of future projected premiums not described in paragraph (c) of this subsection on an earned basis.

(4) All present and accumulated values used to determine rates shall use the maximum valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall disclose as part of the actuarial memorandum required by 806 KAR 17:070, Section 3, the use of any appropriate averages.

#### Section 9. Minimum Standards for Home Health and Community Care Benefits in Short-term nursing Insurance Policies.

(1) A short-term nursing home insurance policy or certificate that provides[shall provide] benefits for home health care or community care services shall not limit or exclude benefits by:

(a) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services are not provided;

(b) Requiring that the insured or claimant first or simultaneously ~~[shall]~~ receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered;

(c) Limiting eligible services to services provided by registered

nurses or licensed practical nurses;

(d) Requiring that a nurse or therapist provide services covered by the policy that may be provided by a:

1. Home health aide; or

2. Other licensed or certified home care worker acting within the worker's scope of licensure or certification;

(e) Excluding coverage for personal care services provided by a home health aide;

(f) Requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) Requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) Limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) Excluding coverage for adult day care services.

(2)(a) A short term nursing insurance policy or certificate that includes home health or community care services shall provide the total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year of coverage available for nursing home benefits under the policy or certificate, when covered home health or community care services are received.

(b) The requirement identified in paragraph (a) of this subsection shall not apply to a policy or certificate issued to a resident of a continuing care retirement community.

(3) In determining maximum coverage under the terms of a policy or certificate, home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate.

Section 10 [9]. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a short-term nursing home insurance policy or certificate replaces another short-term nursing home or long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new short-term nursing home insurance policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section 11. Filing Requirements for Advertising. (1) An insurer providing short term nursing home care insurance or benefits in Kentucky shall provide a copy of any advertisement intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with this administrative regulation and KRS 304.12-020, 304.14-120, and 806 KAR 12:010, 806 KAR 14:005, 806 KAR 14:007, Section 5(2);

(2) An advertisement shall be retained by the insurer for at least five (5) years from the date the advertisement was first used.

(3) The commissioner may exempt advertising from the requirements of this section pursuant to KRS 304.14-120(4).

Section 12. Standards for Marketing. (1) An insurer marketing short term nursing home insurance coverage in Kentucky, directly or through its agents, shall:

(a) Establish marketing procedures and agent training requirements to assure that:

1. Marketing activities, including policy comparison, by its agent, shall be fair and accurate; and

2. Excessive insurance shall not be sold or issued.

(b) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy, the notice as established in HIPMC-STN-1.

(2) An insurer shall:

(a) Comply with the requirements of KRS Chapter 304.12; and

(b) Not perform the following acts and practices:

1. Twisting;

2. High pressure tactics;

3. Cold lead advertising; and

4. Misrepresentation.

(3)(a) To comply with the requirements of this subsection, an association may[shall] have the primary responsibility of educating

members concerning short-term nursing home issues in general:

1. If endorsing or selling short-term nursing home insurance; and

2. To ensure that its members make informed decisions.

(b) An association shall provide objective information regarding short-term nursing home insurance policies or certificates endorsed or sold by the association to ensure that members receive a balanced and complete explanation of the features of the policy or certificate that is endorsed or sold.

(c) An insurer shall file with the department the following:

1. ~~[An] Insurance policies[policy]~~ and, if applicable, ~~certificates[a certificate]~~;

2. ~~Outlines[An outline]~~ of coverage, which corresponds to the filed policy or certificate; and

3. Advertisements as requested by the department pursuant to Section 11(1) of this administrative regulation.

(d) An association shall disclose in a short-term nursing home insurance solicitation:

1. The specific nature and amount of the compensation arrangements, including fees, commissions, administrative fees, and other forms of financial support, which the association receives from endorsement or sale of the policy or certificate to its members; and

2. A brief description of the process used to select the policy and the insurer, which issued the policy.

(e) If an association and insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to the association members.

(f) The board of directors of an association selling or endorsing a short-term nursing home insurance policy or certificate shall review and approve the:

1. Insurance policy; and

2. Compensation arrangements made with the insurer.

(g) Except for a qualified short-term nursing home insurance contract, an association shall:

1. Upon a decision to endorse a short-term nursing home insurance contract, engage the services of a person with expertise in short-term nursing home insurance not affiliated with the insurer to:

a. Conduct an examination of the policy, including its benefits, features, and rates; and

b. Update the examination, if a material change is made to the contract;

2. Actively monitor the marketing efforts of the insurer and agents; and

3. Review and approve:

a. Marketing materials; or

b. Insurance communications other than marketing materials, including communications:

(i) Used to promote sales; or

(ii) Sent to members regarding the policy or certificate.

(h) A group short-term nursing home insurance policy or certificate shall not be issued to an association unless the insurer files with the commissioner the information required in this subsection.

(i) Unless an insurer certifies annually that an association has complied with the requirements established in this subsection, an insurer shall not:

1. Issue a short-term nursing home policy or certificate to the association; or

2. Continue to market the policy or certificate.

(j) Failure to comply with the filing and certification requirements of this section shall constitute an unfair trade practice in violation of KRS 304.12-010.

Section 13. Standard Format and Content of an Outline of Coverage.

(1) An outline of coverage shall:

(a) Be a freestanding document, that shall be printed in no less than ten (10) point type; and

(b) Not contain material of an advertising nature.

(2) Text, shall be ~~[capitalized or underscored in the standard format outline of coverage, may be]~~ emphasized by

using a method, that provides prominence equivalent to the:

(a) Capitalization; or

(b) Underscoring.

(3) Except as indicated, use of the text and sequence of text shall be:

(a) Mandatory; and

(b) Consistent with the Outline of Coverage, HIPMC-STN-1.

(5) The format to be used for the outline of coverage shall be consistent with the Outline of Coverage, HIPMC-STN-1.

Section 14. Standards for Benefit Triggers. (1) A short term nursing home insurance policy shall condition the payment of benefits based upon a determination of the ~~insured's[insureds]~~:

(a) Ability to perform activities of daily living; and

(b) Cognitive impairment.

(2) Eligibility for the payment of benefits shall not be more restrictive than requiring:

(a) A deficiency in the ability to perform no more than three (3) activities of daily living; or

(b) The presence of cognitive impairment.

(3)(a) Activities of daily living shall include no less than the activities defined in Section 2(1) of this administrative regulation and the policy; and

(b) To trigger covered benefits, an insurer may use activities of daily living that are:

1. Described in paragraph (a) of this subsection; and

2. In addition to activities identified in paragraph (a) if defined in the policy.

(4)(a) An insurer may use a provision other than activities of daily living as identified in subsection (3) of this section to determine the date benefits are payable under a policy or certificate; and

(b) If a provision, as established in paragraph (a) of this subsection is used by the insurer, the provision shall not:

1. Restrict the requirements identified in subsections (1), (2), and (3) of this section; and

2. Be used in lieu of the requirements of subsections (1), (2), and (3) of this section.

(5) A determination of a deficiency, as identified in this section, shall not be more restrictive than:

(a) Requiring the hands on assistance of another person to perform the prescribed activities of daily living as identified in subsection (3) of this section; or

(b) If the deficiency is due to the presence of a cognitive impairment, supervision, or verbal cueing by another person shall be needed in order to protect the insured or others.

(6) An assessment of the ~~insured's[insureds]~~ activities of daily living and cognitive impairment shall be performed by a licensed or certified professional, including a:

(a) Physician;

(b) Nurse; or

(c) Social worker.

(7) A short-term nursing home insurance policy shall include a clear description of the process for an appeal and resolution of a benefit determination.

Section 15. Incorporation by Reference. (1) "Outline of Coverage", HIPMC-STN-1~~[I]~~, 03/2021 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at The Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance Internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://www.insurance.ky.gov/>].

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Financial Standards and Examinations**  
**(As Amended at ARRS, September 14, 2021)**

**806 KAR 17:100. Certificate of filing for provider-sponsored networks.**

RELATES TO: KRS 304.17A-005(39)~~[304.17A-100(6)]~~,  
 304.17A-300, 304.17A-310

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-300,  
 304.17A-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) ~~authorizes [provides that]~~ the ~~commissioner to [executive director may]~~ promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, ~~established in KRS 304.1-010~~. KRS 304.17A-300 requires ~~[that]~~ provider sponsored networks ~~to[shall]~~ obtain a certificate of filing before doing business in Kentucky. ~~[The purpose of]~~ This ~~[This]~~ administrative regulation ~~establishes[is to establish]~~ ~~[sets forth]~~ the requirements for a provider sponsored network applying for a certificate of filing.

Section 1. Definitions. A provider-sponsored network is a provider sponsored integrated health delivery network as defined in 304.17A-005(39)~~[304.17A-100(6)]~~.

Section 2. A provider-sponsored network shall apply for and obtain a certificate of filing from the ~~commissioner [executive director]~~ in order to provide, directly or through arrangements with others, a health benefit plan to consumers voluntarily enrolled with the organization on a per capita or a predetermined, fixed prepayment basis.

Section 3. (1) Each application for a certificate of filing for a provider-sponsored network shall be filed on a Form 996 and verified by an officer or authorized representative of the applicant.

(2) Each application shall set forth or be accompanied by the following:

(a) Name, address, principal place of business, owners, officers, managers, and sponsors of ~~the~~ provider-sponsored network[networks].

(b) Address where books and records of the provider-sponsored network ~~shall [will]~~ be maintained at all times.

(c) The providers who sponsor, own, govern, or manage the provider-sponsored network shall provide a copy of their licenses and affidavit confirming good standing with their licensure board.

(d) A copy of the organizational documents of the applicant including:

1. Articles of incorporation;
2. Articles of association;
3. Partnership agreement;
4. Trust agreement;
5. Bylaws;
6. Organizational chart; and
7. Other applicable documents and amendments.

(e) A copy of the policies, procedures, and other documents explaining how the provider sponsored network ~~shall[will]~~:

1. Administer health plans;
2. Have ability, experience, and structure to arrange for appropriate level and type of health care services;
3. Conduct utilization management activities;
4. Achieve, monitor, and evaluate the quality and cost effectiveness of care provided;
5. Monitor access to its provider network; and
6. Use standardized electronic claims, ~~[and]~~ billing processes, and formats.

(f) Names, addresses, and biographical information of the following:

1. Board of directors;
2. Board of trustees;
3. Executive committee or other governing body;
4. Each owner of five (5) percent or more of the provider-

sponsored network;

5. Principal officers;

6. Partners; and

7. Persons responsible for the conduct of the applicants affairs and day to day operations.

(g) Financial statements audited by an independent certified public accountant in conformity with statutory accounting practices ~~[prescribed or otherwise permitted by the commissioner]~~ ~~[executive director]~~ that reflect the following:

1. Financial position of the applicant;
2. Results of its operation;
3. Cash flows; and
4. Changes in capital and surplus.

(h) If the "as of" date of the financial statements filed pursuant to paragraph (f) of this subsection is more than ninety (90) days from the date of the application, interim financial statements compiled by an independent certified public accountant as of a date less than ninety (90) days from the application containing the same information as the audited financial statements.

(i) List of providers including name, address, license number, and health services provided.

(j) A statement or map reasonably describing the counties to be served and written assurance that health services ~~shall[will]~~ be provided to enrollees within fifty (50) miles of their residences.

(k) Proposed contracts and agreements including the following:

1. Applications or individual enrollment forms;
2. Master contract forms for group enrollment;
3. Evidence of coverage or handbook;
4. Riders or endorsements; and
5. Rates with actuarial justifications.

(l) A copy of the following professional agreements:

1. Provider agreements;
2. Third party administrators agreements;
3. Service agreements;
4. Administrative agreements; and
5. Reinsurance agreements.

(m) A copy of grievance procedures to be utilized for the investigation and resolution of enrollee and provider complaints and grievances.

(n) A copy of the applicant's plan for handling insolvency as required by KRS 304.17A-310(6).

(o) Financial program setting forth a three (3) year projection of operations on a quarterly basis which shall include the following:

1. Detailed enrollment projections;
2. Projection of balance sheets;
3. Projection of cash flow statements showing any capital expenditures;
4. Projection of purchase and sale of investments and deposits;
5. Projection of income and expense statements anticipated from the start of operation until the organization has had net income for one (1) year; and
6. Statement of the sources of working capital as well as other sources of funding.

Section 4. If any of the information filed with the ~~department[office]~~ pursuant to Section 3 of this administrative regulation changes or becomes incorrect, then the provider-sponsored network shall immediately notify the office in writing of the change and immediately give the ~~department[office]~~ the correction.

Section 5. Incorporated by Reference. (1) Form 996, "Application for Certificate of Filing as a Provider-Sponsored Integrated Health Delivery Network", 08/03/2021, is incorporated by reference. ~~[Form numbered "996", revised June 1996, is prescribed by the office and incorporated by reference. Copies may be obtained from the Office of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero St.,

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx?http://insurance.ky.gov/>.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(As Amended at ARRS, September 14, 2021)**

**806 KAR 17:150. Health benefit plan rate filing requirements.**

RELATES TO: KRS 304.1-050, 304.3-270, 304.4-010, 304.17A-005, 304.17A-095, 304.17A-0952, 304.17A-0954, [304.17A-096, 304.17A-132, 304.17A-134, 304.17A-139, 304.17A-149,] ~~[304.17A-410, 304.17A-430,]~~ [304.17A-450,] ~~[304.17A-500,]~~ 304.17A-750, 304.17A-764, 304.17A-834, 304.17B-021, 304.17B-023(3)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-095(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner ~~[Executive Director]~~ of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in [by] KRS 304.1-010 ~~[through KRS 304.99-154]~~. KRS 304.17A-095(7) authorizes the commissioner ~~[executive director]~~ to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and establish the format of the filing ~~[filings]~~. ~~[The purpose of]~~ This ~~[This]~~ administrative regulation establishes/is to establish ~~[establishes]~~ the format and procedure for the submission of a health benefit plan rate filing.

Section 1. Definitions. (1) ~~["Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustment for case characteristics or health status.~~

(2) ~~"Base new business rate change" means:~~

(a) ~~For a product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period; and~~

(b) ~~For a product within a market segment class of business, the percentage change equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.~~

(3) "Base premium rate" is defined by/in KRS 304.17A-005(3).~~]~~

(4) ~~"Basic health benefit plan" is defined in KRS 304.17A-005(4).]~~

(2) ~~[(4)]~~ [(5)] "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.

(3) ~~[(5)]~~ "Commissioner" is defined by/in KRS 304.1-050(1).~~]~~

(6) "Covered person" is defined in KRS 304.17A-500(3).~~]~~

(4) ~~[(6)]~~ [(7)] "Date of filing" means the date the department ~~[office]~~ confirms that the appropriate filing fee and all information required by this administrative regulation have been received by the department ~~[office]~~.

(5) ~~[(7)]~~ "Department" is defined by/in KRS 304.1-050(2).

(6) ~~[(8)]~~ "Duration" means a policy year of twelve (12) months, measured from the date of issuance of a policy, with each succeeding twelve (12) month period being a new duration.

(7) ~~[(9)]~~ "Employer-organized association" is defined by/in 304.17A-005(12) ~~[KRS 304.17A-0954(1)(c)].~~

(10) "Executive director" is defined in KRS 304.1-050(1).~~]~~

(8) ~~[(10)]~~ [(11)] "FFS" means a fee for service product type.

(9) ~~[(11)]~~ [(12)] ~~["Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17A-005(19).]~~

(12) ~~[(13)]~~ "Health benefit plan" is defined by/in KRS 304.17A-005(22).

(10) ~~[(13)]~~ [(14)] "Health benefit plan region" or "geographic region" means each one (1) of the eight (8) allowable rating regions for health benefit plans identified in HIPMC-R33, Health Benefit Plan Regions~~[- which is incorporated by reference in 806 KAR 17:005].~~

(11) ~~[(14)]~~ [(15)] "HMO" means a health maintenance organization product type.

(12) ~~[(15)]~~ [(16)] "Index rate" is defined by/in KRS 304.17A-005(27) ~~[304.17A-005(25)].~~

(13) ~~[(16)]~~ [(17)] ~~["Insurance purchasing outlet" is defined in KRS 304.17A-750(4).]~~

(17) ~~[(18)]~~ "Large group" is defined by/in KRS 304.17A-005(32) ~~[304.17A-005(30)].~~

(14) ~~[(18)]~~ [(19)] "Material change" means any change to a rate filing, except that a change in value of an existing rate factor other than trend is/shall ~~[is]~~ not be considered a material change.~~]~~

(20) "Office" is defined in KRS 304.1-050(2).~~]~~

(15) ~~[(19)]~~ [(21)] "POS" means a point of service product type.

(16) ~~[(20)]~~ [(22)] "PPO" means a preferred provider organization product type.

(17) ~~[(21)]~~ [(23)] "Small group" is defined by/in KRS 304.17A-005(45) ~~[304.17A-005(42)].~~

(18) ~~[(22)]~~ [(24)] "Target loss ratio" means a loss ratio that an insurer files, that ~~[which]~~ projects and guarantees a loss ratio on an annual basis.

Section 2. Scope. (1) A health benefit plan rate filing to which the standards of KRS 304.17A-095 apply, shall include the information required by Sections 3 through 10 of this administrative regulation.

(2) The period of time that ~~[in which]~~ the commissioner ~~[executive director]~~ shall have ~~[to]~~ approve or disapprove a filing shall not begin until the date of filing.

(3) An insurer shall not market or use the proposed rates until the date of filing.

(4) A filing and fee shall not be found as/deemed ~~[be]~~ received until the department ~~[office]~~ confirms that:

(a) Information required by Sections 3 through 10 of this administrative regulation has been received; and

(b) The appropriate fee, as established in Section 3(2)(b) of this administrative regulation ~~[set forth in 806 KAR 4:010]~~, has been paid.

Section 3. Health Benefit Plan Rate Filing Procedures. (1) A health benefit plan rate filing shall be submitted electronically through the System For Electronic Rate and Form Filing (SERFF) ~~[or an electronic manner approved by the department]~~ ~~[to the office]~~ for a:

(a) New rate filing; or

(b) Material change to a previously approved rate filing.

(2) The following shall be included and properly completed in a health benefit plan rate filing submission:

(a) Form HIPMC-R32, the Health Benefit Rate Filing Information Form~~[- which is incorporated by reference in 806 KAR 17:005];~~

(b) The following filing fee or the domiciliary state fee, whichever is greater:

1. \$100 for an original or new filing; or

2. Fifty (50) dollars for an amendment to a filing;

(c) Form HIPMC-F1, Face Sheet and Verification Form, that ~~[which]~~ is incorporated by reference in 806 KAR 14:007 ~~[806 KAR 17:005];~~

(d) Signed actuarial memorandum prepared in accordance with Sections 6 and 7 of this administrative regulation; and

(e) An Income and Expense Worksheet, which is incorporated by reference in 806 KAR 17:005;

(e) ~~[(f)]~~ Except for large groups, Certification Form HIPMC-R34~~[- which is incorporated by reference in 806 KAR 17:005];~~

and]

(g) If a rate for a basic health benefit plan is included, Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet Form and Rate Filings, which is incorporated by reference in 806 KAR 17:005.

(3) Two (2) copies of all written material shall be submitted to the office.]

(3) [(4)] A [One (1)] copy of all [written] material shall be submitted electronically to the Kentucky Attorney General's Office by the insurer at the same time as the submission to the department [office] and shall include:

- (a) An amendment;
- (b) An update; or
- (c) A response to an inquiry from the department [office].

(4) [(5)] An electronic copy [Two (2) copies] of all correspondence with the department [office] or other state agency concerning a filing shall be submitted to the department [office].

(6) A photocopy of the most recent annual financial report shall be attached to the filing as an exhibit].

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for each market segment as follows:

- (a) Individual;
- (b) Small group;
- (c) Association;
- (d) Large group; [and]

(e) Except as otherwise authorized pursuant to KRS 304.17A-0954 [(1)] [(2)], each employer-organized association; and  
(f) Self-insured employer organized association.

(2) A large group rate filing may include each product type offered as follows:

- (a) FFS;
- (b) PPO;
- (c) POS; and
- (d) HMO.]

(3) A rate filing for a market segment other than large group may be submitted separately for each product type listed in subsection (2) of this section or in the following combinations:

- (a) FFS and PPO; or
- (b) POS, HMO, and PPO.]

Section 5. Employer-organized Association Rate Filings for Fully Insured and Self Insured. (1)(a) An employer-organized association rate filing shall include the name of each employer-organized association that generated the rating experience contained in the filing; and

(b) If more than one (1) employer-organized association is named in the filing as identified in paragraph (a) of this subsection and each employer-organized association provides the insurer with written permission to have rates based on experience other than its own, the insurer:

1. May have the experience of all employer-organized associations named in the filing combined for rate determination; and

2. Shall include proposed rates for the combination of associations in one (1) filing.

(2) Each employer-organized association rate filing shall contain documentation demonstrating that the entity is an employer-organized association pursuant to KRS 304.17A-005 [(12)] [304.17A-0954 (1)(e)].

(3) An [If an] insurer [is] proposing to begin marketing a health benefit plan to an employer-organized association, shall file a rate filing [may be based on the standard plan benefits], including appropriate formulas and rate factors within the limitations outlined in KRS 304.17A-0954. The filing shall include:

(a) Factors for all plans to be offered; and  
(b) A detailed description of the methodology for incorporating the actual experience of an employer-organized association in determining rates for that association.

(4) If the insurer receives written permission from an employer-organized association regarding combining experience with other employer-organized associations, the insurer shall submit a copy of the [two (2) copies of the written] permission to the

commissioner [executive director] with the rate filing. The [written] permission shall include the following:

(a) A statement giving the insurer permission to rate the employer-organized association on experience other than the experience of the employer-organized association [association's own experience];

(b) Name, address, and telephone number of the employer-organized association giving permission to the insurer;

(c) Name, address, and telephone number of the insurer to which permission is given;

(d) Month, day, and year that permission is given to the insurer; and

(e) Number of eligible association members.

Section 6. Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the most recent edition of the following located at <http://www.actuarialstandardsboard.org/standards-of-practice/>:

(a) Actuarial Standard of Practice No. 8, Regulatory Filings for Health Benefits, Accident/Rates and Health Insurance, and Entities Providing Health Benefits/Financial Projections for Health Plans [(Doc. No. 010, 1990 Edition)], Actuarial Standards Board/American Academy of Actuaries;

(b) Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans [(Doc. No. 052, adopted October, 1996)], Actuarial Standards Board/American Academy of Actuaries; and]

(c) Actuarial Standard of Practice No. 31, Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997), American Academy of Actuaries; and]

(c) [(d)] Actuarial Standard of Practice No. 41, Actuarial Communications/Communication [(Doc. No. 086, adopted March, 2002)], Actuarial Standards Board/American Academy of Actuaries].

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

(a) Qualifications of the signing actuary;

(b) A statement identifying the date that the proposed rates shall be used;

(c) A discussion of the rate development, that [which] shall include a detailed explanation of the following:]

1. The effects of each of the following mandated benefits which shall include the percentage cost and actual dollars attributable to the rates and the number of policyholders who are affected:

a. For benefit plans offering pharmacy benefits, coverage for amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic disorders in accordance with KRS 304.17A-139(4);

b. Hearing aids and related services in accordance with KRS 304.17A-132;

c. Anesthesia and hospital or ambulatory surgical facility services in connection with dental procedures in accordance with KRS 304.17A-149; and

d. Medical and surgical benefits with respect to mastectomies pursuant to KRS 304.17A-134;]

1. [2.] The claim cost development, that [which] shall include an explanation of the following:

a. Methodology;

b. Assumptions including the following:

(i) Trend, including supporting analysis, that [which] supports the trend level selected;

(ii) Benefit change;

(iii) Utilization or cost-per-service change;

(iv) Demographic change;

(v) Change in medical management;

(vi) Change in provider contracts; and

(vii) Any other assumption used by the actuary in the claim cost development; and

c. Experience by month, including exposures or members, earned premium, paid claims, incurred claims, and incurred loss ratio, for the past three (3) years for this product, or for a similar product if the [this] filing is for a new product;



2.a.[3-a.] Development and printout of the following shall be shown by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and highest area factor:

- (i) Base premium rates;
- (ii) Index rates; and
- (iii) Corresponding highest premium rates; [and
- ~~(iv) If offered, any applicable GAP premium rates for the standard plan option.]~~

b. If the filing contains more than one (1) product type, a development and printout as identified and described in clause a of this subparagraph for each product type separately.

c. If the filing contains proposed rates for more than one (1) class of business, a development and printout as identified and described in clauses a. [a] and b. [b] of this subparagraph for each class of business separately;[

4. ~~For an insurer that has existing GAP enrollees:~~

~~a. Index rates for the non-GAP classes of business may be set by excluding the experience of the GAP enrollees;~~

~~b. Index rates for the GAP class of business shall be set by considering the block of experience for the new GAP class of business and the former class of business, which included GAP enrollees; and~~

~~c. Rates for the GAP class of business may not exceed 150 percent of the index rates established in clause b of this subparagraph;]~~

3. [5-] Factors used for each case characteristic, including age, gender, industry or occupation, and geographic region, with a separate summary of the maximum factor and the minimum factor for each case characteristic.

a. A health benefit plan region other than the eight (8) identified in HIPMC-R33, Health Benefit Plan Regions, [which is incorporated by reference in 806 KAR 17:005,] shall not be used for a geographic region factor adjustment; and

b. Any healthy lifestyle discount factor, if applicable, shall be included and an explanation of the determination of that factor, and the condition for when [under which] that factor is applicable;

4. [6-] The anticipated pricing loss ratio, including a detailed justification of load factors, including percentages allocated for the:

a. Administrative expense assumption, including an explanation of:

(i) Any change from the factor used for an existing rate [rates]; and

(ii) How these costs are allocated among each benefit plan design, including demonstrative documentation as an exhibit;

b. Commission assumption, including an explanation for any change from the factor used for an existing rate [rates];

c. Federal, state, and local government tax assumptions, including an explanation for a change from the factor used for an existing rate [rates];

d. Investment income assumption, including an explanation for any change from the factor used for an existing rate [rates];

e. Profit and contingency assumption, including an explanation for a change from the factor used for an existing rate [rates];

f. Assessments pursuant to KRS 304.17B-021; and

g. Other identified load factors;

(d) A detailed explanation, including an example of the following:

1. The method for determining a small group composite rate;

2. The conditions under which a small group composite rate is recalculated; and

3. The group size that is eligible for a composite rate calculation;

(e) Each health benefit plan description and the applicable benefit factor adjustment, or other methods of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan applicable to the [to which this] filing [applies];

(f) Detailed discussion of the manner in which the projected amount of net assessments and payments under KRS 304.17B-021 and 304.17B-023(3) are to be used in establishing the proposed rates in the filing as required by KRS 304.17A-095;

(g) Information regarding how fees are paid to providers as follows:

1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments, and other payments for the rate filing period;

(h) If a trend rate is used, include the time period to which the trend applies, not to exceed twelve (12) months, and the applicable annual trend rate and the periodicity of the factor;

(i) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers, or enrollees;

(j) Information regarding each class of business, which shall include:

1. Identification of each class of business;

2. Justification of each separate class of business; and

3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates, ~~excluding a GAP class of business~~; and

(k) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum for a rate filing other than a large group filing, and signed by the qualified actuary who prepared and signed the actuarial memorandum:

1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to the following markets:

a. Individual;

b. Association; and

c. Small group; and

2. That the proposed rates meet the requirements of KRS 304.17A-0952 or 304.17A-0954, as applicable.

Section 7. Large Group Rate Filings. ~~[(1)]~~ The actuarial memorandum for a large group rate filing shall include the following information:

~~(1)[(a)]~~ The information identified in Section 6(2)(a), (b), (c)1, [2-] ~~4~~[(f), (g), (h)], ~~and~~ (i) and (i) of this administrative regulation;

~~(2)[(b)]~~ Development of rating basis, including each adjustment for the following:

~~(a)[1-]~~ Age;

~~(b)[2-]~~ Gender;

~~(c)[3-]~~ Family composition;

~~(d)[4-]~~ Benefit plan;

~~(e)[5-]~~ Industry;

~~(f)[6-]~~ Healthy lifestyle; and

~~(g)[7-]~~ Any other adjustment included in the development;

~~(3)[(c)]~~ A formula for new and renewal business, including a definition of each term used in the formula;

~~(4)[(d)]~~ Credibility criteria used in conjunction with experience rating;

~~(5)[(e)]~~ Detailed explanation of a change in the manual rating formula or experience rating formula;

~~(6)[(f)]~~ Detailed explanation of a change in factors that would be used in a formula;

~~(7)[(g)]~~ Any periodic trend rate applied in the formula;

~~(8)[(h)]~~ The composite effect of a change in formula and formula factors; and

~~(9)[(i)]~~ Detailed explanation of any trend assumption used in experience rating. [

~~(2) – Certification Form HIPMC-R34, Certification Form, incorporated by reference in 806 KAR 17:005], shall not be required for a large group rate filing.]~~

Section 8. Guaranteed Loss Ratio Filing for New Products or Products without Credible Experience.

(1) A filing accompanied by a guaranteed loss ratio statement shall meet all requirements of KRS 304.17A-095(6).

(2) Individual, small group, and employer-organized association market filings shall meet the following requirements



regarding guaranteed loss ratios by duration:

(a) The guaranteed loss ratio for the first duration shall not be less than sixty (60) percent of the guaranteed lifetime loss ratio specified in the policy.

1. Expected loss ratios may vary by month within the first duration; and

2. The average of the loss ratios for all months shall be equal to the guaranteed loss ratio for the first duration;

(b) The guaranteed loss ratio for a specific duration shall not be less than the guaranteed loss ratio for the previous duration;

(c) The guaranteed loss ratio for the third duration shall not be less than the guaranteed lifetime loss ratio identified in the policy;

(d) The average of the first six (6) guaranteed loss ratios by duration shall not be less than the guaranteed lifetime loss ratio identified in the policy;

(e) The guaranteed lifetime loss ratio shall not be less than that identified in KRS 304.17A-095(6)(a)5; and

(f) The guaranteed loss ratios by duration shall be guaranteed for any policy issued under the policy form and shall be identified in the policy.

(3) A refund shall be calculated pursuant to the following formula:

(a) Refundable premium for any year shall be the sum of the current year's refundable premium for each duration. Each duration's refundable premium shall be calculated by subtracting the three (3) items in subparagraphs 1, 2, and 3 of this paragraph from the current year's earned premium by duration and multiplying the result by the ratio of earned premium by duration and earned premium by duration minus the items identified in subparagraphs 1 and 2 of this paragraph and minus any premium related expenses identified in subparagraph 3 of this paragraph:

1. State and local premium taxes allocated to that duration;

2. Assessments pursuant to KRS 304.17B-021 allocated to that duration; and

3. The sum of incurred claims, preferred provider organization expenses, case management and utilization review expenses, and reinsurance premiums, minus reinsurance recoveries, allocated to that duration, divided by the guaranteed loss ratio in the policy, for that duration;

(b) If the annual earned premium is less than \$2,500,000, the minimum refund shall be calculated by refundable premium multiplied by the annual earned premium, divided by \$2,500,000;

(c) If the annual earned premium is equal to or greater than \$2,500,000, the minimum refund shall be the refundable premium;

(d) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(e) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(4) An audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Guaranteed loss ratios by duration;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities, and description of method of allocation by duration;

(d) Earned premium by duration and description of method of allocation by duration;

(e) State premium tax by duration and description of method of allocation by duration;

(f) Local premium tax by duration and description of method of allocation by duration;

(g) Assessments by duration and description of the method of allocation by duration;

(h) Incurred claims by duration and description of method of allocation by duration;

(i) Preferred provider organization expenses and description of method of allocation by duration;

(j) Case management and utilization review expenses and

description of method of allocation by duration;

(k) Reinsurance premiums less reinsurance recoveries and description of method of allocation by duration;

(l) A description of reinsurance and identity of reinsurer;

(m) A statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees, or any other related administration expenses;

(n) A statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings, and any other savings;

(o) A statement of refund checks not being issued before approval of the audit;

(p) Calculation of minimum refundable premium, actual refunded premium, and refund carryover;

(q) Calculation of percent of earned premium that shall be refunded;

(r) Method used to calculate a policyholder's actual refund;

(s) Historical experience for the policy form since inception;

(t) Auditor's certification; and

(u) Actuarial certification.

(5) An initial rate filing shall be a formal filing, and a subsequent rate filing may be submitted by actuarial certification.

Section 9. Minimum Guaranteed Loss Ratio Requirements for an Amended Policy Form or a Previously Filed Minimum Guaranteed Loss Ratio.

(1) If amending a policy form or a previously filed minimum guaranteed loss ratio, a filing accompanied by a guaranteed loss ratio statement shall meet the requirements of KRS 304.17A-095(6).

(2)~~[(a)]~~ An insurer shall provide a minimum guaranteed loss ratio statement each time rates are amended for a policy form or if amending a previously filed minimum guaranteed loss ratio. The statement shall identify amounts by which rates are amended and include an actuarial certification verifying that rates continue to meet the requirements of the minimum guaranteed loss ratio **most recently filed with the department**; and

~~(b) Most recently filed with the department [office].~~

(3) The initial rate filing and subsequent statements shall include an actuarial certification, which includes information to demonstrate meeting the requirements of KRS 304.17A-0952 and Section 6 of this administrative regulation.

(4)(a) The currently approved loss ratio on file with the department [office] under a prior approval process or a minimum guaranteed loss ratio shall be **found as deemed** a reasonable loss ratio for any amended policy forms or amended minimum guaranteed loss ratios; and

(b) Rate filings requesting a change in the previously approved loss ratio shall require documented evidence to demonstrate increased administrative cost or other evidence that the insurer would not be able to achieve previously approved profitability targets.

(5) If experience is filed by duration pursuant to Section 8(2) of this administrative regulation, a refund shall be calculated in accordance with Section 8(3) of this administrative regulation.

(6) If experience is filed by utilizing a target loss ratio and the actual achieved loss ratio is less than the target loss ratio, a refundable premium shall be determined as follows:

(a) Refundable premium shall be equal to the annual earned premium multiplied by the percentage by which the target loss ratio exceeds the actual achieved loss ratio;

(b)1. If the annual earned premium is equal to or greater than \$2,500,000, the minimum re-fundable premium shall be equal to the refundable premium as established in paragraph (a) of this subsection; or

2. If the annual earned premium is less than \$2,500,000, the:

a. Minimum refundable premium shall be equal to the refundable premium multiplied by the ratio of the annual earned premium divided by \$2,500,000;

b. Refund carryover shall be equal to any amount by which the refundable premium exceeds the minimum refundable premium; and

c. Refundable premium in the subsequent year shall be the

sum of the refund carryover plus the calculated refundable premium for the subsequent year;

(c) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(d) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(7) If experience is filed by duration, an audit shall be conducted in accordance with Section 8(4) of this administrative regulation.

(8) If experience is filed by target loss ratio, an audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

- (a) Guaranteed lifetime loss ratio;
  - (b) Actual loss ratio;
  - (c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities;
  - (d) Earned premium;
  - (e) State premium tax;
  - (f) Local premium tax;
  - (g) Assessments;
  - (h) Incurred claims;
  - (i) Preferred provider organization expenses;
  - (j) Case management and utilization review expenses;
  - (k) Reinsurance premiums less reinsurance recoveries;
  - (l) A description of reinsurance and identity of reinsurer;
  - (m) A statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees, or any other related administration expenses;
  - (n) A statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings, and any other savings;
  - (o) A statement of refund checks not being issued before approval of the audit;
  - (p) Calculation of minimum refundable premium, actual refund premium, and refund carryover;
  - (q) Calculation of percent of earned premium that is to be refunded;
  - (r) Method used to calculate a policyholder's actual refund;
  - (s) Historical experience for the policy form since inception;
  - (t) An auditor's certification; and
  - (u) An actuarial certification.
- (9) An initial rate filing shall be a formal filing, and a subsequent rate filing may be by actuarial certification.
- (10) An initial rate filing shall be required for insurers electing to file under a minimum guaranteed loss ratio pursuant to KRS 304.17A-095(6).

#### Section 10. Amendments to Previously Approved Rate Filings.

(1) For any change that is not a material change, an insurer shall submit an amendment to a rate filing previously approved by the department [office], which shall include the following:

- (a) Identification of the rate file number assigned and stated in the Order of Approval received by the insurer from the department [office] for the previously approved rate filing;
- (b) Date of approval of the previously approved rate filing;
- (c) The proposed effective date of the amendment;
- (d) A fifty (50) dollar filing fee;
- (e) A copy [Two (2) copies] of a properly completed HIPMC-F1 form, Face Sheet and Verification Form that is incorporated by reference in 806 KAR 14:007; and, which is incorporated by reference in 806 KAR 17:005;

(f) A copy [Two (2) copies] of a properly-completed HIPMC-R32 form, Health Benefit Plan Rate Filing Information Form, which is incorporated by reference in 806 KAR 17:005; and

(g) If the filing is for a basic health benefit, Two (2) copies of the completed HIPMC-RF-25 Form, Basic Health Benefit Plan Summary Sheet – Form and Rate Filings, which is incorporated by reference in 806 KAR 17:005.

(2) Each amendment filing shall contain documentation to demonstrate the necessity of the amendment, which shall include the following:

(a) An itemized list of the information to be amended and the reason for the amendment;

(b) A statement identifying the impact of the amendment in relation to benefits and costs on current and future policyholders; and

(c) A statement identifying the impact of the amendment on the insurer.

(3) One (1) copy of the amendment filing and written material relating to the filing shall be submitted to the Kentucky Attorney General's department [office] by the insurer at the same time as the submission to the department [office].

(4) The amendment to a previously approved rate filing shall not be found as[deemed] received until the department [office] confirms that the information and fifty (50) dollar filing fee required under this section have been received.

(5) Within sixty (60) days of date of filing[confirmation of receipt of the required information and fee], the department [office] shall notify the insurer in writing of the acceptance or rejection of the amendment. [

(6) The sixty (60) day confirmation time shall not begin until the department [office] confirms that the required information and fee have been received.]

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

(a) Actuarial Standard of Practice No. 8, "Regulatory Filings for Health Benefits, Accident, [Rates] and Health Insurance, and Entities Providing Health Benefits[Financial projections for Health Plans]", [originally adopted 1990, newly adopted] 03/2014 [(Doc. No. 010, 1990 Edition)]["], Actuarial Standards Board[American Academy of Actuaries];

(b) Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans", [originally adopted 10/1997, revised and effective] 05/2011 [(Doc. No. 052, adopted October, 1996)]["], Actuarial Standards Board[American Academy of Actuaries];

(c) Actuarial Standard of Practice No. 31, "Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997)", American Academy of Actuaries;

(c) [(d)] Actuarial Standard of Practice No. 41, "Actuarial Communications[Communication]", 12/2010[originally adopted 03/2002, revised and effective 05/2011] (Doc. No. 086, adopted March, 2002)]["], Actuarial Standards Board[American Academy of Actuaries];

(d) HIPMC-R32 Form, "Health Benefit Plan Rate Filing Information Form", 04/2021;

(e) [HIPMC-F1 Form, Face Sheet and Verification Form, 07/2020;

(f)] HIPMC-R33, "Health Benefit Plan Regions", 04/2021;

(f)] [(g)] [Certification Form] HIPMC-R34, "Certification Form", 04/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [office] of Insurance, The Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance[office's] internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>[<http://www.insurance.ky.gov>] [<http://dot.ppr.ky.gov>].

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(As Amended at ARRS, September 14, 2021)**

**806 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.**

RELATES TO: KRS 304.17A-540, 304.17A-545, 304.17A-600 – 304.17A-619

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) ~~authorizes [provides that]~~ the ~~Commissioner [Executive Director]~~ ~~[may]~~ promulgate reasonable ~~administrative [rules and]~~ regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. This administrative regulation establishes the procedure to be followed when a medical director's signature is required on health care benefit denials.

Section 1. Definitions. (1) "Adverse determination" is defined by KRS 304.17A-600(1).

(2) "Coverage denial" is defined by KRS 304.17A-617(1).

(3) "Electronic signature" is defined by KRS 369.102(8).

(4) "Enrollee" is defined by KRS 304.17A-500(5).

(5) "Managed care plan" is defined by KRS 304.17A-500(9).

(6) "Medical director" means a person meeting the requirements of KRS 304.17A-545(1), and includes a medical director of an entity under contract and delegated to perform utilization review on behalf of a managed care plan.

(7) "Notice of coverage denial" means a letter, a notice, or an Explanation of Benefits statement advising of a coverage denial as defined by KRS 304.17A-617(1).

(8) "Signature" means name, title, state of licensure and license number.

(9) "Utilization review" is defined by KRS 304.17A-600(17) [KRS 304.17A-600(18)].

Section 2. Application. This administrative regulation shall apply to all managed care plans authorized by law to engage in managed care in the state of Kentucky, and any utilization review entities registered in Kentucky that have contracted with a managed care plan to perform utilization reviews on the plan's behalf.

Section 3. Appointment of Medical Director. (1) A managed care plan shall submit to the ~~department [office]~~ a:

(a) Completed Form HIPMC-MD-1, ~~incorporated by reference in this administrative regulation~~; and

(b) Biographical resume of each individual who shall serve as the medical director ~~[of the managed care plan]~~.

(2) A managed care plan shall furnish the ~~department [office]~~ with any change in medical director within thirty (30) days of the change.

(3) A managed care plan shall provide for an alternative medical director to serve ~~if [in the event of]~~ the medical director is absent [director's absence] and furnish the ~~department [office]~~ with information as required in subsection (1) of this section.

Section 4. Letters of Denial for Adverse Determination or Notices of Coverage Denial. (1) Letters of denial for adverse determination or notices of coverage denial shall be sent to an enrollee's last known address with a copy of the same sent to the provider.

(2) Letters of denial requiring signature of the medical director ~~[of a managed care plan]~~ pursuant to KRS 304.17A-545(1)(d) and KRS 304.17A-607(1) shall include:

(a) Letters of adverse determination, including denials, limitations, reductions and terminations of services, based on lack of medical necessity; and

(b) Letters of adverse determination, including denials, limitations, reductions and terminations or services, based on lack of medical appropriateness.

(3) Notices of coverage denial shall not require the medical director's signature.

Section 5. Signature of the Medical Director. For purposes of this administrative regulation, the signature of the medical director shall include:

(1) Handwritten and copies of original signature; or

(2) An electronic signature.

Section 6. Incorporation by Reference. (1) "Medical Director Report Form", Form HIPMC-MD-1, 03/2021 [(40/2000)] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [Office] of Insurance, The Mayo-Underwood Building, 500 Mero Street [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department's Web site at <http://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://www.insurance.ky.gov/>].

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health, Life Insurance and Managed Care**  
**(As Amended at ARRS, September 14, 2021)**

**806 KAR 17:260. Conversion policy minimum benefits.**

RELATES TO: KRS 304.17A, 304.18-110, 304.18-114[304.18-440], 304.18-120(2), 29 C.F.R. 2590.715-2713(a), 29 C.F.R. 2590.715-2713(b)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-120(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) ~~authorizes [provides that]~~ the ~~Commissioner [executive director]~~ of Insurance to promulgate ~~[may make reasonable]~~ administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010 [through KRS 304.99-154]. KRS 304.18-120(2) requires the ~~department [office]~~ to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy. ~~[The purpose of]~~ This [This] administrative regulation establishes [is to establish] [establishes] those requirements.

Section 1. Definitions. (1) "Conversion policy" means an individual health policy issued to an insured person pursuant to a conversion privilege contained in a group health policy upon termination of the insured person's coverage under the group policy.

(2) "FFS" means a fee-for-service product type.

(3) "Group policy" is defined by [in] KRS 304.18-110(1)(a).

(4) "HMO" means a health maintenance organization product type.

(5) "POS" means a point-of-service product type.

(6) "PPO" means a preferred provider organization product type.

(7) "Preventive Health Service" means the service described by 29 C.F.R. 2590.715-2713(a) and (b).

Section 2. Plan Cost Sharing and Minimum Benefits. (1) The out-of-pocket limit for covered expenses incurred during a plan year for a converted policy issued pursuant to a conversion privilege contained in a PPO, FFS, HMO, or POS product shall be no more than:

(a) \$7,000 [~~\$6,000~~] for a single person; and

(b) \$14,000 [~~\$12,000~~] for a family.

~~[(2) The deductible and out-of-pocket limit for covered~~

VOLUME 48, NUMBER 4– OCTOBER 1, 2021

expenses incurred during a plan year for a converted policy issued pursuant to the conversion privilege contained in a group FFS or PPO product shall be no more than:

- (a) \$6,000 for a single person and an out-of-pocket limit of \$6,000 after the deductible; and
- (b) \$12,000 for a family and an out-of-pocket limit of \$12,000 after the deductible.

~~Section 3. Minimum Benefits. (1) A converted policy issued pursuant to the conversion privilege contained in a HMO or POS product shall include the following minimum benefits:~~

- ~~(a) In hospital care:~~
    - ~~1. Inpatient hospital room and board benefits in a maximum copayment amount of \$1,000 per admission; and~~
    - ~~2. Coverage benefits in a maximum copayment amount of \$1,000 per admission for transplants, including:~~
      - ~~a. Kidney;~~
      - ~~b. Cornea;~~
      - ~~c. Bone marrow;~~
      - ~~d. Heart;~~
      - ~~e. Liver;~~
      - ~~f. Lung;~~
      - ~~g. Heart/lung; and~~
      - ~~h. Pancreas.~~
  - ~~(b) Outpatient care:~~
    - ~~1. Ambulatory outpatient surgery benefits in a maximum copayment amount of \$500 per visit;~~
    - ~~2. Provider office visits benefits in a maximum copayment amount of thirty (30) dollars per visit; and~~
    - ~~3. Diagnostic tests benefits in a maximum copayment amount of thirty (30) dollars per testing session.~~
  - ~~(c) Emergency care:~~
    - ~~1. Hospital emergency room benefits in a maximum copayment amount of \$150 per visit; and~~
    - ~~2. Ground ambulance benefits in a maximum copayment amount of seventy-five (75) dollars per use.~~
  - ~~(d) Medicare hospice benefit.]~~
- (2) A converted policy issued pursuant to the conversion privilege contained in a group HMO, POS, FFS, or PPO product shall include the following minimum benefits:
- (a) In hospital care:
    - 1. Inpatient hospital room and board benefits in a maximum coinsurance amount of fifty (50) percent; and
    - 2. Coverage benefits in a maximum coinsurance amount of fifty (50) percent for transplants, including:
      - a. Kidney;
      - b. Cornea;
      - c. Bone marrow;
      - d. Heart;
      - e. Liver;
      - f. Lung;
      - g. Heart ~~or~~/lung; and
      - h. Pancreas.
  - (b) Outpatient care:
    - 1. Ambulatory outpatient surgery benefits in a maximum coinsurance amount of fifty (50) percent;
    - 2. Provider office visits benefits in a maximum coinsurance amount of fifty (50) percent; and
    - 3. Diagnostic tests and Laboratory benefits in a maximum coinsurance amount of fifty (50) percent;
  - (c) Emergency care:
    - 1. Hospital emergency room benefits in a maximum coinsurance amount of fifty (50) percent; and
    - 2. Ground ambulance benefits in a maximum coinsurance amount of fifty (50) percent.
  - (d) Medicare hospice benefits.
  - (e) Prescription drug benefits in a maximum coinsurance amount of fifty (50) percent.
  - (f) Maternity Benefits in a maximum coinsurance amount of fifty (50) percent.
  - (g) Mental Health and Substance Abuse Benefits:
    - 1. Inpatient Benefits in a maximum coinsurance amount of fifty (50) percent; and

2. Outpatient Benefits in a maximum coinsurance amount of fifty (50) percent.

(h) Rehabilitative and Habilitative Benefits in a maximum coinsurance amount of fifty (50) percent.

(i) Preventive Health Service shall be covered at 100 percent.  
(j) Pediatric Benefits in a maximum coinsurance amount of fifty (50) percent.

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.

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health, Life Insurance and Managed Care**  
**(As Amended at ARRS, September 14, 2021)**

**806 KAR 17:290. Independent External Review Program.**

RELATES TO: KRS 304.1-050, 304.2-100, 304.2-230, 304.2-310, 304.17A-005, 304.17A-505, 304.17A-600, 304.17A-617, 304.17A-621-304.17A-631[304.17A-700]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the ~~commissioner~~ [executive director] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-629 requires the ~~department~~ [office] to promulgate administrative regulations regarding the Independent External Review Program. [EO-2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.] [The purpose of] This [This] administrative regulation establishes [is to establish] [establishes] the insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. This administrative regulation [it] also establishes the disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

Section 1. Definitions. (1) "Adverse determination" is defined by [in] KRS 304.17A-600(1).

(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(3) "Authorized person" is defined by [in] KRS 304.17A-600(2).

(4) "Commissioner" is [means Commissioner of Insurance as] defined by KRS 304.1-050(1).

(5) "Coverage denial" is defined by [in] KRS 304.17A-617(1).

(6) "Covered person" is defined by [in] KRS 304.17A-600(4).

(7) "Department" is [means Department of Insurance as] defined by KRS 304.1-050(2).

(8) "External review" is defined by KRS 304.17A-600(5).

(9) "Financial hardship" means the:

(a) Gross income of the covered person is below 200 percent of the federal poverty level based upon family size as shown by a federal income tax return for the previous year; or

(b) Covered person's participation in one (1) of the following programs:

- 1. National Prescription Drug Patient Assistance;
- 2. Kentucky Transitional Assistance Program (K-TAP);
- 3. Kentucky Medical Assistance Program; or
- 4. Unemployment Insurance.

(10) "Health Care Provider" or "Provider" is defined by KRS 304.17A-005(23).

(11) [(14)] "Independent review entity" is defined by [in] KRS 304.17A-600(7).

(12) [(14)] "Insurer" is defined by [in] KRS 304.17A-600(8). [

(12) "Provider" is defined in KRS 304.17A-600(13).]

(13) "Reviewer" means an individual selected by the

independent review entity to conduct an external review and make a recommended decision to the independent review entity.

Section 2. Requirements of an Insurer. (1) An insurer shall:

(a) Disclose to a covered person in a clear, concise, written format the following information concerning an external review:

1. At enrollment, the right to an external review in accordance with KRS 304.17A-505(1)(g);

2. The availability of an external review, including expedited external review, in the insurer's notice of an adverse determination in accordance with KRS 304.17A-623(1);

3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:

a. Whether the appeal shall be in writing;

b. How to request and complete any [a] necessary forms [form], including a medical records release form or written authorization of representation;

c. Applicable time frames;

d. The position and telephone number of a contact person who can provide additional information about an external review; and

e. Additional documentation that may be necessary to initiate the external review; and

4. The right of a covered person to request an external review within sixty (60) days of receiving notice that, pursuant to KRS 304.17A-617(3)(d), the insurer has elected to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed by a brief written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances under which the following types of external review shall be provided:

a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6), and (13); and

b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);

2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);

3. Notice that the cost of an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);

4. The procedure for submitting:

a. An oral request followed up by a brief written request, or a written request for an expedited external review;

b. A written request for a nonexpedited external review; and

c. Any specific forms required by the insurer to initiate an external review, including a written authorization of personal representation or a consent to release medical records form;

5. The time frame for:

a. Submitting a request for external review in accordance with KRS 304.17A-623(4);

b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and

c. Implementation of a decision of the independent review entity in accordance with KRS 304.17A-625(11) through (13);

6. A statement relating to the confidential treatment of medical records and information relating to the external review; and

7. A statement of the availability of a complaint process through the department relating to:

a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and

b. The action of an independent review entity in accordance with KRS 304.17A-625(16);

(d) If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:

1. Written authorization of representation; and

2. Consent to release medical records to the independent review entity;

(e) Determine if an external review is warranted in accordance with KRS 304.17A-623(3)

and (10), and notify the person who requested the external review of its determination within the following time periods:

1. For expedited reviews, within twenty-four (24) hours of receipt of the request, pursuant to KRS 304.17A-623(11); or

2. For nonexpedited reviews, within five (5) business days of receipt of the request;

(f) Upon a determination that an expedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity, which was selected pursuant to KRS 304.17A-623(7) from a list of certified independent review entities maintained by the department at <http://insurance.ky.gov>; and

2. Notify the independent review entity by telephone that the following documents shall be forwarded to the independent review entity in accordance with KRS 304.17A-623(11):

a. The written consent of the covered person authorizing release of medical records as required by KRS 304.17A-623(4);

b. Information to be considered [~~taken into account~~] as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6[~~incorporated by reference in 806 KAR 47:005~~];

(g) Upon a determination that a nonexpedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity which was selected pursuant to KRS 304.17A-623(7) from the list of certified independent review entities as identified in paragraph (f)1 of this subsection; and

2. Within three (3) business days of assignment, deliver to the independent review entity the documentation as identified in paragraph (f)2 of this subsection;

(h) Upon assignment of an external review, complete and send to the department an Assignment of Independent Review Entity Form, HIPMC-IRE-2[~~incorporated by reference in 806 KAR 47:005~~], within one (1) business day via email to DOI.UtilizationReview@ky.gov;

(i) Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13) and provide the department with a reprocessed explanation of benefits or other payment documentation showing the implementation of the overturned decision;

(j) Upon receipt of an invoice relating to an external review, pay the independent review entity within thirty (30) days;

(k) Maintain a written record of each external review for a period of not less than five (5) years pursuant to 806 KAR 2:070, Section 1; and

(l) Upon written notice of termination of an independent review entity pursuant to Section 3(21)(19)(a) or (c) of this administrative regulation, reassign an external review in accordance with paragraphs (f) and (g) of this subsection.

(2)(a) If a request for external review is denied by an insurer, written notification shall be provided by the insurer to the person requesting the external review, which shall include:

1. The date the request for external review was received by the insurer;

2. A statement relating to the nature of the request;

3. The rationale of the insurer for denying the request;

4. A statement relating to the availability of review by the department if a dispute arises regarding the right to external review;

5. The toll-free telephone number of the department; and

6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.

(b) If requested by the department, the insurer shall provide:

1. A copy of the written notification described in paragraph (a) of this subsection; and

2. Information or documentation that the insurer relied upon to deny the request for external review.

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

(1) Accept a request for assignment unless:

(a) A conflict of interest exists;

(b) Confidentiality issues exist; or

(c) Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable;

(2) Upon receipt of a request for assignment from an insurer;

— ~~(a)~~ Determine if a condition of subsection (1)(a) through (c) of this section exists;

~~(3)(b)~~ Within twenty-four (24) hours of receipt of a request for assignment:

~~(a)(1-)~~ Immediately provide verbal notification, followed by written notification to the insurer and department of the rejection of an assignment if a condition of subsection (1)(a) through (c) of this section exists; or

~~(b)(2-)~~ Provide written notification to an insurer and the department via DOI.UtilizationReview@ky.gov of the acceptance of an assignment; and

~~(4)(c)~~ Maintain a written record of:

~~(a)(1)~~ Whether the external review relates to an adverse determination or coverage denial, which requires resolution of a medical issue;

~~(b)(2-)~~ The specific question or issue, as identified by the independent review entity, to be resolved by the external review; and

~~(c)(1-3-)~~ Whether the external review is expedited or nonexpedited;

~~(5)(3)~~ For each external review, obtain and maintain a signed statement of a reviewer that the reviewer has no conflict of interest;

~~(6)(4)~~ Not limit the basis of an external review decision to the standards, criteria, and clinical rationale used by the insurer to make its decision pursuant to KRS 304.17A-625(1), (2), and (7);

~~(7)(5)~~ Have a reviewer with expertise in:

(a) Health insurance benefits and contracts, who shall serve as a reviewer with a healthcare professional reviewer, in an external review of a coverage denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and

(b) Health care, who shall:

1. Conduct an external review of a coverage denial which requires resolution of a medical issue and an adverse determination; and

2. Meet the following requirements:

a. Hold active licensure in a state of the United States;

b. Have recent experience or familiarity with current body of knowledge and applicable specialty or subspecialty practice;

c. Have at least five (5) years of experience in the specialty or subspecialty of the external review; and

d. Hold current board certification by:

(i) The American Board of Medical Specialties if the reviewer is a medical doctor;

(ii) The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine;

(iii) The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine; or

(iv) Other recognized health professional board pursuant to KRS 304.17A-627;

~~(8)(6)~~ Establish criteria in accordance with KRS 304.17A-627 for:

(a) Selection of a qualified reviewer, including the initial verification and reverification every three (3) years of credentials of the reviewer;

(b) Ensuring that an appropriate:

1. Reviewer performs the external review; and

2. Number of reviewers are used for the external review; and

(c) Ensuring that at least one (1) reviewer qualified in each medical specialty and subspecialty is available for external review;

(d) Provide a listing of the reviewers to the department including each reviewer's [reviewers] name, date of licensure, license number and specialty, including any subspecialty in accordance with KRS 304.17A-627(5) and (6);

~~(9)(7)~~ Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:

(a) Hold a current license to practice medicine in a state of the United States;

(b) Provide guidance for the medical aspects of the external review process; and

(c) Oversee the medical aspects of the:

1. Quality management program; and

2. Reviewer credentialing program;

~~(10)(8)~~ Establish and implement criteria for determination of the need for a time extension pursuant to KRS 304.17A-623(12) and (13);

~~(11)(9)~~ Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:

(a) Title, professional license number, state of licensure and specialty or subspecialty certifications, if any, of the reviewer;

(b) Date the decision was rendered; and

(c) A statement that:

1. The decision shall be final and binding on the insurer; and

2. If dissatisfied with the decision, a comment, question, or complaint may be submitted in writing to the department;

~~(12)(10)~~ Within two (2) business days of rendering a decision, provide written notification of the decision to the:

(a) Covered person or authorized person, treating provider, and insurer; and

(b) Department ~~[by]~~ via email at DOI.UtilizationReview@ky.gov ~~by~~;

1. Copying the department on the written notification to the covered person; and

2. Completing an External Review Decision Notification Form, HIPMC-IRE-3[, incorporated by reference in 806 KAR 17:005];

~~(13)(11)~~ Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9), 806 KAR 3:210, [806 KAR 3:220] and 806 KAR 3:230;

~~(14)(12)~~ Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070, which shall include, as applicable:

(a) All documentation relating to the external review pursuant to KRS 304.17A 625(1)(a);

(b) The independent review entity's decision regarding each issue identified in the external review request;

(c) The name, credentials, and specialty or subspecialty of the reviewer;

(d) Medical records and information considered during the review;

(e) References to any medical literature, research data, or national clinical criteria upon which the independent review entity's decision was based;

(f) A copy of the covered person's health benefit plan;

(g) A copy of the adverse determination or coverage denial, which requires resolution of a medical issue, and the internal appeal decision; and

(h) A copy of all correspondence and communication between the independent review entity, reviewer, and any other person regarding the external review, including a copy of the final external review decision letter;

~~(15)(13)~~ Provide toll-free telephone access that:

(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone if the services under review are in dispute; and

(b) Allows for:

1. Receiving after-hours requests for external review; and

2. Acting upon expedited external review requests in accordance with KRS 304.17A-623(12);

~~(16)(14)~~ If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit to the department:

(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and

(b) A copy of the delegation or subcontract agreement;  
~~(17)(15)~~ Establish and maintain a written quality assurance program in accordance KRS 304.17A-627, which shall be made available to the public upon request and shall include a written plan, which addresses:

- (a) Scope and objectives;
- (b) Program organization;
- (c) Monitoring and oversight mechanisms; and
- (d) Evaluation and organizational improvement of external review activities, including:

1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;

2. The implementation of an action plan to improve or correct an identified problem; and

3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;

~~(18)(16)~~ Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1[, as incorporated by reference in 806 KAR 17:005], in writing to the department for approval. A change shall not become effective until approved by the commissioner;

~~(19)(17)~~ Submit a new application for certification if requested by the department following notification of a material change in the application information as required by KRS 304.17A-627(2);

~~(20)(18)~~ Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:

- (a) A completed external review of:

1. A coverage denial, which requires resolution of a medical issue; and

- 2. An adverse determination; and

- (b) An incomplete external review;

~~(21)(19)~~ Immediately terminate an external review and provide notice by telephone, followed by a written notification to the department and, if appropriate, the insurer requesting the external review if:

(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process;

(b) A reversal of a coverage denial or adverse determination is received in writing from the insurer; or

(c) The independent review entity or a reviewer becomes unavailable for reasons beyond the control of the independent review entity, including acts of God, natural disasters, epidemics, strikes or other labor disruptions, war, civil disturbances, riots, or complete or partial disruptions of facilities;

~~(22)(20)~~ If more than one (1) reviewer is utilized in making a decision:

(a) Render an overall decision based upon the majority decision of the reviewers; or

(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment shall be covered, request an additional reviewer to make a binding majority decision;

~~(23)(21)~~ Implement a written policy and procedure for each aspect of an external review process, including:

(a) Processing of the request for assignment of an external review from an insurer;

(b) Receipt and maintenance of medical records and information from insurer;

(c) Ensuring access to appropriate qualified reviewers pursuant to subsection ~~(8)(6)~~ of this section;

(d) Ensuring the credentialing, selection, and notification of a reviewer who performs an external review;

(e) Rendering a timely decision and issuing notification of the decision;

(f) Ongoing monitoring and evaluation of the performance of a reviewer;

(g) Monitoring and oversight of a delegated external review function, if any;

- (h) Billing and collection of fees for external review, including:

- 1. Filing fee of the covered person; and
- 2. Cost of external review for the insurer;

- (i) Collecting and reporting data;

- (j) Termination of external review; and

(k) Response to a request for information relating to a complaint filed with the department; and

~~(24)(22)~~ (a) Conduct annually, a program for training reviewers, which:

1. Provides information relating to the requirements of the Kentucky Independent External Review Program; and

2. Describes the policies and procedures of the independent review entity, as applicable; and

(b) Provide a written record of the training to the department, upon request.

Section 4. Application Process for Certification to Perform External Reviews. (1) To perform an external review, an independent review entity shall be certified in accordance with requirements ~~[as]~~ established in KRS 304.17A-627, and this administrative regulation.

(2) To be certified to perform an external review, an independent review entity shall:

(a) Complete and submit to the department, an Application for Certification of an Independent Review Entity, HIPMC-IRE-1[, incorporated by reference in 806 KAR 17:005];

(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation; and

(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an independent review entity ~~[as]~~ established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) In renewing a certification, an independent review entity shall submit an application for certification to the department at least ninety (90) days prior to expiration of the current certification.

Section 5. Fees. (1) Department fees.

(a) An application for certification as an independent review entity shall be submitted with \$500.

(b) ~~Pursuant to [As identified in]~~ KRS 304.17A-627(2), a change in application information after certification shall be submitted with fifty (50) dollars.

(c) Fees submitted to the department shall be made payable to the Kentucky State Treasurer.

(2) Independent review entity fees.

a)1. Except for a fee which meets the criteria established in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800, the total fee charged for an external review shall not exceed \$800; and

2. The fee proposed by the independent review entity in excess of \$800 shall be submitted to the department for approval prior to billing the insurer with the justification defined in HIPMC-IRE-5, Approval of an External Review Fee in Excess of \$800.

(b) The twenty-five (25) dollar filing fee to be paid by the covered person shall:

1. Be billed by the independent review entity upon assignment; or

2. Be waived if it creates a financial hardship pursuant to KRS 304.17A-623(5).

Section 6. Department Review of Application for Certification or Change in Information Provided on the Application.

(1) Upon review of an application for certification or a change in information provided on the application, the department shall:

(a) Notify the applicant of any missing or necessary information;

(b) Identify and request submission of the information identified in paragraph (a) of this subsection within thirty (30) days;

(c) If requested information is not provided to the department within the time frame established in paragraph (b) of this subsection:

1. Disapprove the application for certification or the change of information provided on the application; and

2. Not refund the applicable fee submitted in accordance with Section 5(1) of this administrative regulation; and

(d) Approve or deny certification or a change to information



provided on the application of an independent review entity within ninety (90) days of submission.

(2) An independent review entity certification shall expire on the second anniversary of the certification date unless the certification is renewed by the independent review entity, which submits a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department shall:

- (1) Give written notice of its action; and
- (2) Advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process. (1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department requesting a written response to the complaint shall be sent to the independent review entity.

(2) Within ten (10) business days of receipt of the letter from the department, the independent review entity shall submit a written response to the department, including the following:

- (a) Information relating to the complaint;
- (b) If applicable, corrective actions to address the complaint, including time frames for actions; and
- (c) A mechanism to evaluate the corrective action, if applicable.

(3) Upon receipt of the written response of the independent review entity, the department shall:

- (a) If applicable, take action pursuant to KRS 304.17A-625(16); and
- (b) Notify the complainant of the department's findings and action taken, if any.

Section 9. Department Investigations. The commissioner may conduct an investigation of an independent review entity pursuant to KRS 304.2-100 and 304.2-230.

Section 10. Reporting Requirements. An independent review entity shall complete and submit to the department by March 31 of each year for the previous calendar year, the Annual Independent Review Entity Report Form, HIPMC-IRE-4; incorporated by reference in 806 KAR 17:005].

Section 11. Cessation of Participation. (1) Upon a decision to terminate participation in the independent external review program as established in KRS 304.17A-621, an independent review entity shall:

- (a) Immediately notify the department in writing of its decision to cease accepting new assignments; and
- (b) Except for reasons beyond its control, submit the following to the department for approval at least thirty (30) days prior to termination:
  1. Written notification of the termination, including:
    - a. Date of termination; and
    - b. Number of pending external reviews with corresponding assignment dates; and
  2. A written action plan for terminating participation.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) Form HIPMC-IRE-1, "Application for Certification of an Independent Review Entity", 09/2020 edition;
- (b) Form HIPMC-IRE-2, "Assignment of Independent Review Entity Form", 09/2020 edition;
- (c) Form HIPMC-IRE-3, "External Review Decision Notification Form", 09/2020 edition;
- (d) Form HIPMC-IRE-4, "Annual Independent Review Entity Report Form", 09/2020 edition;
- (e) Form HIPMC-IRE-5, "Approval of an External Excess Review Fee in Excess of \$800", 09/2020 edition; and
- (f) Form HIPMC-IRE-6, "External Review Information Face Sheet", 09/2020 edition.

(2)(2-1) This material may be inspected, copied or obtained subject to applicable copyright law, at the Department of Insurance, The Mayo-underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov>].

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

## PUBLIC PROTECTION CABINET

Department of Insurance

Division of Health, Life Insurance and Managed Care  
(As Amended at ARRS, September 14, 2021)

### 806 KAR 17:370. Standardized health claim attachments.

RELATES TO: KRS 304.17A-005, 304.17A-607, 304.17A-700-304.17A-730, 304.17C-010, 304.17C-090, 304.39-010-304.39-340, ~~[2008 Acts ch. 127, Part XII, secs 18-20]~~, 42 C.F.R. 411.32, 441.203, 441.206, 441.207, 441.208, 441.250, 441.255, 441.256, 441.258

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-720(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner ~~[executive director]~~ to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-720(1) requires the department to promulgate administrative regulations prescribing standardized health claim attachments to be used by insurers. ~~[EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.]~~ This administrative regulation establishes requirements for standardized health claim attachments and minimum requirements for routinely requested medical information health claim attachments.

Section 1. Definitions. (1) "Clean claim" is defined by [in] KRS 304.17A-700(3).

(2) "Health benefit plan" is defined by [in] KRS 304.17A-005(22).

(3) "Health care provider" or "provider" is defined by [in] KRS 304.17A-700(9), ~~as amended by 2008 Ky Acts ch. 127, Part XII, sec. 18]~~.

(4) "Health claim attachments" is defined by [in] KRS 304.17A-700(10).

(5) "Insurer" is defined by [in] KRS 304.17A-005(29) ~~[304.17A-005(27)]~~.

(6) "Limited health services benefit plan" is defined by KRS 304.17C-010(5).

(7) "Practitioner" means an individual licensed or certified to provide a health care service in Kentucky.

(8) "Reparation obligor" is defined by [in] KRS 304.39-020(13).

Section 2. Standardized Health Claim Attachments. If another payment source is identified by a provider, an insurer shall require the provider to include the following health claim attachments, as applicable, for a claim to qualify as a clean claim:

(1) An explanation of benefits statement or noncoverage notice from another payer;

(2) An electronic or paper-based Medicare remittance notice if the claim involved Medicare as a payer; and

(3) A record of all payments by a reparations obligor pursuant to KRS 304.39-010 to 304.39-340.

Section 3. Routinely-requested Health Claim Attachments. An insurer offering a health benefit plan or a limited health service benefit plan for dental only, may routinely request the following health claim attachments in accordance with KRS 304.17A-706(2),



as applicable:

- (1) A certification of medical necessity;
- (2) A complete medical record, or part of a medical record, including:

(a) Discharge summary:

1. Patient identification, including name, age, gender, and medical record number;
2. Name of attending practitioner;
3. Dates of admission and discharge;
4. Final diagnosis;
5. Reason for the admission or visit;
6. Medical history;
7. Significant findings during length of stay or visit;
8. Procedures and treatments;
9. Patient condition at discharge;
10. Discharge medications; and
11. Discharge instructions;

(b) Emergency department report:

1. Patient identification, including name, age, gender, and medical record number;
2. Date of service;
3. Attending practitioner;
4. Chief complaint and symptoms;
5. History of present illness and physical exam;
6. Diagnostic test findings;
7. Clinical impression and diagnosis;
8. Treatment plan;
9. Discharge instructions; and
10. Practitioner orders;

(c) History and physical:

1. Patient identification, including name, age, gender, and medical record number;
2. Chief complaint;
3. Details of present illness;
4. Relevant past, social and family histories;
5. Inventory by body system;
6. Summary of psychological needs;
7. Report of relevant physical exam;
8. Statement relating to the conclusions or impressions drawn from the admission history and physical;
9. Statement relating to the course of action planned for this episode of care; and
10. Name of practitioner performing history and physical;

(d) Nurse's notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Vital signs with graphics, if available;
3. Intake and output record, if applicable;
4. Medication administration records;
5. Date of nurse's notes;
6. Nurse assessment;
7. Nursing intervention;
8. Observation; and
9. Name of nurse;

(e) Operative report:

1. Patient identification, including name, age, gender, and medical record number;
2. Date of procedure;
3. **Name of** operating practitioner;
4. Pre- and post-operative diagnoses;
5. List of procedures performed;
6. Operative description including indications and findings;
7. Anesthesia used; and
8. Specimens collected;

(f) Progress notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Discharge or treatment plan;
3. Practitioner orders;
4. Practitioner notes;
5. Attending practitioner name;
6. Results of tests and treatments;
7. Dates of notes; and

8. Chief complaint;

(g) Test results:

1. Patient identification, including name, age, gender, and medical record number;
2. Test findings, including date ordered and date **completed[competed]**; and
3. Ordering practitioner name;

(h) Practitioner orders or treatment plan, as applicable:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner orders;
3. Ordering practitioner name; and
4. Order dates;

(i) Practitioner notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner notes; and
4. Dates of notes;

(j) Consult notes and reports:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Findings and recommendations including notes and reports; and
4. Dates of notes and reports;

(k) Anesthesia record:

1. Patient identification, including name, age, gender, and medical record number;
2. Administering practitioner name;
3. Start and stop anesthesia times;
4. Route of administration;
5. Dates;
6. Notes;
7. Patient vital signs; and
8. Drug administered;

(l) Therapy notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner orders;
4. Treatment plan;
5. Number of treatments and dates;
6. Therapist's notes; and
7. Dates of notes;

(m) Office notes:

1. Patient identification, including name, age, gender, and medical record number;
  2. Practitioner name;
  3. Any notes generated for dates of service; and
  4. Dates of notes;
- (n) Dental records; and
- (o) Pharmacy records;

(3) Certification and documentation as identified in 42 C.F.R. 441.203, 441.206, 441.207, 441.208, 441.250, 441.255, 441.256, and 441.258;

(4) Itemized bill; and

(5) Evidence of Medicare secondary payment pursuant to 42 C.F.R. 411.32.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health, Life Insurance and Managed Care**  
**(As Amended at ARRS, September 14, 2021)**

**806 KAR 17:450. Insurance purchasing outlet requirements.**

RELATES TO: KRS 304.1-050, 304.2-310, 304.4-010, 304.9-052, 304.17A-200, 304.17A-245, 304.17A-750-304.17A-770, 304.47-020

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-752(3), 304.17A-758(8), 304.17A-760(1)(i), 304.17A-762(3)(c), 304.17A-768(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~Executive Director~~] of Insurance to promulgate [~~make~~] reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-752(3) authorizes the commissioner [~~executive director~~] to promulgate administrative regulations necessary to administer KRS 304.17A-750 through 304.17A-770. KRS 304.17A-758(8) requires the commissioner [~~executive director~~] to promulgate regulations to establish fees for the initial registration and renewal of registration of an insurance purchasing outlet. KRS 304.17A-760(1)(i) requires the commissioner [~~executive director~~] to promulgate administrative regulations to establish a process for insurance purchasing outlets to prepare and file annual reports on the operations of the insurance purchasing outlet. KRS 304.17A-762(3)(c) requires the commissioner [~~to executive director~~] promulgate regulations to establish disclosures that are required to be made by the insurance purchasing outlet to insurance purchasing outlet members when the member enrolls. KRS 304.17A-768(8) requires the commissioner [~~executive director~~] to promulgate administrative regulations to implement the provisions of that section involving vouchers. [The purpose of] This [~~This~~] administrative regulation establishes/is to establish [~~establishes~~] insurance purchasing outlet requirements, procedures for registering insurance purchasing outlets, and the voucher process.

Section 1. Definitions. (1) "Business entity" means an applicant for a certificate of registration to act as an insurance purchasing outlet.

(2) "Commissioner" is defined by KRS 304.1-050(1) [~~"Executive Director" of Insurance~~].

(3) "Department" is defined by KRS 304.1-050(2) [~~"Office" means Office of Insurance~~].

(4) "Eligible employee" is defined by [in] KRS 304.17A-750(1).

(5) "Employer" is defined by [in] KRS 304.17A-750(3).

(6) "Insurance purchasing outlet" is defined by [in] KRS 304.17A-750(4).

(7) "Insurance purchasing outlet member" or "member" is defined by [in] KRS 304.17A-750(5).

(8) "Voucher" is defined by [in] KRS 304.17A-750(7).

Section 2. Application for Certificate of Registration. (1) A business entity seeking issuance of or renewal of a certificate of registration shall submit to the department [~~office~~] the following:

(a) A completed Insurance Purchasing Outlet Application for Registration, HIPMC-IPO-1 [(7/02)];

(b) All the documentation and information required by KRS 304.17A-754(4); and

(c) A fee as required by Section 3 of this administrative regulation.

(2) Since KRS 304.4-010(2) requires all fees payable under the insurance code to be collected in advance, the period of time in which the commissioner [~~executive director~~] may act on an application for issuance of a certificate of registration, pursuant to KRS 304.17A-754(3), shall not commence, until the following are received by the department [~~office~~]:

(a) All the information required by KRS 304.17A-750 through 304.17A-768 and Sections 2 through 8 of this administrative

regulation; and

(b) The appropriate fee pursuant to Section 3 of this administrative regulation.

(3) A business entity seeking to renew a certificate of registration to act as an insurance purchasing outlet shall file an application to renew a certificate of registration:

(a) Biennially in accordance with KRS 304.17A-758(6); and

(b) At least ninety (90) days prior to expiration of the certificate of registration.

(4) Upon receipt of an application for issuance or renewal of certificate of registration, the department [~~office~~] shall:

(a) Inform the applicant if supplemental information is or is not needed, and if supplemental information is needed:

1. The applicant shall submit the requested information within thirty (30) days; or

2. If requested information is not provided to the department [~~office~~] within thirty (30) days, the department [~~office~~] shall:

a. Deny the application for issuance or renewal of a certificate of registration to act as an insurance purchasing outlet; and

b. Not refund the application fee;

(b) Review the application and material required by KRS 304.17A-754(4) and Sections 2 through 8 of this administrative regulation; and

(c) Approve or deny issuance or renewal of the certificate of registration to act as an insurance purchasing outlet.

(5) Pursuant to KRS 304.17A-754(5), an insurance purchasing outlet shall submit to the department [~~office~~] a change to the original documentation or information that was submitted to the department [~~office~~] for issuance or renewal of a certificate of registration as follows:

(a) All updated documentation or information shall be submitted to the department [~~office~~] within thirty (30) days after the insurance purchasing outlet knew of the change; and

(b) A fee to submit updated information shall be paid in accordance with Section 3 of this administrative regulation.

Section 3. Fees. (1) An application for issuance of a certificate of registration to act as an insurance purchasing outlet shall be accompanied by a fee of \$200 [~~dollars~~] to pay administrative and other costs associated with carrying out the provisions [~~provision~~] of KRS 304.17A-750 through 304.17A-768.

(2) A submission to change the information filed by an insurance purchasing outlet, in accordance with KRS 304.17A-754(5), and Sections 2 through 8 of this administrative regulation, shall be accompanied by a fee of twenty-five (25) dollars to pay administrative and other costs associated with carrying out the provisions of KRS 304.17A-750 through 304.17A-768.

(3) An application to renew a certificate of registration as an insurance purchasing outlet, in accordance with KRS 304.17A-758(6), shall be accompanied by a fee of fifty (50) dollars to pay administrative and other costs associated with carrying out the provisions of KRS 304.17A-750 through 304.17A-768.

Section 4. Annual and Quarterly Financial Statements Required. In accordance with requirements and timeframes established in KRS 304.17A-758 and 304.17A-760, an insurance purchasing outlet shall:

(1) Annually, submit:

(a) In accordance with the timeframes [~~timeframe~~] established in KRS 304.17A-758(4), an annual financial statement and, including an audited financial statement, in accordance with the Annual Financial Statement of Insurance Purchasing Outlet, HIPMC-IPO-3, 9/02 (9/02); and

(b) Within sixty (60) days after the end of the fiscal year of the insurance purchasing outlet, a report on operations in accordance with the Annual Report on Operations of Insurance Purchasing Outlet, HIPMC-IPO-2, 9/02 (9/02). The report shall include:

1. Membership enrollment in tabular form by:

a. Month;

b. Quarter; and

c. Year-to-date; and

2. Discussion and analysis of financial condition and results of operations.

(2) In accordance with the timeframe established in KRS 304.17A-758(4), quarterly, submit a financial statement, in accordance with the format established in the Quarterly Financial Statement of Insurance Purchasing Outlet, HIPMC-IPO-4[, 9/02 (9/02)].

(3) An insurance purchasing outlet shall file its financial statements, as required by KRS 304.17A-758, in accordance with Financial Accounting Standards Board Statements available at <https://www.fasb.org/jsp/FASB/Page/PreCodSectionPage&cid=1176156317989>.

Section 5. Advertising and Marketing Materials Required to be Filed. An insurance purchasing outlet shall file all advertising and marketing materials, of any nature, with the commissioner [executive director] for informational purposes:

(1) Materials submitted shall contain a form number on the lower left hand corner of every page of the filed document; and

(2) A filing fee of five (5) dollars for each form or marketing material shall be required to be submitted at the time of the filing.

Section 6. Disclosures Required. (1) In writing, and at the time of enrollment, an insurance purchasing outlet shall provide disclosures to its members as follows:

(a) Premium payment procedures;

(b) Voucher payment procedures;

(c) The insurance purchasing outlet's reinstatement policy for members terminated for nonpayment of premium; and

(d) As required by KRS 304.17A-762(3).

(2) In writing, the insurance purchasing outlet shall provide the following disclosures to an eligible person or eligible employee when an application for membership is submitted:

(a) The appeal rights for a person denied membership in the insurance purchasing outlet as required by KRS 304.17A-754(4)(c); and

(b) The enrollment procedures of the insurance purchasing outlet.

Section 7. Vouchers. (1) An insurance purchasing outlet shall:

(a) Accept all vouchers; and

(b) Submit the voucher to the insurance purchasing outlet member's employer for payment within five (5) business days of receipt of the voucher from the member.

(2) If the insurance purchasing outlet does not receive payment for the voucher from the member's employer within ten (10) business days of submission, the insurance purchasing outlet shall notify the member, within three (3) business days, by certified mail return receipt requested, that the member's employer failed to redeem the voucher within the required time. At the same time, the insurance purchasing outlet shall also notify the member that he may pay the premium amount directly to the insurance purchasing outlet pursuant to KRS 304.17A-768(2).

(3) A voucher shall contain the following information:

(a) The name of the employer;

(b) The mailing address of the employer;

(c) The business telephone number of the employer;

(d) The tax identification number of the employer;

(e) The name of the employee;

(f) The employee's Social Security number;

(g) The dollar amount of the voucher;

(h) The dates during which the voucher is valid; and

(i) That the voucher is nonassignable and nontransferable pursuant to [as specifically stated in] KRS 304.17A-768(1).

Section 8. Reinstatement Policy Required. (1) An insurance purchasing outlet shall have a reinstatement policy for an eligible employee and an eligible person who is terminated from the health benefit plan for nonpayment of premium.

(2) An eligible employee or an eligible person who has been terminated, pursuant to KRS 304.17A-245, shall be reinstated as a member of the insurance purchasing outlet if he or she meets the reinstatement requirements of the insurance purchasing outlet and the insurer.

(3) An insurance purchasing outlet shall not deny an eligible

employee or an eligible person reinstatement based on any health status-related factor listed in KRS 304.17A-200 or consideration of medical loss ratio.

(4) If premium is not paid and the insurance purchasing outlet receives notification of termination for the member, pursuant to KRS 304.17A-245, the insurance purchasing outlet shall notify the member, within five (5) business days of receiving notification of termination from the insurer, that he or she is terminated. The insurance purchasing outlet shall notify the member of his or her termination by regular first class mail to the last known address of the member.

Section 9. Cessation of Operations of the Insurance Purchasing Outlet. (1) Upon a decision to cease operating as an insurance purchasing outlet, the insurance purchasing outlet shall:

(a) Immediately notify the department, in writing, its decision to cease accepting new members to the insurance purchasing outlet; and

(b) Submit the following to the department [office] ninety (90) days prior to ceasing operations:

1. Written notification of the cessation of operations, including the date of cessation and the number of current members of the insurance purchasing outlet; and

2. A written action plan for ceasing operations, which shall be approved by the department [office] and include:

a. Copies of letters that will be mailed to members and insurers notifying them of the decision to cease operating as an insurance purchasing outlet; and

b. The projected date for processing all voucher and premium payments.

(2) Upon receipt of a written notification as required in subsection (1) of this section, the department [office] shall review and act upon the action plan of the insurance purchasing outlet.

(3) Upon approval of an action plan to cease operations by the department [office], the insurance purchasing outlet shall send written notification, at least sixty (60) days in advance of the date that it will cease operations, to insurance purchasing outlet members and insurers issuing health benefit plans to its members.

(4) Upon being notified by the insurance purchasing outlet of its decision to cease operations, the insurer shall notify all members of the insurance purchasing outlet that the health benefit plan offered through the insurance purchasing outlet shall be terminated and that the member has the right to elect a conversion policy pursuant to KRS 304.17A-766.

Section 10. Hearing Process. (1) An insurance purchasing outlet may request a hearing pursuant to KRS 304.2-310(2)(b) if the commissioner [executive director]:

(a) Denies an application for a certificate of registration to act as an insurance purchasing outlet;

(b) Suspends or revokes a certificate of registration held by an insurance purchasing outlet; or

(c) Imposes a civil penalty against an insurance purchasing outlet.

(2) The commissioner may take administrative action against an insurance purchasing outlet for any violation of KRS 304.17A-750 through 304.17A-770, 304.47-020, and Sections 2 through 9 of this administrative regulation.

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

(a) "Insurance Purchasing Outlet Application for Registration," HIPMC-IPO-1, 7/02 [(7/02)];

(b) "Annual Report on Operations of Insurance Purchasing Outlet," HIPMC-IPO-2, 9/02 [(9/02)];

(c) "Annual Financial Statement of Insurance Purchasing Outlet," HIPMC-IPO-3, 9/02 [(9/02)]; and

(d) "Quarterly Financial Statement of Insurance Purchasing Outlet," HIPMC-IPO-4, 9/02 [(9/02)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [office] of Insurance, The Mayo-Underwood Building, 500 Mero Street [215 West Main Street], Frankfort, Kentucky 40601, Monday

through Friday, 8 a.m. to 4:30 p.m. The material is also available on the department Internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx?http://insurance.ky.gov/ppc/> [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.

**PUBLIC PROTECTION CABINET**  
Department of Insurance  
Division of Health and Life Insurance and Managed Care  
(As Amended at ARRS, September 14, 2021)

**806 KAR 017:511. Repeal of ~~[806 KAR 17:005,]~~ 806 KAR 17:095, 806 KAR 17:170, ~~[806 KAR 17:180,]~~ and 806 KAR 17:510.**

RELATES TO: KRS 304.12-080(3), 304.12-085(2), (3), (4)~~[304.17A-149]~~, 304.14-120, 304.14-190, 304.17A-080, 304.17A-095, 304.17A-096, 304.17A-149, 304.17A-600-304.17A-629, [304.12-085(2), (3), (4),] 304.17A-200(1)(f), 304.17A-220(8)(d), 304.17A-230(3), [304.17A-080,] 304.17A-250, [304.12-080(3), 304.14-120(1), 304.17A-250(10),] 304.17A-505, 304.17A-540, 304.17A-600 -304.17A-633, 304.17B-015, 304.38-050

STATUTORY AUTHORITY: KRS ~~[13A.310,]~~ 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. ~~[KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. The intent of]~~ This administrative regulation ~~repeals [is to repeal 806 KAR 17:005,]~~ 806 KAR 17:095, 806 KAR 17:170, ~~[806 KAR 17:180,]~~ and 806 KAR 17:510. ~~[806 KAR 17:005, Health insurance forms and reports, because the forms incorporated in the regulation are currently being incorporated into the corresponding regulation to which they apply.]~~ 806 KAR 17:095, Reimbursement for general anesthesia and facility charges for dental procedures, ~~is [shall be]~~ repealed because it removes limitations of provider's rights under KRS 304.17A-149 ~~[prescribes the same or similar requirements]~~. 806 KAR 17:170, Genetic testing, ~~is [shall be]~~ repealed because the administrative regulation is now obsolete, as when it was originally promulgated the terms defined in the regulation were emerging, and now they are considered of common dictionary meaning. ~~[806 KAR 17:180, Standard health benefit plan, shall be repealed as the statute no longer requires the standard plan to be issued by insurers.]~~ 806 KAR 17:510, Health benefit plan exclusionary rider requirements, ~~is [shall be]~~ repealed because exclusionary riders are no longer permitted due to the federal law requirements related to essential health benefits that are required to [must] be covered under all plans.

Section 1. The following administrative regulations are hereby repealed:

- (1) ~~[806 KAR 17:005, Health insurance forms and reports;]~~
- (2) 806 KAR 17:095, Reimbursement for general anesthesia and facility charges for dental procedures;
- (2)~~[(3)]~~ 806 KAR 17:170, Genetic testing; and
- (3)~~[(4)]~~ ~~806 KAR 17:180, Standard health benefit plan; and~~
- (5) 806 KAR 17:510, Health benefit plan exclusionary rider requirements.

CONTACT PERSON: Abigail Gall, Executive Assistant, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email Abigail.gall@ky.gov.

**PUBLIC PROTECTION CABINET**  
Department of Insurance  
Division of Property and Casualty  
(As Amended at ARRS, September 14, 2021)

**806 KAR 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings**

RELATES TO: KRS 304.1-050, 304.13-011, 304.13-051, KRS 304.14-120, 304.48-020(7), 304.48-180, 304.48-200

STATUTORY AUTHORITY: KRS 304.48-180, 304.48-230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.48-230 authorizes the commissioner to promulgate reasonable administrative regulations consistent ~~[not inconsistent]~~ with KRS 304 Subtitle 48 that the commissioner deems necessary for the proper administration of the subtitle. KRS 304.48-180 requires liability self-insurance groups to file rates, underwriting guidelines, evidence of coverage and any changes therein with the commissioner. This administrative regulation establishes the procedures for liability self-insurance groups to submit these filings.

Section 1. Definitions.

- (1) "Commissioner" is defined by [in] KRS 304.1-050(1).
- (2) "Liability self-insurance group" is defined by [in] KRS 304.48-020(7).
- (3) "Rates and underwriting guidelines" means any rating manuals and underwriting rules for all coverage types including any manual or plan of rates, loss costs, risk classifications, rating schedule, minimum premium, policy fees, premium payment plans, rating rules, supplementary rating information or any other similar information needed to determine the applicable coverage rate or premium for a member.
- (4) "Supplementary rating information" is defined by [in] KRS 304.13-011(2).

Section 2. General Filing Requirements.

- (1) All liability self-insurance group rate, underwriting and evidence of coverage filings shall be accompanied by a completed and signed Form LSIG F-1A P&C, ~~[F]~~ Face Sheet and Verification Form for Liability Self-Insurance Groups~~[F]~~.
- (2) All paper filings shall include one (1) full document set on 8 1/2" x 11" white paper with two (2) cover letters and a self-addressed stamped envelope.
- (3) A filing may include any number of documents, filed together on a particular date. Rates and underwriting guidelines shall be filed separately from evidence of coverage forms.
- (4)(a) A liability self-insurance group may submit a filing in an electronic format established by the National Association of Insurance Commissioners.
- (b) An electronic filing shall be in lieu of a paper filing.
- (5) The period of time in which the commissioner may affirmatively approve or disapprove the filing, as set forth in KRS 304.13-051, shall not begin until a complete filing and the filing fee in accordance with KRS 304.48-180, is received.

Section 3. Rate and Rule Filings.

- (1) The rates and underwriting guidelines shall be filed not later than fifteen (15) days after the date of first use of the rates and underwriting guidelines, pursuant to KRS 304.13-051(1).
- (2) A liability self-insurance group shall comply with the requirements of KRS 304.13-051(5).
- (3) Form LSIG: S-1 P & C, ~~[F]~~ Filing Synopsis for Rates and or Rules~~[F]~~ shall be filed with all rate and underwriting guideline filings. Separate forms shall be filed for each type of coverage.
- (4)(a) Form LSIG: LC-1 P & C, ~~[F]~~ Calculation of Loss Cost Multiplier~~[F]~~ shall be filed with all rate filings referencing loss costs formulated by any advisory organization. Separate forms shall be filed for each type of coverage.
- (b) Form LSIG LC-2 P & C, ~~[F]~~ Expense Constant Supplement~~[F]~~ shall be filed with all rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used. Separate forms shall be filed for each type of coverage.

(5)(a) Form LSIG: EMA P & C, E-mod Affidavit, shall be filed with all rate or underwriting guideline filings that utilize[utilizing] an experience modification plan, and shall include the experience rating plan by type of coverage with the formula used for calculating the experience modification factor for that coverage. Each experience modification factor applied shall be made available to the member upon request.

(b) All rate or underwriting guideline filings containing schedule rating plans shall identify the characteristics of the risk not reflected in an experience modification factor.

(c) Any application of the schedule rating plan shall be based on evidence contained in the liability self-insurance group's file at the time it is applied. The schedule rating plan debit or credit factor applied shall be made available to the member upon request.

(d) If the reason for application of any schedule debit is corrected by the member to the satisfaction of the liability self-insurance group, the debit may be removed at the time evidence of the correction is received by the group.

#### Section 4. Coverage Form Filings.

(1) Form LSIG: S-2 P & C, ["Filing Synopsis Form for Forms"] and Form LSIG: F-2 P & C, ["Forms Index"] shall be filed with all evidence of coverage form filings.

(2) An evidence of coverage form shall not be used until it has been approved by the commissioner. If the rates pertaining to an evidence of coverage form are required to be filed with or approved by the commissioner pursuant to KRS 304.13-051, the coverage form shall not be used until the appropriate rates have been filed or approved as required.

(3) A filing which amends, replaces, or supplements an evidence of coverage form previously filed and approved shall include an explanation setting forth all changes contained in the newly filed coverage form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and an explanation as to the effect on the rates applicable thereto.

(4) A change of signature of the executing officer on an evidence of coverage form shall not, because of this change alone, require a new filing.

#### Section 5. Advisory Organization Filings.

(1) A liability self-insurance group that is a member, subscriber, or service purchaser of an advisory organization, statistical agent, or forms provider may adopt coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or statistical agent [by doing so] in accordance with the procedures established in this administrative regulation and shall clearly identify each filing of the advisory organization or statistical agent it is adopting.

(2) If a liability self-insurance group chooses to adopt only a specific filing of an advisory organization, statistical agent, or form provider it shall do so in accordance with the procedures established in this administrative regulation, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting. Loss cost filings shall be specifically adopted.

(3)(a) If a liability self-insurance group chooses to adopt all of the current and future evidence of coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, of an advisory organization, statistical agent, or forms provider, it may file written notice with the commissioner that it is adopting by blanket reference all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, as filed by the advisory organization, statistical agent, or forms provider. Loss cost filings shall not be adopted on this blanket reference basis.

(b) If a liability self-insurance group previously notified the commissioner of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to not adopt certain evidence of coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or

guidelines, or statistical plans, the group shall file notice of the nonadoption with the commissioner and shall pay the appropriate filing fee in accordance with KRS 304.48-180.

1. If a liability self-insurance group previously notified the commissioner of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to delay the effective date of its adoption, it shall submit a letter to the commissioner requesting the revised date upon which it will adopt the filing.

2. The delayed adoption date shall be within six (6) months of the original effective date.

3. If additional time is needed, a second letter shall be submitted to the commissioner, requesting a revised delayed adoption date.

4. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization, statistical agent, or forms provider.

5. If a liability self-insurance group fails to adopt the advisory organization, statistical agent, or forms provider filing within one (1) year of the original effective date as filed by the advisory organization, statistical agent, or forms provider, the insurer shall submit a filing to the commissioner indicating it is non-adopting.

#### Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form LSIG: F-1A P & C, "Face Sheet and Verification Form for Liability Self Insurance Groups," (7/2010);[f:]

(b) Form LSIG: F-2 P & C, "Forms Index," (7/2010);[f:]

(c) Form LSIG: S-1 P & C, "Filing Synopsis for Rates and Rules," (7/2010);[f:]

(d) Form LSIG: S-2 P & C, "Filing Synopsis Form," (7/2010);[f:]

(e) Form LSIG: LC-1 P & C, "Calculation of Loss Cost Multiplier," (7/2010);

(f) Form LSIG: LC-2 P & C, "Expense Constant Supplement," (7/2010); and; [f:]

(g) [f:] Form LSIG: EMA P & C, "E-mod Affidavit," (7/2010).

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the Department of Insurance Internet Web site, <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov>].

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (As Amended at ARRS, September 14, 2021)

#### 907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 205.565, 210.370-210.485, 311.840, 42 C.F.R. 400.203, Part 414, 415.110, 438.2, 440.50, 447.10, 447.200-447.205, 447.325, 42 U.S.C. 1395m, 1395w-4, 1395x(t)(1), 1396a, 1396b, 1396c, 1396d, 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code that may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Anesthesia under medical direction" means a service that is:

- (a) Directed by an anesthesiologist;
- (b) Delivered by an appropriate and qualified anesthesia provider, including a certified registered nurse anesthetist; and
- (c) Provided concurrently to no more than four (4) patients by the anesthesiologist.

(3) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(4)[(3)] "Community mental health center" means a facility that meets the community mental health center requirements established in 902 KAR 20:091.

(5)[(4)] "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(6)[(5)] "Department" means the Department for Medicaid Services or its designee.

(7)[(6)] "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(8)[(7)] "Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).

(9)[(8)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(10)[(9)] "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(11)[(10)] "Healthcare common procedure coding system" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(12)[(11)] "Incidental" means that a medical procedure:

- (a) Is performed at the same time as a primary procedure; and
- (b) 1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(13)[(12)] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(14)[(13)] "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(15)[(14)] "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(16)[(15)] "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(17)[(16)] "Medicaid Physician Fee Schedule" means a list, located at <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [http://chfs.ky.gov/dms], that:

(a) Contains the current reimbursement rates for physician services established by the department in accordance with this administrative regulation; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.1.

(17) "Medical direction" means a service provided:

(a) Under direct orders from a physician who is:

1. Not physically present with the recipient during the provision of the service; and

2. Communicating with the service provider during the

provision of the service; or

(b) Based on a set of written instructions from a physician who is not physically present with the recipient during the provision of the service.]

(18) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(19) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(20) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(21) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(22) "Physician administered drug" or "PAD" means any rebateable covered outpatient[out-patient] drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(23) "Physician assistant" is defined by KRS 311.840(3).

(24) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(25) "Provider group" means a group of at least two (2) individually licensed physicians who:

(a) Are enrolled with the Medicaid Program individually and as a group; and

(b) Share the same Medicaid provider number.

(26) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code that takes into consideration the physician's work, practice expense, and liability insurance.

(27) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(28) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and that are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(29) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(30) "Usual and customary charge" means the uniform amount that a physician charges the general public in the majority of cases for a specific medical procedure or service.

Section 2. Standard Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician who provided the covered service; or

(b) The physician:

1. In a provider group enrolled in the Kentucky Medicaid Program; and

2. Who provided the covered service.

(2) Except as provided in subsection (3) of this section and Sections 3 through 11[40] of this administrative regulation, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with this administrative regulation.

(3) If there is not an established fee for a listed service in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

Section 3. Rates Established Using a Relative Value Unit and a Dollar Conversion Factor.

(1) Except for a service specified in Sections 4 through 10[9] of this administrative regulation:

(a) The rate for a non-anesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all non-anesthesia related services.

Section 4. Medicare Part B Covered Services. Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

Section 5. Services with a Modifier. Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as established in this section.

(1) A service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service.

(2) A professional component of a service reported by the addition of the two (2) digit modifier "26" shall be reimbursed at the product of:

(a) The Medicare value assigned to the physician's work; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(3) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

(a) The Medicare value assigned to the practice expense involved in the performance of the procedure; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(4) A bilateral procedure reported by the addition of the two (2) digit modifier "50" shall be reimbursed at 150 percent of the amount assigned to the CPT code.

(5) An assistant surgeon procedure reported by the addition of the two (2) digit modifier "80" shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon.

(6) A procedure performed by a physician acting as a locum tenens physician for a Medicaid-participating physician reported by the addition of the two (2) character modifier "Q6" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code.

(7) An evaluation and management telehealth consultation service provided by a telehealth provider or telehealth practitioner in accordance with 907 KAR 3:170 and reported by the appropriate[~~two (2)~~] letter modifier, as applicable,["GT"] shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code.

(8) A level II national healthcare common procedure coding system modifier designating a location on the body shall be

reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

Section 6. Laboratory, Venipuncture, and Catheter. (1) Except for a service specified in paragraph (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:028.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital, or emergency room visit or in addition to a laboratory test.

(2) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital, or emergency room visit if performed by the same provider.

(3) A laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code.

Section 7. Delivery-Related Anesthesia, Anesthesia Add-On Services, and Oral Surgery-Related Anesthesia[~~and Anesthesia Under Medical Direction~~]. (1) The department shall reimburse as follows for the following delivery-related anesthesia services:

(a) For a vaginal delivery, the lesser of:

1. \$215; or

2. The actual billed charge;

(b) For a cesarean section, the lesser of:

1. \$335; or

2. The actual billed charge;

(c) For neuroaxial labor anesthesia for a vaginal delivery or cesarean section, the lesser of:

1. \$350; or

2. The actual billed charge;

(d) For an additional anesthesia for cesarean delivery following neuroaxial labor anesthesia for vaginal delivery, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge; or

(e) For an additional anesthesia for cesarean hysterectomy following neuroaxial labor anesthesia, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge.

(2) For an anesthesia add-on service provided to a recipient under the age of one (1) year or over the age of seventy (70) years, the department shall reimburse the lesser of:

(a) Twenty-five (25) dollars; or

(b) The actual billed charge.

(3) For deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon, the department shall reimburse the lesser of:

(a) \$150; or

(b) The actual billed charge.[

~~(4) The department shall not reimburse for an anesthesia service if the claim for the service is submitted with a modifier indicating that a service of medical direction was performed.]~~

Section 8. Medical Direction of Anesthesia and Anesthesia Under Medical Direction Services. (1) A provider or facility performing medical direction shall comply with all Medicare requirements to perform medical direction services located in 42 C.F.R. 415.110 and as found in the Medicare Claims Processing Manual, Chapter 12, Section 50, Paragraph C, as those Medicare requirements[they] existed at the time of the applicable claim submission. This is a link to the Medicare Claims Processing Manual, Chapter 12, as it existed in July 2021: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c12.pdf>.

(2) A[No] reimbursement shall not be made for an

anesthesiologist assistant or a student registered nurse anesthetist unless those provider types are:

(a) Otherwise eligible for licensure or certification;  
(b) [and] Appropriately enrolled with the department; and  
(c) If applicable, a managed care organization [Anesthesia Under Medical Direction. (1) An anesthesia under medical direction service that complies with this section shall be eligible for reimbursement.

(2) An anesthesiologist performing anesthesia under medical direction, regardless of the type of anesthesia provided, shall personally document performing each element described in subsection (3) of this section.

(3) An anesthesia under medical direction service shall meet the requirements established in paragraphs (a) through (i) of this subsection.

(a) The anesthesiologist shall perform a face-to-face examination and evaluation, by telehealth if appropriate pursuant to 907 KAR 3:170, prior to the anesthetic session. The examination and evaluation shall indicate the body system or area examined and the anesthesiologist's findings.

(b) The anesthesiologist shall personally decide on the appropriate anesthetic for the procedure and shall document that decision.

(c) The anesthesiologist shall personally participate in person for the most demanding procedures in the treatment plan developed pursuant to this section. This personal participation shall include that the anesthesiologist be in the room and participating in the service if induction and emergence are part of the anesthesia service provided.

(d) Any services not provided by the anesthesiologist shall be conducted by a qualified individual.

(e) A qualified individual providing services pursuant to this section shall document and sign their delivery of the service. Any signature shall also include the qualified individual's licensure or certification.

(f) The anesthesiologist shall monitor the course of anesthesia administration at frequent intervals during the course of treatment.

(g) The anesthesiologist shall:  
1. Remain physically present for all key and critical portions of the procedure; and

2. Be immediately available for immediate diagnosis and treatment of an emergency.

(h) 1. The following services may be performed on another patient or case by an anesthesiologist while complying with paragraph (g) of this subsection:

a. Addressing an emergency of short duration in the immediate area;

b. Administering an epidural or caudal anesthetic to ease labor pain;

c. Periodically, but not continuously, monitoring an obstetrical patient;

d. Receiving patients entering an operating suite for surgery;

e. Assessing or discharging patients in the recovery room;  
or

f. Managing scheduling matters.

2. A service performed in subparagraph 1. of this paragraph shall not be anesthesia under medical direction if:

a. The anesthesiologist leaves the immediate area of the operating suite for longer than a short amount of time;

b. The anesthesiologist is not available to respond to the immediate needs of surgical patients, for example, if the anesthesiologist devotes extensive time to an emergency case; or

c. The anesthesiologist's services to the anesthesia patients are supervisory in nature.

(i) The anesthesiologist shall perform and document all appropriate and necessary post-anesthesia care as indicated. Compliance with this paragraph shall include documentation that transfer was done safely to another level of care).

administration of a:

(a) Pediatric vaccine to a recipient under the age of nineteen (19) years; or

(b) Flu vaccine to a recipient of any age.

(2)(a) The department shall reimburse for the cost of a vaccine administered to a recipient under nineteen (19) years of age, in addition to administration of the vaccine, for a vaccine that is:

1. Administered to the recipient by a physician; and

2. Not available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(b) The department shall not reimburse for the cost of a vaccine if the vaccine is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

Section 10[9]. Physician Assistant. Reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this administrative regulation.

Section 11[40]. Reimbursement Limits and Related Requirements. (1)(a) Except for chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per provider per calendar year.

(b) A claim for an evaluation and management service with a corresponding CPT code of 99214 or 99215 submitted in excess of the limit established in paragraph (a) of this subsection shall be reimbursed as an evaluation and management service with a corresponding CPT code of 99213.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of the limit established in paragraph (a) of this subsection shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of fluids and blood incidental to the anesthesia or surgery;

(d) Postoperative pain management until discharge from the recovery area;

(e) Preoperative, intraoperative, and postoperative monitoring services; and

(f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance to a recipient by epidural or spinal injection for the control of chronic pain shall be limited to three (3):

(a) Injections per date of service; and

(b) Dates of service per six (6) month period.

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service; and

(c) A postoperative service and follow-up care within:

1. Ninety (90) calendar days following the date of major surgery; or

2. Ten (10) calendar days following the date of minor surgery.

(5) Reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104, Section 3(4).

(6) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(7) If [When] performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the

Section 9. Vaccines. (1) The department shall reimburse



## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

department to be incidental, integral, or mutually exclusive to another procedure.

(8) The department shall not reimburse for an evaluation and management CPT code unless:

- (a) Direct physician contact occurred during the visit; or
- (b) Direct physician contact is not required in accordance with 907 KAR 3:005, Section 3(2).

Section 12[44]. Other Provider Preventable Conditions. In accordance with 907 KAR 14:005, the department shall not reimburse for other provider preventable conditions.

Section 13[42]. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 11[40] of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician:

- (a) Who:
  1. Is licensed to practice medicine or osteopathy in Kentucky;
  2. Is enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672;
  3. Is participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671;

4. Is employed by a state university teaching hospital, a pediatric teaching hospital, or a state university school of medicine that is part of a university health care system; and

5. Agrees to assign his or her Medicaid reimbursement, in accordance with 42 C.F.R. 447.10, to the state university entity with whom the physician is employed; and

(b) For services provided:

1. Directly by the medical school faculty physician; or
  2. By a resident working under the supervision of the medical school faculty physician.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall:

(a) Not exceed the physician's charge for the service provided; and

(b) Be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;

(b) Consistent with the requirements of 42 C.F.R. 447.325; and

(c) Made on a quarterly basis.

Section 14[43]. The department shall reimburse for physician administered drugs in accordance with 907 KAR 23:020.

Section 15[44]. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse the same amount for physician services as the department does.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a physician service reimbursed by the department via this administrative regulation.

Section 16[45]. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services approval for the reimbursement.

Section 17[46]. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

CONTACT PERSON: Krista Quarles, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Income Support Division of Child Support Enforcement (As Amended at ARRS, September 14, 2021)

**921 KAR 1:020. Child Support Enforcement Program: confidentiality, program administration contracts, and agreements.**

RELATES TO: KRS Chapter 45A, 69.210, ~~194A.050(1);~~ 205.175, 205.177, 205.710, 205.712, 205.730, 205.735, 205.7685, 205.772, 205.774, 205.776, ~~[-]205.800, 205.990(1), (2), (4), [(6);~~ (6), 403.211, 405.430(9), (13), 406.035, 434.845, 45 C.F.R. 302.34, 303.21, 303.70(e)(3) ~~[(d)(2)]~~, 303.107, 304, 307.13, 406.021(1), 26 U.S.C. 6103(a), (b), 7213(a)(2)[4], 31 U.S.C. 7502, 42 U.S.C. 651, 654(7), (26), 666(a)(17), (c)(1)(D) ~~[et seq.]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 405.520, 42 U.S.C. 654(26)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 405.520 authorizes the cabinet to promulgate administrative regulations to implement the Child Support Enforcement ~~[Recovery]~~ Program. This administrative regulation establishes the procedures for safeguarding information and entering into program administration contracts and cooperative agreements.

Section 1. Definition. "CSEP" means the Child Support Enforcement Program.

#### Section 2. Safeguarding Information.

(1) Use or disclosure of information obtained exclusively for the ~~[Child Support Enforcement Program - (CSEP)]~~ shall be restricted from release to any party except the appropriate party or entity pursuant to KRS 205.175, 205.730, 205.735, 205.7685 (2), 205.772(4), and 205.776, 45 C.F.R. 303.70(e)(3) and 302.34, 26 U.S.C. 6103(a), (b), 7213(a)(2), and 42 U.S.C. 654(26)] applicable state and federal laws ~~[pursuant to KRS 205.175, 205.730, 205.735, 205.7685 (2), 205.772(4), and 205.776, 45 C.F.R. 303.70(d)(2) and 302.34, 26 U.S.C. 6103(a), (b), 7213(a)(2), and 42 U.S.C. 654(26)]~~.

(2) Unless an applicant for or recipient of child support services has given informed consent, information concerning the applicant or recipient of child support services shall only be released in accordance with KRS 205.177.

#### Section 3. Program Administration Contract.

(1) A program administration contract initiated by the cabinet with another government entity shall comply with KRS Chapter 45A and shall:

(a) Contain a clear description of specific duties, functions, and responsibilities of the parties in administration of the CSEP;

(b) Specify clear and definite terms and requirements of the contract;

(c) Specify financial reimbursement arrangements including:

1. Budget estimates;

2. Covered expenditures;

3. Methods of determining costs; and

4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain reporting requirements;

(f) Contain the requirements for compliance with 31 U.S.C. 7502;

(g) Provide the beginning and end dates of the program administration contract, review or renewal provisions, and

termination circumstances; and

(h) Provide audit criteria.

(2) If another government entity contracts with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:

(a) Established by the cabinet; and

(b) Specified in the contract.

(3) The contracted government entity shall provide to the cabinet ~~[in a timely fashion]~~ statistical information concerning CSEP activities as established[prescribed] by the cabinet and specified in the contract.

(4) If no contract is executed with a local law enforcement official, a referral for child support activities may be made to a local law enforcement official. A referral for child support activities made to a local law enforcement official shall be in accordance with the official's statutory obligations as established by KRS 69.210, 205.712(7), and 406.021(1), but the official shall not be eligible for reimbursement as established[specified] in subsection (2) of this section.

Section 4. An Agreement with a Financial Institution.

(1) The cabinet shall enter into an agreement with a financial institution pursuant to KRS 205.712(15)~~[(14)]~~, 205.772, and 205.774 to conduct a financial data match.

(2)~~[(4)]~~ The cabinet or its agent shall implement the data exchange and ~~[The cabinet or its agent]~~ shall have access to identifying information.

(a) ~~[Have access to identifying information]~~ For an obligated parent who owes an arrearage and who the cabinet has identified to a financial institution through a data match for the purpose of monitoring and auditing; and

(b) [Have access to identifying information] Available to a financial institution if deemed necessary by the cabinet to provide service to a recipient of child support services.

(3)~~[(2)]~~ The cabinet shall pay a financial institution a fee not to exceed \$250 per fiscal year quarter, or the actual cost to the financial institution for operating the data match, whichever is less.

(4)~~[(3)]~~ A financial institution shall:

(a) Exchange information by way of an automated data exchange system;

(b) Maintain security to assure that information received from the cabinet or its agent concerning a recipient of child support services shall:

1. Be maintained and safeguarded as confidential; and

2. Not be copied or given to any other entity without the written permission of the cabinet or the recipient of child support services; and

(c) Incur no liability for:

1. Disclosing a financial record to the cabinet for the establishment, modification, or enforcement of a child support obligation of the account holder;

2. Encumbering or surrendering an asset held by a financial institution in response to an order to withhold or order to deliver issued by the cabinet, or any other action taken by a financial institution in good faith; or

3. Providing a file to the cabinet or its authorized agent in accordance with an approved format as established[described] by the Multistate Financial Institution Data Match Specifications Handbook ~~[incorporated by reference in Section 5 of this administrative regulation]~~.

(5)~~[(4)]~~ If a financial data match occurs, a financial institution shall:

(a) Hold, encumber, or surrender an account to the cabinet upon receipt of an order to withhold or order to deliver;

(b) Address and send to the cabinet or its authorized agent as designated, notices, paperwork, ~~[tapes]~~ or other communication resulting from a financial institution data match program; and

(c) Submit data files to the cabinet or its authorized agent as designated.

(6)~~[(5)]~~ The match of an account holder to a delinquent obligor record provided by the cabinet does not constitute a levy, and an account shall not be held, encumbered, or surrendered to the cabinet without a financial institution having received an order to

withhold or order to deliver from the cabinet.

(7)~~[(6)]~~ The information provided to the cabinet on a quarterly basis by a financial institution shall be provided in the format established[prescribed] by the Multistate Financial Institution Data Match Specifications Handbook~~[-incorporated by reference in Section 4 of this administrative regulation]~~, using either method one or method two.

(a) If a financial institution agrees to provide the information according to method one, the financial institution shall:

1. Submit by March 31, June 30, September 30, and December 31 of a calendar year, data files of open accounts to the cabinet, or the cabinet's authorized agent, for the data match; and

2. Report information requested[required] by the cabinet or the cabinet's authorized agent on any account maintained by a financial institution.

(b) If a financial institution agrees to provide the information according to method two, the financial institution shall:

1. Request the cabinet or its authorized agent to send the inquiry file to the financial institution[institution's] or its agent;

2. Match the inquiry file of obligors identified and provided by the cabinet, or by the cabinet's authorized agent, against open accounts maintained by a financial institution; and

3. Submit a report of matched accounts to the cabinet or its authorized agent within thirty (30) to forty-five (45) days of receipt of the inquiry file.

Section 5. Incorporation by Reference. (1) "Multistate Financial Institution Data Match Specifications Handbook", edition 12/2020 ~~[edition 11/07]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dis/Pages/regs.aspx> [<https://chfs.ky.gov/agencies/dcbp/Pages/default.aspx>].

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Income Support**  
**Division of Child Support Enforcement**  
**(As Amended at ARRS, September 14, 2021)**

**921 KAR 1:390. Child Support Enforcement Program paternity establishment.**

RELATES TO: KRS 186.570(2), 205.710, 205.712, 205.721, 205.730 ~~[-205.800]~~, 213.036(5), 213.046(3), (4), (5), (9), (10), 213.071, 237.110(4)(g), 405.430, 406.011, 406.021, 406.025, 406.180, 45 C.F.R. 302.31, 302.33, 303.5, 304, 42 U.S.C. 651, 652, 653, 654, 666, 668~~[-699b]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 authorizes the secretary to promulgate administrative regulations consistent with the purpose and intent of KRS 205.710 through[te] 205.800. This administrative regulation establishes the requirements for the establishment of paternity for the Child Support Enforcement Program.

Section 1. Requirement for Paternity Establishment. The cabinet shall bring action, as established[specified] in KRS 406.021(1) and (3) if:

- (1) The child is born out of wedlock; and
- (2) An assignment of rights to the cabinet is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Cabinet Action. (1) A case requiring paternity action shall be opened upon receipt of:

- (a) A public assistance case referral; or
- (b) A nonpublic assistance application, in accordance with KRS 205.721.

(2) The cabinet shall open a case pending determination of good cause.

(a) If good cause for failure to cooperate is determined, the child support case shall be closed.

(b) Good cause shall be established in accordance with the requirements of 921 KAR 2:006, Section 18(4) and (5).

(3) In a case referred to the cabinet in which paternity has not yet been established, the cabinet shall, within ninety (90) days of locating the alleged father or custodial parent:

(a) Obtain a voluntary acknowledgment of paternity as **established/specified** by KRS 213.036(5) and 213.046(3), (9);

(b) File for establishment of paternity;

(c) Complete service of process to establish paternity; or

(d) Document unsuccessful attempts to serve process.

(4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:

(a) Successful service of process; or

(b) The child reaching the age of six (6) months.

(5) The voluntary acknowledgment of paternity may be rescinded. **Rescinded acknowledgement of paternity shall be accomplished** in accordance with KRS 213.071 [901 KAR 5:070].

~~(6) [The cabinet shall recover a reasonable fee for genetic tests from the administratively or judicially determined father pursuant to KRS 205.712(2)(h), utilizing the CS-77, Administrative Order for Genetic Testing.~~

~~(7) The cabinet shall request denial, suspension, or revocation of a license or certification for failure to comply with a subpoena or warrant relating to paternity pursuant to KRS 186.570(2) and 237.110(4)(g).]~~

~~Section 3. Incorporation by Reference. (1) CS-77, "Administrative Order for Genetic Testing", edition 3/09, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET  
Public Service Commission  
(Amended After Comments)

807 KAR 5:015. Access and attachments to utility poles and facilities.

RELATES TO: KRS Chapter 278, 47 U.S.C.A. 224(c)

STATUTORY AUTHORITY: KRS 278.030(1), 278.040(2), 278.040(3), HB 320 (2021)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. House Bill 320 from the 2021 Regular Session of the General Assembly requires the commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. 47 U.S.C.A. § 224(c) requires that state regulation of pole attachments shall only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and regulations governing attachments; and addresses complaint's regarding pole attachments within 360 days. This administrative regulation establishes the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law.

Section 1. Definitions

(1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.

(2) "Broadband internet provider" means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second. **The term "broadband internet provider" does not include a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.**

(3) "Communication space" means the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment.

(4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.

(5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.

(6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.

(7) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, for

example.

(8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(9) "New attacher" means a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that a new attacher does not include a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.

(10) "Red tagged pole" means a pole that a utility that owns or controls the pole:

(a) Designated for replacement based on the **pole's[poles]** non-compliance with an applicable safety standard;

(b) Designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or

(c) Would have needed to replace at the time of replacement even if the new attachment were not made.

(11) "Telecommunications carrier" means a person who owns, controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation. **The term "telecommunications carrier" does not include a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.**

(12) "Simple make-ready" means make-ready in which existing attachments in the communications space of a pole could be rearranged without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

Section 2. Duty to Provide Access to Utility Poles and Facilities.

(1) Except as established in paragraphs (a), (b), and (c) of this subsection, a utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes;

(b) A utility shall not be required to provide access to any pole that is used primarily to support outdoor lighting; and

(c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments or facilities from a third party for or on behalf of a person or entity requesting access pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way owned or controlled by the utility.

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

(3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to an agreement that establishes rates, **terms[charges]**, or conditions for access not contained in its tariff:

(a) The rates, **terms[charges]**, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

Section 3. Pole Attachment Tariff Required.

(1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes rates, terms, and conditions governing pole attachments

in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(2) The tariff may incorporate a standard contract or license for attachments if its terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) Standard contracts or licenses for attachments permitted by subsection (2) of this section shall prominently indicate that the contracts or licenses are based wholly on the utility's tariff and that the tariff shall control if there is a difference.

(4) The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(5) Overlapping ~~The tariff shall not prohibit overlapping except if doing so is justified by lack of capacity, safety or reliability concerns, or applicable engineering standards.~~

(a) A utility shall not require prior approval for an existing attachment that overlaps its existing wires on a pole; or for third party overlapping of an existing attachment that is conducted with the permission of an existing attachment.

(b) A utility may not prevent an attachment from overlapping because another existing attachment has not fixed a preexisting violation. A utility may not require an existing attachment that overlaps its existing wires on a pole to fix preexisting violations caused by another existing attachment, unless failing to fix the preexisting violation would create a capacity, safety, reliability, or engineering issue.

(c) A utility may require no more than thirty (30) days' advance notice of planned overlapping. If a utility requires advance notice for overlapping, then the utility must include the notice requirement in its tariff or include the notice requirement in the attachment agreement with the existing attachment. If after receiving advance notice, the utility determines that an overlap would create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlap within the thirty (30) day advance notice period and the party seeking to overlap must address any identified issues before continuing with the overlap either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary.

(d) A party that engages in overlapping is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. If damage to a pole or other existing attachment results from overlapping or overlapping work causes safety or engineering standard violations, then the overlapping party is responsible at its expense for any necessary repairs.

(e) An overlapping party shall notify the affected utility within fifteen (15) days of completion of the overlap on a particular pole. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlap. The utility has fourteen (14) days after completion of its inspection to notify the overlapping party of any damage or code violations to its equipment caused by the overlap. If the utility discovers damage or code violations caused by the overlap on equipment belonging to the utility, then the utility shall inform the overlapping party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlapping party for the reasonable costs related to fixing the damage or code violations or require the overlapping party to fix the damage or code violations at its expense within fourteen (14) days following notice from the utility.

(6) Signed standard contracts or licenses for attachments permitted by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011, Section 13.

(7) Tariffs conforming to the requirements of this administrative

regulation and with a proposed effective date no later than March 31, 2022, shall be filed by February 28, 2022.

#### Section 4. Procedure for New Attachments to Request Utility Pole Attachments.

(1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).

(2) Application review and survey.

(a) Application completeness.

1. A utility shall review a new attachment's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attachment within ten (10) business days after receipt of the new attachment's pole attachment application if the application is incomplete.

2. A new attachment's pole attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attachment, to begin to survey the affected poles.

3. If the utility notifies a new attachment that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

4. If the utility does not respond within ten (10) business days after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete.

(b) Survey and application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within sixty (60) days in the case of larger orders as established in subsection (7) of this section) for the purpose of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachments in surveys conducted by a utility.

a. A utility shall allow the new attachment and any existing attachments on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachments with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. If a new attachment has conducted a survey pursuant to subsection (10)(b)(c) of this section, or a new attachment has otherwise conducted and provided a survey, after giving existing attachments notice and an opportunity to participate in a manner consistent with subsection (10)(b)(c), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachments of the intent to use the survey conducted by the new attachment and by providing a copy of the survey to the affected attachments within the time period established in subparagraph 1. of this paragraph.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attachment either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in subsection (7) of this section).

5. A utility's denial of a new attachment's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

6. Payment of survey costs and estimates.

a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness, before a utility shall be obligated to conduct surveys pursuant to this section.

b. If a utility's tariff requires prepayment of survey costs, the

utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.

c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

(3) Payment of make-ready estimates.

(a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis if requested and reasonably calculable, and consistent with subsection (6)(b) of this section, of charges to perform all necessary make-ready.

(b) A utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

(4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready in the communications space that is no later than thirty (30) days after notification is sent (or up to seventy-five (75) days in the case of larger orders as established in subsection (7) of this section);
3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date established for completion;
4. State that, if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph, the new attacher may complete the make-ready specified pursuant to subparagraph 1. of this paragraph; and
5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or 135 days in the case of larger orders, as established in subsection (7) of this section).
3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date established for completion;
4. State that the utility may assert the utility's right to fifteen (15) additional days to complete make-ready;
5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready specified pursuant to subparagraph 1. of this paragraph; and
6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) Once a utility provides the notices required by this subsection, the utility shall provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall

be responsible for coordinating with existing attachers to encourage completion of make-ready by the dates established by the utility pursuant to paragraph (a)2. of this subsection for communications space attachments or paragraph (b)2. of this subsection for attachments above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates established for existing attachers in subsection (4)(a)2. of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2. of this section (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).

(6) Final invoice.

(a) Within a reasonable period, not to exceed **120[ninety (90)]** days after a utility completes the utility's make-ready, the utility shall provide the new attacher:

1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from any estimate previously paid for the survey work or if no estimate was previously paid; and

2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably calculable, of the actual make ready costs to accommodate attachments if the final make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) Limitations on make ready costs.

1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety, reliability, and pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to replace any red tagged pole with a replacement pole of the same type and height.

3. If a red tagged pole is replaced with a pole of a different type or height, then the new attacher shall be responsible, as part of any invoice for make ready, only for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment.

4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

(7) For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of 300 poles or zero and five-tenths (0.5) percent of the utility's poles in the state;

(b) A utility may add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.

(c) A utility may add up to forty-five (45) days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.

(d) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.

(e) A utility may treat multiple requests from a single new attacher as one request if the requests are submitted within thirty (30) days of one another; and

(f) As soon as reasonably practicable, but no less than sixty (60) days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a high volume request.

(8) Deviations from make-ready timeline

(a) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff or in a special contract between the utility and the new attacher.

(b) A utility may deviate from the time limits established in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits established in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits established in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination once the utility returns to routine operations.

(c) An existing attacher may deviate from the time limits established in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits established in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which shall not extend beyond sixty (60) days from the completion date provided in the notice described in subsection (4) of this section as[is] sent by the utility (or up to 105 days in the case of larger orders described in subsection 6(b) and (c) of this section). The existing attacher shall not deviate from the time limits established in this section for a period for longer than necessary to complete make-ready on the affected poles.

(9) Self-help remedy.

(a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete a survey as specified in Section 5 of this administrative regulation.

1. A new attacher shall allow the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey the attacher conducts.

3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) Make-ready. If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor to complete the make-ready as specified in Section 5 of this administrative regulation.

1. A new attacher shall allow the affected utility and existing attachers to be present for any make-ready.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than seven (7) days of the impending make-ready.

3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(c) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

(d) Pole replacements. Self-help shall not be available for pole replacements.

(10) One-touch make-ready option. For attachments involving simple make-ready, new attachers may elect to proceed with the process established in this subsection in lieu of the attachment

process established in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process shall elect the one-touch make-ready process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines if the make-ready requested in an attachment application is simple.

2. Application completeness.

a. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attachers attachment application whether or not the application is complete.

b. An attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to make an informed decision on the application.

c. If the utility notifies the new attacher that an attachment application is not complete, then the utility shall state all reasons for finding the application incomplete.

d. If the utility fails to notify a new attacher in writing that an application is incomplete within ten (10) business days of receipt, then the application shall be deemed complete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within fifteen (15) days of the utility's receipt of a complete application (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)).

a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how the evidence and information relate to a denial of access.

b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)), a utility or an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.

c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing, include all relevant evidence and information supporting the objection, be made in good faith, and explain how the evidence and information relate to a determination that the make-ready is not simple.

d. If the utility's or the existing attacher's objection to the new attacher's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed to be complex, **and the new attacher may not proceed with the affected proposed one-touch make-ready.**

(b) Surveys.

1. The new attacher shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as established in Section 5(2) of this administrative regulation to complete surveys.

2. The new attacher shall allow the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys.

3. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacher's attachment application is approved and if the attacher has provided fifteen (15) days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a

contractor in the manner established for simple make-ready in Section 5(2) of this administrative regulation.

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles shall then be governed by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2)(a), (3), and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a one-touch make ready application.

#### Section 5. Contractors for Survey and Make-ready.

(1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on the utility's poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility provides this list, then the new attacher shall choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(a) 1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that shall meet the requirements in subsection (3) of this section.

2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the utility that the attacher's contractor meets the minimum qualifications established in subsection (3) of this section upon providing notices required by Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation.

(b) 1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but a disqualification shall be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications established in subsection (3) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.

2. The utility shall provide notice of the utility's objection to the contractor within the notice periods established by the new attacher in Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation and in the utility's objection must identify at least one available qualified contractor.

(3) Contractor minimum qualification requirements. Utilities shall ensure that contractors on a utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection (2)(a) of this section, meet the minimum requirements established in paragraphs (a) through (e) of this subsection.

(a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines.

(b) The contractor has acknowledged that the contractor knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility.

(c) The contractor has agreed to follow all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules.

(d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds established by the utility, if made available.

(e) The contractor shall be adequately insured or shall establish an adequate performance bond for the make-ready the contractor will perform, including work the contractor will perform on facilities owned by existing attachers.

(4) A consulting representative of ~~a~~[an electric] utility may make final determinations, on a nondiscriminatory basis, if there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

#### Section 6. Notice of Changes to Existing Attachers.

(1) Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than sixty (60) days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4 of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001, Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response within ten (10) days of the date the motion for a temporary stay was filed.

(e) No further filings under this subsection shall be considered unless requested or authorized by the commission.

(3) Transfer of attachments to new poles.

(a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within sixty (60) days of receiving written notice from the utility pole owner.

(b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires such a deviation shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

(c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and



the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility pole owner may transfer attachments at the existing attacher's expense.

(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.

#### Section 7. Complaints for Violations of This Administrative Regulation.

(1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) How filed.

(a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8.

(b) Notwithstanding 807 KAR 5:001, Section 8(3), the filing party shall file two (2) copies in paper medium with the commission in the manner required by 807 KAR 5:001, Section 8(12)(a)2.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

(7) Burden of proof.

(a) The complainant has the burden of establishing it is entitled to the relief sought.

(b) The commission may presume that a pole replaced to accommodate a new attachment was a red tagged pole if:

1. There is a dispute regarding the condition of the pole at the time it was replaced; and

2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue, or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.

(8) Time for final action.

(a) The commission shall take final action on a complaint **regarding the rates, terms, or conditions for**~~alleging that a person or entity was unlawfully denied~~ access to a utility's pole, duct, conduit, or right-of-way within 180 days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 360 days from the date the complaint establishing a prima facie case is filed.

(b) The period within which final action shall be taken may be extended beyond 360 days upon agreement of the complainant and defendant and approval of the commission.

This is to certify that the Public Service Commission approved promulgation of this administrative regulation, pursuant to KRS 278.040(3), on September 15, 2021.

LINDA BRIDWELL, P.E. Executive Director

KENT A. CHANDLER, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 15, 2021 at 11:36 a.m.

CONTACT PERSON: John E.B. Pinney, Acting General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, mobile (502) 545-6180, fax (502) 564-7279, email Jeb.Pinney@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: J.E.B. Pinney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the Kentucky Public Service Commission's (PSC) jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law.

(b) The necessity of this administrative regulation: House Bill 320 from the 2021 Regular Session of the General Assembly requires the Commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband by December 31, 2021. Further, pursuant to 47 U.S.C.A. § 224(c), if a state does not regulate the rates, terms, and conditions of access to utility poles in a manner proscribed therein, then poles owned by investor owned utilities are subject to regulation by the Federal Communications Commission (FCC). Finally, various state and federal efforts to expand broadband access, as well as changes in technology, have or are likely to result in increased interest in new pole attachments, and there is a need for a clear process to govern pole attachments to avoid delays that may slow or prevent broadband deployment in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) provides that the Commission may promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) states that the Commission has exclusive jurisdiction over the regulation of rates and services of utilities. KRS 278.030(1)

provides that all rates received by a utility shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service. In *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983), the Court of Appeals held that utility pole attachments are a service that is provided for a rate. House Bill 320 from the 2021 Regular Session of the General Assembly requires the PSC to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. This administrative regulation creates a uniform process with specific timelines and self-help remedies by which cable television providers, telecommunications carriers, broadband internet providers, and government units may seek to make new attachments, while minimizing burdens placed on utilities and considering the fair allocation of costs between attachers and the traditional utility customers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation creates a uniform process with specific timelines and self-help remedies, including one-touch make-ready, by which cable television providers, telecommunications carriers, broadband internet providers, and government units may seek to make new attachments, while minimizing burdens placed on utilities and considering the fair allocation of costs between attachers and traditional utility customers.

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

(a) How the amendment will change this existing administrative regulation: The amendments will respond to some of the concerns of the commenters by clarifying vague or ambiguous language or by providing additional guidance regarding the process for attaching to utility poles. The amendment will also change some applicable timelines for utility pole owners

(b) The necessity of the amendment to this administrative regulation after comment: The Commission is making amendments to the following sections of the proposed regulation: Section 3(5) in order to clarify and strengthen the rules addressing overloading of third party attachers and to reduce confusion regarding the timing of notice of overloading and, to clarify that overloading may only be done on an attacher's own facilities or two existing facilities with the permission of the owner; Section 2(1) to provide clarity regarding engineering standards and to clarify language in Section 2(1) that language in Section 3(4) and (5) are intended to reference; Section 4(6) to extend the time from 90 days to 120 days for pole owners to submit invoices to attachers which allows a more reasonable time for pole owners to compile invoices from its contractors; Section 4(10)(a)3.d to clarify that a new attacher may not proceed with one touch make ready work if the work is deemed to be complex, mimicking a federal regulation and clarifying the Commission's intent in originally promulgating this section; Section 5(4) to delete the term "electric," because it could create confusion regarding what utilities can reject attachments for reasons of safety, reliability, and generally applicable engineering purposes; Section 7(8)(a) to clarify that a complaint may be brought for rates, service, and conditions for access to poles, and not just for complaints regarding access to poles; and several minor changes containing typographical errors that will be listed in the statement of consideration.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments House Bill 320 from the 2021 Regular Session of the General Assembly requires the Commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband by December 31, 2021. The amendments will further the provisions of broadband service by clarifying the proposed regulation, particularly where overloading is concerned. The amendments also further the Commission general jurisdiction pursuant to KRS 278.030 and KRS 278.040.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying and amending the proposed regulation the Commission hopes to remove ambiguity for the proposed regulation and provide additional guidance on certain issues. By doing so, the amendments will reduce the number of formal

complaints with regard to pole attachments and promote the deployment of broadband service in the Commonwealth as exhorted by General Assembly in House Bill 320.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will primarily affect regulated utilities in Kentucky that own or control utility poles, including investor owned electric utilities, rural electric cooperatives, and incumbent local exchange carriers. There are currently four investor owned electric utilities, 21 rural electric cooperatives, and 20 incumbent local exchange carriers, which include investor owned telephone utilities and telephone cooperatives, operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Currently, utilities process pole attachment requests pursuant to utility specific pole attachment tariffs. The PSC reviews the pole attachment tariffs when they are filed or modified to determine if they meet the requirements of KRS Chapter 278, such as whether service provided is adequate, efficient, and reasonable and whether rates charged are fair, just, and reasonable. Further, under the current process, if a new attacher or existing attacher contends that the terms of a pole attachment tariff or its implementation violates KRS Chapter 278 or PSC regulations, then they may file a complaint, which must be addressed within 360 days, and request relief from the alleged violation. When setting pole attachment rates under the current process, the PSC has applied the same principles it applies when establishing rates for other customers—that each customer classification should pay for the cost of the service they are being provided.

This administrative regulation creates a uniform process with specific timelines and self-help remedies, including one-touch make-ready, by which cable television providers, telecommunications carriers, broadband internet providers, and government units may seek to make new attachments, while minimizing burdens placed on utilities and considering the fair allocation of costs between attachers and the traditional utility customers based on cost causation principles traditionally applied by the PSC. To comply with this administrative regulation, utilities will have to update their pole attachment tariffs so the tariffs are consistent with this regulation and process pole attachment requests and make-ready in a manner consistent with this administrative regulation. Costs will still be allocated pursuant to the principles the PSC applies when establishing rates for other customers, though this administrative regulation does specifically address make ready and survey costs, where practical, to avoid future disputes and delays in the pole attachment process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will incur some initial costs in updating their tariffs to comply with this administrative regulation. The costs of such a process are likely to vary depending on the size and complexity of the utility involved and whether and the extent to which potential attachers or other customer groups object to the proposed tariff.

An estimate of the costs regulated entities might incur to update their tariffs would be between \$25,000 and \$200,000 per regulated entity. However, such costs could likely be mitigated if similarly situated utilities worked together to draft tariffs that comply with this regulation. Further, the adoption of a uniform process should reduce potential conflicts in the future that would have to be resolved through the potentially costly complaint process. Finally, a number of the utilities periodically update their pole attachment tariffs in the absence of this regulation.

The regulated entities will also incur costs in processing pole attachment applications and performing make ready, and such costs will be based on the size and frequency of new attachment projects. However, like the federal regulation, and consistent with

the cost causation principles the PSC applies when setting rates for other customers, utilities are able to recover the costs of processing pole attachment applications and completing make-ready from the attaching entities that caused them to be incurred, so the timelines for reviewing applications and completing make-ready should not result in the regulated entities incurring uncompensated costs. Further, while attaching entities will bear those costs, the process outlined in this regulation should actually reduce their overall costs by reducing or eliminating costly disputes and delays in the pole attachment process. Thus, this administrative regulation is expected to result in a net reduction in costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The adoption of a uniform process should reduce potential conflicts in the future that would have to be resolved through the complaint process. This should reduce the overall cost of pole attachments by reducing or eliminating costly delays.

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

(a) Initially: Zero Dollars; no fiscal impact.

(b) On a continuing basis: Zero Dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The PSC does not anticipate this amendment increasing its enforcement cost. The PSC currently funds enforcement of regulations through its general operating budget funded through annual assessments paid by regulated utilities pursuant to KRS 278.130, *et. seq.*, and this amendment has no effect on that funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are established and existing fees will not be affected.

(9) TIERING: Is tiering applied? Yes. The speed at which utilities are required to process applications and complete make ready is tiered based on the number of poles owned the utility. Tiering the regulation in this manner, which is consistent with how the federal regulation is tiered, will allow smaller utilities to process pole attachment applications at slower rates, while maintaining a relatively consistent attachment speed throughout the state.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: J.E.B. Pinney

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Government units will be affected to the extent that they are seeking to attach to poles owned or controlled by regulated utilities. As with other attachers, it is expected that costly delays will be reduced or eliminated.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040; HB 320 (2021).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero Dollars; no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero Dollars; no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero Dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero Dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero Dollars; no fiscal impact.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amended After Comments)

#### 921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS Chapter 13B, 205.231, 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.231 establishes the appeals process for applicants or recipients of public assistance. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for these violations. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include the issuance of an order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.

(2) The cabinet shall retain:

(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

(a) Initiate an administrative disqualification hearing; or

(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80 (EF) or (TR), Notice of

SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

- (a) Cabinet's suspicion that an IPV has been committed;
- (b) Amount and period of the overpayment for the suspected IPV; and
- (c) Household's right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A (EF) or (TR), Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80, Supplement A (EF) or (TR), the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).

(4) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail, return receipt requested, to the individual; or

(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050.

(5) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(6) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

- (a) Conduct an administrative disqualification hearing; and
- (b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14.

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

- (a) One (1) time; and
- (b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:

- (a) Conduct the hearing without the household member or representative;
- (b) Consider the evidence; and
- (c) Determine whether an intentional program violation was committed based on clear and convincing evidence.

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:

- (a) Household was not represented at the hearing;
- (b) Individual was determined to have committed an IPV;
- (c) 1. Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2)(f), by showing nonreceipt of the notice of hearing; and

(d) Secretary or the secretary's designee is not considering the same matter.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of

an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;

(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A (EF) or (TR); or

(c) Individual completing, signing, and returning the form FS-111, Supplemental Nutrition Assistance Program [Deferred Adjudication] Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

- (a) Reinstatement of the individual, if eligible; and
- (b) In accordance with 7 C.F.R. 273.17, restore benefits:
  1. That were lost as a result of the disqualification; and
  2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111[~~-Deferred Adjudication Disqualification Consent Agreement~~], in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing an [a] FS-111 of the:

- (a) Consequences of consenting to disqualification;
- (b) Disqualification; and
- (c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

- (a) Committed an IPV, as determined by:
  1. An administrative disqualification hearing; or
  2. A court; or
- (b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

(1) Further administrative appeal procedures shall not exist after an:

- (a) Administrative disqualification hearing determines that an IPV was committed; or
- (b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

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

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012;

(b) "FS-80 (EF), Notice of SNAP Suspected Intentional Program Violation", 05/21/12[4/5];

(c) "FS-80 (TR), Notice of SNAP Suspected Intentional Program Violation", 5/21;

(d) "FS-80, Supplement A (EF), Voluntary Waiver of SNAP Administrative Disqualification Hearing", 11/05/21[4/5];

(e) "FS-80, Supplement A (TR), Voluntary Waiver of SNAP

Administrative Disqualification Hearing", 11/05/21; and

(f)(4) "FS-111, Supplemental Nutrition Assistance Program [Deferred Adjudication] Disqualification Consent Agreement", 05/21/9/44].

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 10, 2021

FILED WITH LRC: September 14, 2021 at 8:00 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred in the Supplemental Nutrition Assistance Program (SNAP) and the penalties that shall be applied for an IPV.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for determinations and penalties regarding SNAP IPV's.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing criteria for recipient claims, collections, and additional cabinet administrative provisions for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for recipient claims, the hearing process, and additional administrative provisions used by the cabinet in the administration of SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language in the incorporated material that are used in the fair hearing process based on recommendations from the Office of the Inspector General, Kentucky Legal Aid, the Kentucky Equal Justice Center, and the USDA Food and Nutrition Service. The revised language is more clear and easily understood regarding intentional program violations. This administrative regulation and two of the incorporated forms are being further revised in response to public comment received. The "FS-80, Supplement A (EF), Voluntary Waiver of SNAP Administrative Disqualification Hearing", 11/21, and the "FS-80, Supplement A (TR), Voluntary Waiver of SNAP Administrative Disqualification Hearing", 11/21, are being amended to reference the FS-80 form that accompanies these forms, include wording relating to the waiver being optional, and to state that the signature is not required for those wishing to have a hearing. The purpose of these form revisions is to simplify the language and clarify steps in the claims and hearings processes while adhering to all federal requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clearly inform recipients of hearing rights and penalties associated with misusing SNAP benefits.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its enhancement of notification of hearing rights and processes, penalties, and additional administrative provisions used by the cabinet in the administration of SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the authorizing statutes through its clarification and enhancement of hearing rights, penalty notification, and additional administrative provisions used by the cabinet in SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2021, there were 289,841 active SNAP households in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require no new action on the part of SNAP applicants or recipients. The amendment only affects the notices sent out by the cabinet when there is a suspected intentional program violation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, communication to SNAP recipients will be clearer and notification of hearing rights and penalties will be provided in easily understood wording.

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

(a) Initially: There will be minor one-time costs in system changes.

(b) On a continuing basis: No ongoing expenses are anticipated as a result of this amendment as the new forms will replace the forms currently used.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.16

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.16

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.010, KRS 194A.050, 7 C.F.R. 271.4, 273.16.

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

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

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

(c) How much will it cost to administer this program for the first year? Minor one-time costs will be associated with system changes.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(Amended After Comments)**

**922 KAR 1:300. Standards for child-caring facilities.**

RELATES TO: KRS 2.015, 13B.050, 17.165(6), 17.500(8), 189.125(3), 198B.050-198B.090, 199.011[(2), (3), (4), (6), (7), (10), (14)], 199.640, 199.650, 199.660, 199.670, 211.350-211.380, 214.034(5), Chapter 271B Subtitle 8, 273.161(7), Chapter 424, 600.020(23), 605.080(3), 605.090(1), 610.110(6), 615.010, 615.030, 615.040, 620.020, 620.030, 620.090(2), 620.140(1), 620.230(3), 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of [Secretary for] the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) requires the [secretary for the] cabinet to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards of care and service for child-caring facilities.[-]

Section 1. Definitions. (1) "Aftercare" means a service provided to a child after discharge from a child-caring facility.

(2) "Board of directors" is defined by [at] KRS 273.161(8)[(7)].

(3) "Cabinet" is defined by KRS 199.011(3) [means the Cabinet for Health and Family Services].

(4) "Case" means an individual child or family being provided services by a child-caring facility social worker or counselor.

(5) "Chemical restraint" means a drug used as a restraint that is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition.

(6) "Child" is defined by [at] KRS 199.011(4) and 600.020(9)[(8)] and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A person [child] who meets the exceptions to the age of majority in accordance with KRS 2.015.

(7) "Child-caring facility" is defined by [at] KRS 199.011(5)[(6)].

(8) "Child-placing agency" is defined by [at] KRS 199.011(6)[(7)].

(9) "Child-caring program" means the method of delivering a child-caring service.

(10) "College or university" means:

(a) An institution accredited by one (1) of the [eleven-(11)] regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education;

(b) For a Kentucky institution, one (1) that is licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; and

(c) For an out-of-state institution, one (1) that is licensed in its home state if licensure is required in that state.

(11) "Community resource" means a service or activity available in the community that supplements those provided by the child-caring facility or child-placing agency in the care and treatment of a child.

(12) "Corporal physical discipline" means reasonable physical discipline in accordance with KRS 199.640(6).

(13) "Crisis intervention unit" means a unit that serves a child in need of short-term intensive treatment, to avoid risk of placement to a higher level of care.

(14) "De-escalation plan" means a treatment method used to decrease the intensity of emotional conflict or aggressive behavior.

(15) "Direct child-care staff" means a child-caring facility [an] employee or volunteer providing face-to-face care and supervision of a child.

(16)[(15)] "Discharge" means a planned release of a child from a child-caring facility program.

(17)[(16)] "Emergency discharge" means the release of a child from a program as a result of a circumstance that presents a risk to the health or safety of a child.

(18)[(17)] "Emergency shelter child-caring facility" means a child-caring facility that meets the requirements of 922 KAR 1:380.

(19)[(18)] "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

(20)[(19)] "Group home" is defined at KRS 199.011(11)[(40)].

(21)[(20)] "Independent living services" means services provided to an eligible child, as described in Section 8 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(22)[(21)] "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(23)[(22)] "Indoor living area" means an area in the child-caring facility that is separate from a hallway, bedroom, kitchen, stairway, vestibule, bathroom, closet, unfinished basement, or attic.

(24)[(23)] "Institution" is defined by [at] KRS 199.011(12)[(44)].

(25) "Latching device" means an instrument used to secure a seclusion room door that does not require the use of a key or combination.

(26)[(24)] "Living unit" means a building or part thereof in which a child resides, not exceeding sixteen (16) beds.

(27)[(25)] "Permanence" is defined by [at] KRS 620.020(9)[(8)].

(28)[(26)] "Physical management" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement in order to maintain a safe environment for the child and others.

(29) "Qualified mental health professional" is defined by KRS 600.020(52).

(30) "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(31) "Reasonable and prudent parenting standards" is defined by 42 U.S.C. 675(10).

(32) "Seclusion" means the temporary placement of a child in a room in a residential treatment facility to prevent harm to the child or others.

(33)(27) "Residential child-caring facility" means a child-caring facility that meets the standards established in 922 KAR 1:390.

(28) "Residential treatment program" means residential child-caring facility that meets the treatment program requirements of 922 KAR 1:390, Section 4.

(29) "Sex crime" is defined by [at] KRS 17.500(8).

(34)(30) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

(35)(31) "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a non-secure area for a time-limited period, in order to permit the child to regain control over his behavior.

(36)(32) "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving his or her emotional conflict or behavioral disorder.

(37) "Treatment director" means an individual who oversees the day-to-day operation of the treatment program.

(38) "Treatment professional" means an individual with the following credentials or an individual with a master's degree in a human services field practicing under the direct supervision of an individual with the following credentials:

(a) A licensed psychiatrist;

(b) A certified or licensed clinical psychologist;

(c) A licensed clinical social worker;

(d) A licensed marriage and family therapist;

(e) A licensed professional clinical counselor;

(f) A licensed professional art therapist;

(g) A licensed clinical alcohol and drug counselor; or

(h) A licensed behavior analyst.

(39)(33) "Treatment team" means a representative group of people who provide services to the child and the child's family.

(40)(34) "Unplanned discharge" means the release of a child from the child-caring facility that is not in accordance with the ITP.[

(35) "Youth wilderness camp" means a specific program of a child-caring facility that is designed to provide an outdoor experience consistent with a child's ITP.]

Section 2. Operations and Services. (1) This administrative regulation establishes standards for the following child-caring facilities:

(a) An emergency shelter child-caring facility, also governed by 922 KAR 1:380;

(b) An emergency shelter child-caring facility with treatment, also governed by 922 KAR 1:380, Section 3;

(c) A residential child-caring facility, ~~[also governed by 922 KAR 1:390,]~~ including:

1. A group home; and

2. An institution; ~~and[.]~~

(d) A residential treatment program, ~~[also governed by 922 KAR 1:390, Section 4,]~~ including:

1. A crisis intervention unit, ~~[also governed by 922 KAR 1:390, Section 5];~~

2. A group home, ~~[also governed by 922 KAR 1:390, Section 6];~~ and

3. An institution[; and

~~(e) A youth wilderness camp program, also governed by 922 KAR 1:460].~~

(2) Except for a child-caring facility maintaining a license prior to October 16, 2000, a child-caring facility shall not be located or operated on the grounds of a psychiatric hospital.

Section 3. Administration and Operation. (1) The licensing procedure for a child-caring facility shall:

(a) Be administered as established in 922 KAR 1:305; and

(b) Based upon the services provided, meet the requirements of this administrative regulation and 922 KAR 1:380 ~~[or].]~~ **[922 KAR 1:390]** ~~[, or 922 KAR 1:460].~~

(2) Board of directors.

(a) The child-caring facility shall have a board of directors in accordance with KRS Chapter 271B, Subtitle 8.

(b) The board of directors shall:

1. Consist of at least seven (7) members;

2. Meet at least quarterly;

3. Cause minutes of each meeting to be taken and kept in written form;

4. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local law;

5. Have procedures in place to insure that its staff receives ongoing training as defined in subsection (6)(o) of this section;

6. Obtain a criminal records check **consistent with KRS 17.165** of prior convictions of the executive director prior to employment; and

7. Approve a mission statement delineating:

a. The purpose;

b. Objective; and

c. Scope of service to be provided.

(3) Executive director.

(a) Duties of the executive director shall be determined by the board of directors.

(b) The executive director shall be responsible for the child-caring facility and its affiliates in accordance with the child-caring facility's written policy.

(c) If the executive director is not on the premises **and not available to make decisions**, a designated staff person shall be responsible for the day-to-day operation of the child-caring program.

(d) The executive director shall oversee and report to the board on a quarterly basis, providing an evaluation of program services addressing measurable goals, staff training, and incident reports.

(e) The criteria and process of the quarterly evaluation shall be approved by the board.

(4) Staff qualifications.

(a) A person employed as an executive director after the effective date of this administrative regulation shall possess the following qualifications:

1. A master's degree in business administration or a human services field from a college or university, supplemented by two (2) years of work experience in or management of a human services program related to working with families and children; or

2. A bachelor's degree in a human services field from a college or university, supplemented by four (4) years' work experience in management of a human services program related to working with families and children.

(b) A treatment director or person employed by the child-caring facility in a position responsible for supervising, evaluating, or monitoring social work and related activities shall:

1. Hold at least a master's degree in a human service discipline; and

2. ~~Have [Within two (2) years of October 17, 2007, have]~~ at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

a. Supervision;

b. Evaluation; and

c. Monitoring of the:

(i) Treatment program;

(ii) Social work; and

(iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d) A residential child-caring facility providing a treatment

service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director, if at least fifty (50) percent of his duties are spent supervising the treatment program. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.

(e) An employee responsible for social work, counseling, or planning and coordinating these services for a child shall have at least a bachelor's degree in a human services field from a college or university.

(f) A person employed in a position responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least:

1. Two (2) years of education from a college or university and two (2) years of work experience in a child-caring facility; or

2. A high school diploma, or an equivalence certificate, and at least five (5) years of work experience in a child-caring facility.

(g) A person employed in a position responsible for the daily direct care or supervision of a child shall possess at least a high school diploma or equivalency certificate.

(h) If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet the more rigorous qualifications.

(i) A child-caring facility contracting for the services of a social worker or treatment director not on the staff of the child-caring facility shall document that the social worker or treatment director meets the qualifications established in paragraphs (b) and (e) of this subsection. An agreement for provision of service shall be on file at the child-caring facility, and shall specify the qualifications of the social worker or social services professional.

(5) Staffing requirements.

(a) The child-caring facility shall have:

1. A written policy describing a child-to-direct-child-care-staff ratio that is consistent with the staff-to-child ratios required in paragraph (b) of this subsection; and

2. An explanation of the assignment of staff in order to:

a. Ensure the health and safety of a child; and

b. Implement the child-caring program.

(b) Staff-to-child ratios for each type of facility shall be as follows:

1. An emergency shelter child-caring facility: one (1) staff member to ten (10) children at all times.

2. An emergency shelter child-caring facility with treatment: one (1) staff member to six (6) children at all times.

3. A residential child-caring facility:

a. One (1) staff member to ten (10) children age six (6) and over; and

b. One (1) staff member to five (5) children under age six (6).

4. A residential child-caring facility with treatment:

a. One (1) staff member to six (6) children; and

b. One (1) staff member to twelve (12) children during sleeping hours.

5. A crisis intervention unit:

a. One (1) staff member to four (4) children; and

b. One (1) staff member to six (6) children during sleeping hours.

6. A group home:

a. One (1) staff member to four (4) children; and

b. One (1) staff member to accompany a child while away from the home.

7. An institution: one (1) staff member to ten (10) children.[]

8. A youth wilderness camp program to include:

a. A base camp:

(i) ~~One (1) staff member to four (4) children age eleven (11) and (12) years old; and~~

(ii) ~~One (1) staff member to six (6) children age thirteen (13) and above; and~~

b. A field program, for which two (2) staff members shall be on location at all times:

(i) ~~One (1) staff to three (3) children age eleven (11) and (12) years old;~~

(ii) ~~One (1) staff to four (4) children age thirteen (13) and above;~~

(iii) ~~Group size, including staff, shall not exceed more than~~

~~twelve (12) at one (1) time;~~

(iv) ~~In a mixed gender group, one (1) woman and one (1) man, with one (1) staff member remaining awake during sleeping hours;~~

(v) ~~A staff-to-child ratio shall be based on the age of the youngest child; and~~

(vi) ~~A volunteer shall not be included in the staff-to-child ratio.]~~

(c) There shall be at least one (1) staff member present in each child-caring facility building if a child is present.

(d) At least one (1) staff member certified in first aid and cardiopulmonary resuscitation shall be on the premises, if a child is present.

(e) The child-caring facility shall have a written work schedule and a policy that provides for utilization of relief staff.

(f) The child-caring facility shall employ an individual who is responsible for the overall planning and coordinating of social services for a family and child.

(g) Social services staff shall not carry a caseload of more than fifteen (15) children and their families.

(6) Personnel policy.

(a) A child-caring facility shall have and comply with a written personnel policy and procedure.

(b) An employee of the child-caring facility shall be at least eighteen (18) years of age and, effective July 1, 2022, newly-hired direct care staff shall be at least twenty-one (21) years of age.

(c) The employment of an individual shall be governed by KRS 17.165, with regard to a criminal record check.

(d) A new criminal record check shall be completed at least every two (2) years on each employee or volunteer.

(e) An employee under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with all children [a-child] within the child-caring facility until the employee is cleared of the charge.

(f) Each employee or volunteer shall submit to a check of the central registry pursuant to [described by] 922 KAR 1:470. An individual listed on the central registry shall not be a volunteer at or be employed by a child-caring facility.

(g) Each licensee shall report to the cabinet and each child-caring facility employee or volunteer shall report to the licensee or facility's director, an incident that occurs subsequent to the most recent central registry check, if the employee or volunteer:

1. Is the subject of a cabinet child abuse or neglect investigation;

2. Has been found by the cabinet or a court to have abused or neglected a child; or

3. Has been indicted for or charged with a violent or sex crime as defined in KRS 17.165.

(h) An individual shall not be left alone in the presence of any [a] child if a central registry check has not been completed.

(i) Determination by the cabinet of risk of potential harm by an employee to a child in a child-caring facility shall result in:

1. Investigation of the employee for evidence of child abuse or neglect; and

2. The removal of the employee from direct contact with all children [a-child]:

a. For the duration of the investigation or, if an investigation has exceeded forty-five (45) days, when the originating Service Region Administrator and director of the Division of Protection and Permanency consent in writing; and

b. Pending completion of the administrative appeal process in accordance with 922 KAR 1:320;

(j) A current personnel record shall be maintained for each employee[] that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of a current registration, certification, licensure, and college credentials, if required by the position;

3. Record of ongoing participation in an agency staff development program as specified in paragraphs (n) and (o) of this subsection;

4. Record of performance evaluation;

5. Criminal records check as required by [established in] paragraph (c) of this subsection;



6. Documentation of a central registry check completed every two (2) years in accordance with 922 KAR 1:470;

7. Personnel action; and

8. Application for employment, resume, or contract.

(k) A child-caring facility shall retain an employee personnel record for at least five (5) years after termination of employment.

(l) An employee shall document compliance with a requirement for meeting state or national professional standards, as set forth in the job description.

(m) The child-caring facility shall have a record of participation and successful completion of an ongoing staff and volunteer development program.

(n) The staff development program shall be under the supervision of a designated staff member; and

(o) Full-time direct child care staff shall have at least forty (40) hours, and part-time direct child care staff shall have at least twenty-four (24) hours, of training specific to the tasks to be performed and of annual training in the following:

1. Emergency and safety procedure;
2. Principle and practice of child residential care;
3. Behavior management, including de-escalation training;
4. Physical management for a child-caring facility using the technique;

5. First aid; ~~and~~
6. Personnel orientation; ~~and~~
7. Trauma-informed care.

(p) A volunteer who functions as a professional or direct staff member without compensation shall meet the same general requirements and qualifications.

(q) A child-caring facility using physical management shall:

1. Develop and maintain clearly-written policy and procedure governing the use of physical management of a child, including a requirement for a de-escalation plan, in accordance with **Section 8(3) of this administrative regulation**~~922 KAR 1:390, Section 4~~;

2. Require a staff member who conducts physical management[,] to complete at least sixteen (16) hours of annual training in approved methods of de-escalation and physical management from a nationally-recognized accreditation organization approved by the cabinet, as part of the annual training required by ~~[established in]~~ paragraph (o) of this subsection, to include:

- a. Assessing physical and mental status, including signs of physical distress;
- b. Assessing nutritional and hydration needs;
- c. Assessing readiness to discontinue use of the intervention; and
- d. Recognizing when medical or other emergency personnel are needed.

(r) The program director shall review and analyze instances of physical management in order to:

1. Assure compliance with Section 5(2)(f) through (h) of this administrative regulation and the child-caring facility policy;
2. Provide documentation of a plan of action to prevent injury to a child or staff as a result of the use of physical management; and
3. Review each incident no later than one (1) working day after its use.

(s) A child-caring facility shall develop and maintain clearly written policies and procedures governing professional boundaries for an employee or volunteer working with children.

(t) A child-caring facility shall develop and maintain clearly written policies and procedures governing smoking prohibitions, in accordance with 20 U.S.C. 7183 and 922 KAR 2:120, Section 3(10)~~[2:110, Section 3(9)]~~.

(7) Interstate placement.

(a) Before accepting a child from another state or placing a child in another state, the child-caring facility shall be in compliance with:

1. Applicable provisions of the Interstate Compact on Placement of Children, KRS 615.030 ~~or~~ ~~[and]~~ 615.040; and
2. The Interstate Compact ~~for~~ ~~[on]~~ Juveniles, KRS 615.010.

(b) If a child committed to the cabinet makes a brief visit out of

state for age- or developmentally-appropriate activities, not accompanied by child-caring facility personnel, the child-caring facility shall employ reasonable and prudent parenting standards for careful and sensible parental decisions that maintain the health, safety, and best interests of the child prior to determining whether to allow the child to participate in extracurricular, enrichment, cultural, and social activities ~~[obtain prior consent from the cabinet staff member responsible for the case]~~.

(c) If an emergency placement of a child into a licensed child-caring facility is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040. If the receiving child-caring facility is aware of noncompliance by the placement source, the child-care facility shall notify the cabinet's interstate compact coordinator.

(8) Record retention. A child-caring facility shall:

(a) Retain ~~[The child-caring facility shall retain]~~ all records, books, and reports related to financial conditions and status for auditing purposes for a minimum of five (5) years; ~~and~~ ~~[.]~~

(b) Make available all books, records, and financial information for review, inspection, auditing, and photocopying by the cabinet or cabinet designee, authorized federal and state agency reviewers and auditors.

(9) A residential child-caring facility shall become accredited by a nationally recognized accreditation organization within two (2) years of initial licensure.

Section 4. Physical Plant. (1) A child-caring facility shall comply with applicable state and local law relating to:

- (a) Construction;
- (b) Sanitation; and
- (c) Building maintenance.

(2) The child-caring facility shall conform to the Kentucky Standards of Safety in accordance with 815 KAR 10:060.

(3) A climate control system shall be provided as follows:

(a) A minimum temperature of sixty-five (65) degrees Fahrenheit maintained in occupied areas in cold weather conditions;

(b) In warm weather conditions and periods of extreme heat, an occupied area shall be properly ventilated;

(c) If not air-conditioned and the temperature in an occupied area exceeds eighty-five (85) degrees Fahrenheit, the child-caring facility director shall assure that the following occurs:

1. A fan is utilized to circulate air;
2. The child-caring facility is properly ventilated to outside air;
3. Ice water is readily available and served to residents; and
4. Staff frequently monitor residents for a sign or symptom of a heat-related illness.

(4) The water supply shall be from an approved source and easily available from the following:

- (a) Drinking fountain;
- (b) Refrigerator; or
- (c) Cold water tap.

(5) The plumbing and waste disposal systems shall comply with applicable provisions of the Uniform State Building Code, KRS 198B.050, and with laws regarding on-site sewage disposal, KRS 211.350 to 211.380, if applicable.

(6) Housekeeping and maintenance service.

(a) The building and its content shall be maintained in a clean and safe condition and in good repair.

(b) A maintenance plan shall be implemented.

(c) The child-caring facility shall ensure that the grounds and outdoor equipment are well kept and the exterior of the building is in good repair.

(d) The interior of the building and its contents shall be in good repair.

(e) Garbage and trash shall be:

1. Stored in an area separate from those used for the preparation and storage of food;
2. Removed from the premises regularly; and
3. Placed in a container that is cleaned regularly.

(f) Insecticides, pesticides, and chemical poisons shall be plainly labeled and stored in a secure, locked area. Access shall be given to:

1. The facility's maintenance personnel; and
2. A pest control company with which the facility has a contract.

(7) Bedroom.

- (a) A bedroom shall be:

1. Of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds; and
2. Constructed to allow no more than four (4) residents per room.

- (b) A bedroom for a child above age three (3) shall be equipped with an individual bed for each child that shall be:

1. Long and wide enough to accommodate the child's size;
2. Developmentally appropriate for the child; and
3. Equipped with a support mechanism and a clean mattress.

- (c) A bed occupied by a child shall be placed so that the child shall not experience discomfort because of:

1. Proximity to a radiator or heat outlet; or
2. Exposure to drafts.

- (d) **Siblings may share sleeping quarters, including siblings over the age of five (5) if [Except for a sibling] indicated in an ITP, there shall be separate sleeping quarters for boys and girls over the age of five (5)].**

- (e) Storage space shall be provided for each child to accommodate his or her personal belongings in a:

1. Closet and drawers; or
2. Closet for the child's exclusive use and shelves within the closet.

- (f) A child shall not be housed in a room, detached building, or enclosure that has not previously been inspected and approved for resident use.

- (g) A child shall be provided with clean bed linens, laundered at least once a week, and a waterproof mattress covering.

- (h) An exception to this subsection shall be documented with clear safety reasons for the exception and there shall be a written safety plan in place for the duration.**

- (8) Indoor living area. An indoor living area shall have:

- (a) At least thirty-five (35) square feet per child; and

- (b) Comfortable furnishings adequate for the number of children served.

(9) Bathroom.

- (a) For every six (6) children residing in the living unit, a living unit shall have a minimum of:

1. One (1) wash basin with hot and cold water;
2. One (1) flush toilet; and
3. One (1) bath or shower with hot and cold water.

- (b) A child shall be provided with access to:

1. Toilet paper;
2. Towels;
3. Soap; and
4. A wastebasket.

- (c) Each bathtub and shower shall have an enclosure or screen for individual privacy. If more than one (1) toilet is located in the same bathroom, each toilet shall:

1. Be partitioned; and
2. Include a door capable of remaining closed.

- (d) A bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

- (10) The use of cameras to monitor youth bedrooms and bathrooms is prohibited except with the written consent of the director of the Division of Protection and Permanency or designee. A request for exception to this subsection shall include the reason for the request that relates to an immediate safety issue for the youth.**

Section 5. Health, Safety, and Nutritional Requirements. (1) Health.

- (a) A child-caring facility shall have written policy and procedure for health and medical care, to include provisions for:

1. The care and disposition of an ill child; and
2. Emergency care.

- (b) The service of a physician, **or other licensed qualified health professional,** shall be made available to a child. If the service of a licensed physician **or other professional** is not

available in the community, the child-caring facility shall request the assistance of the:

1. County health department; or
2. The Department for Public Health[~~Division of Adult and Child Health Improvement~~].

- (c) Staff shall follow licensed physician orders for:

1. Medicine;
2. Prescription; and
3. Medical care.

- (d) Except for a weekend or holiday, within forty-eight (48) hours of admission to a child-caring facility, a child shall have:

1. An initial health screening for illness, injury, and communicable disease or other immediate needs, by a nurse or trained child-care staff;

2. After the initial health screening, a physical examination by a licensed physician or a qualified person under the supervision of a licensed physician, within two (2) weeks of admission, unless it has been documented that the child has received an examination during the past twelve (12) months; and

3. The examining professional shall report, in writing, observations and findings including:

- a. Developmental history of the child, illnesses, operations, and immunizations if available to the physician;
- b. A limitation the child may have that may prevent participation in an activity scheduled by the child-caring facility;
- c. Visual and auditory examination results;
- d. Recommendation and order for future care, treatment, and examinations;
- e. TB skin test results, unless contraindicated by a qualified person under the supervision of a licensed physician; and
- f. Other tests for communicable disease as indicated by the medical and social history of the child.

- (e) An annual physical examination shall be scheduled and documented as **required by [established in] paragraph (d)3,** of this subsection.

- (f) Upon admission, the child-caring facility shall consult with a physician if there is evidence that the child may require medical attention.

- (g) The child-caring facility shall develop a procedure for a child requiring a specific provision for an infectious medical condition.

- (h) A separate health record shall be maintained for each child, kept on the premises, and be made available to a:

1. Physician;
2. Nurse; or
3. Designated staff member.

- (i) The health record shall contain the following:

1. Copy of each physical examination, including any recommendations for treatment;
2. Previous and continuing health and medical history, if available;
3. Record or report of each test, immunization, periodic reexamination, and physician order and instruction;
4. Report and date of each dental examination and treatment;
5. Authorization for regular and emergency medical, dental, and surgical care, signed at admission by the legal custodian;
6. Documentation of medication administered to the child; and
7. Documentation of a special provision made for the child in accordance with a physician's order.

- (j) A child's medical need shall be provided for as recommended by a licensed physician.

- (k) The facility shall keep an immunization certificate on file for each child, in accordance with KRS 214.034(5).

- (l) If a child dies while in the care of a child-caring facility or in a home operated or supervised by the child-caring facility:

1. The child-caring facility shall immediately notify the:

- a. County coroner;
- b. Child's parent;
- c. Guardian or custodian; and
- d. Cabinet staff;

2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Community[-]Based Services;

3. A written comprehensive report from the executive director outlining the incident shall be forwarded to the Office of the Commissioner, Department for Community[-]Based Services, on the next working day following the verbal report; and

4. If a child's death occurred as a result of alleged abuse or neglect, the executive director of the child-caring facility shall make verbal and written reports as required by KRS 620.030(1) and (2).

(m) Upon discharge, medical information shall follow the child if a release form has been obtained.

(n) Unless a dental examination has been performed in the six (6) months preceding admission, the child-caring facility shall document within one (1) week after a child's admission a scheduled dental examination within thirty (30) days or the reason the dental examination was not obtained within the timeframe, shall schedule an appointment for a dental examination. The facility shall ensure the treatment of emergency dental needs by a licensed dentist as they arise.

(o) A child age two (2) years and above shall be examined at least annually by a licensed dentist.

(p) The child-caring facility shall:

1. Document the information required by this subsection; and
2. Assure the confidentiality of the information.

(q) The child-caring facility shall maintain a continuous program of personal hygiene.

(r) Medication shall be inaccessible to a child.

(2) Safety.

(a) A child shall be instructed in fire prevention, safety, and fire emergency procedures.

1. The child-caring facility shall maintain and post a current, written emergency fire evacuation plan and diagram to include:

- a. An evacuation route and procedure; and
- b. The location of fire extinguishers.

2. Emergency drills shall be performed quarterly and documented for each of the following emergency events;

- a. Fire;
- b. Tornado or severe thunderstorm warning; and
- c. Flash flood, if applicable.

3. An emergency plan shall designate a suitable shelter in the event of an emergency.

(b) A child-caring facility with a swimming pool shall be staffed with a certified lifeguard in accordance with 902 KAR 10:120, Section 13.

(c) Donated home processed foods shall be prohibited.

(d) Transportation.

1. If transportation is provided directly, contracted for, or arranged, a child-caring facility shall require:

- a. Compliance with state laws pertaining to vehicles, drivers, and insurance;
- b. A seat for each child and that the child remain seated while the vehicle is in motion;
- c. A seat belt be used to secure the child;
- d. A vehicle used to transport a child off campus to provide a seat for each passenger as manufactured standard equipment;
- e. That a child never be left unattended in a vehicle; and
- f. Compliance with KRS 605.080(3) pertaining to court-ordered transportation.

2. The maximum number of children a driver shall supervise alone is four (4).

3. A child under the age of eight (8) who is less than fifty-seven (57) inches tall [A child under forty (40) inches tall or forty (40) pounds in weight] shall not be transported unless restrained in a safety seat that meets the requirements established [approved] in [accordance with] KRS 189.125(3).

4. A vehicle shall not pick up and deliver a child under the age of six (6) to a location that requires the child to cross a street or highway unless the child is accompanied by an adult.

5. If transportation is provided by a means other than licensed public transportation:

- a. The vehicle shall be maintained in a safe mechanical and operable condition;
- b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and
- c. If the driver is not in his seat, the motor shall be turned off,

keys removed, and brake set.

(e) A child with a history of aggressive behavior or sexual acting-out shall be assessed by the treatment team to ensure the safety of the child and other children in the facility, including sleeping arrangements, with the appropriate safety measures included in the child's ITP.

(f) If a child-caring facility accepts for placement a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime, the child-caring facility shall have written policies and procedures for the segregation of the child from a child committed to the cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).

1. Segregation shall include sight and sound separation of a child committed to the Department of Juvenile Justice from a child committed to the cabinet for the following functions within the facility or activities supervised by the facility:

- a. Sleeping;
- b. Personal hygiene; and
- c. Toiletry.

2. During other functions within the facility or activities supervised by the facility, segregation shall include separation of a child committed to the Department of Juvenile Justice from a child committed to the cabinet to prohibit any physical contact and verbal communication between the children.

(g) Physical management shall be used in an emergency or a crisis situation only:

1. After attempts to de-escalate the situation have been made;
2. By trained staff; and
3. To prevent:

- a. A child from injury to self or others; or
- b. Serious property damage ~~or disruption of the child-caring facility's program~~.

(h) Physical management shall not be used for [as]:

1. Punishment;
2. Discipline; [or]
3. The [For the] convenience of staff;
4. Forced compliance;
5. Retaliation; or
6. A substitute for appropriate behavioral support.

(i) Physical management shall be discontinued if a child displays adverse side effects including:

1. Illness;
2. Severe emotional or physical stress; or
3. Physical damage.

(3) Nutritional requirements.

(a) A child shall be served meals that:

1. Meet the nutritional guidelines of the U.S. Department of Agriculture that include foods from the five (5) basic food groups; and

2. Satisfy the quantity required to meet the needs of each child as to age, activity, and prescribed diet or ITP.

(b) A child shall be encouraged to eat the food served, but shall not be subjected to coercion.

(c) An order for a modified diet from a licensed physician shall be followed by the child-caring facility.

(d) A menu shall be planned at least one (1) week in advance, dated, posted, and kept on file for one (1) year.

(e) With the exception of a child receiving a meal at school, three (3) meals a day shall be provided at regular intervals and, except for weekends and holidays, no more than fourteen (14) hours shall lapse between the evening meal and morning meal.

1. A nourishing snack shall be provided and:

- a. May be part of the daily food needs;
- b. Shall not replace a regular meal; and
- c. Shall be recorded on the menu.

2. A meal shall be scheduled at set times each day so that at least one (1) hot meal a day is not hurried, allowing time for conversation.

3. Food, or withholding of food, shall not be used as a punishment.

4. Only pasteurized milk and milk products, and U.S. government inspected meat shall be served to a child.

5. Food shall be prepared to preserve nutritive value and

heighten flavor and appearance.

6. The same food shall be served to children under care and to staff members, unless a food is not suitable for a person because of:

- a. The person's age;
- b. A dietary restriction; or
- c. A religious preference.

(f) Table service shall be provided for a child capable of eating at a table.

1. Tables and chairs shall be:

a. Of a height that corresponds to the size of the child served; and

b. Constructed of material that can be easily sanitized.

2. A child who has not had an opportunity to learn how to handle food with the usual table service shall be managed in a way that he shall not be embarrassed or subjected to ridicule.

(g) A written report of a food inspection by municipal, county, or federal authorities shall:

- 1. Be kept on file at the child-caring facility; and
- 2. Meet local, state, and federal regulations.

(h) If a child-caring facility subcontracts a food service, applicable federal and state administrative regulations shall apply.

Section 6. General Requirements. (1) An incident of suspected child abuse or neglect, human trafficking, or female genital mutilation shall be reported as required by KRS 620.030.

(2)(a) The facility shall, with regard to suspected child abuse or neglect by an employee:

- 1. Document each incident;
- 2. Keep each incident document on file; and
- 3. Make the files accessible to the cabinet.

(b) A child shall not be exploited for promotional purposes, or in a manner that shall cause the child or family to suffer discomfort or embarrassment.

(c) Except as indicated in paragraph (d) of this subsection, a child shall not be used personally for a fund-raising purpose for the child-caring facility.

(d) If a picture, slide, recording, or other private, personal effect of a child is used in fund-raising or promotional effort of a child-caring facility, written permission shall be obtained from:

- 1. A parent or guardian; or
- 2. An authorized:
  - a. Representative of the cabinet;
  - b. Representative of the Department of Juvenile Justice; or
  - c. Legal representative.

(3) For an activity conducted away from a child-caring facility, the facility shall:

(a) Safeguard the health and safety of the children during the activity;

(b) Have a written policy and procedures governing the activity;

(c) Maintain staff-to-child ratios in accordance with Section 3 of this administrative regulation; and

(d) Provide transportation in a manner that complies with Section 5(2)(d) of this administrative regulation.

(4) Clothing and personal possessions.

(a) Through agreement with the child's legal custodian, the child-caring facility shall provide a child with clothing and footwear that is clean, well-fitting, and seasonal.

(b) A child shall be provided individual articles of personal hygiene.

(c) The child-caring facility shall allow a child to have personal belongings and property consistent with this administrative regulation and child-caring facility policy.

(5) A child's money.

(a) The child-caring facility shall have written policy and procedure relating to money belonging to a child.

(b) A child shall have access to information regarding the balance of the child's fund.

(c) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.

(6) Visitation and communication shall include:

- (a) Written policy on visitation and communication;
- (b) An arrangement for visitation that is not in conflict with the

ITP;

(c) Documentation of each visit in the case record; and  
(d) Access to a telephone to make and receive a telephone call consistent with the child's ITP, current court orders, and the facility's child-caring policy.

(e) Allowing a child to contact cabinet staff by telephone within twenty-four (24) hours of the request of the child.

(7) Religion, culture, and ethnic origin.

(a) Facility policy shall demonstrate consideration for and sensitivity to:

1. The racial, cultural, ethnic, and religious background of a child in care; and

2. Availability of activities appropriate to the child's cultural or ethnic origin.

(b) With the exception of a religious practice that is destructive towards property or places a child or others in physical danger, an opportunity shall be provided for a child to:

1. Practice the religious belief and faith of the child's individual or family preference; and

2. Participate in a religious activity without coercion.

(8) Education.

(a) If a child-caring facility operates its own school program, it shall have written policy and procedure regarding the development and implementation of the educational program. The policy and procedure shall include:

- 1. School attendance;
- 2. Teaching staff;
- 3. School records;
- 4. Educational supplies and equipment;
- 5. Individual educational plans; and
- 6. Use of a community school.

(b) A child-caring facility shall ensure that a child attends an accredited educational program the number of days required by law.

(c) A child shall be enrolled in an accredited educational program within one (1) week of admission.

(d) A school-age child ineligible or unable to attend an accredited school shall have an educational program specific to the individualized need of the child that may include a General Education Diploma or vocational training.

(e) If a child-care facility operates an educational program, maintenance of school records shall comply with state law and administrative regulations of the educational body having jurisdiction.

(f) The child-caring facility shall provide a quiet area and designated time for study.

(9) Work and chore assignment.

(a) An assigned chore or work assignment shall not place the child in physical danger.

(b) A chore assignment shall be posted within the child's living quarters.

(c) A child may be given a job in compliance with child labor laws for which he or she receives payment that shall be clearly differentiated from a chore expected of him to be completed in relation to the routine of daily living.

(d) A work assignment outside of a daily routine chore at the child-caring facility shall not be used as a form of punishment. An additional chore assignment beyond what is regularly assigned to a child may be:

1. Performed as restitution for intentional property damage made by the child; or

2. Given to a child for violation of a child-caring facility rule upon mutual agreement between the child and supervisory child-caring staff without the child being coerced to enter into an agreement.

(e) A child shall be given a rest period of at least ten (10) minutes during each hour worked.

(f) Use of a child to perform a chore or work assignment shall not negate the child-caring facility's ultimate responsibility for the maintenance of the child-caring facility nor the employment of staff sufficient to maintain the child-caring facility.

(10) Discipline.

(a) A child-caring facility shall have written policy and

procedure governing disciplinary action.

(b) Discipline shall be:

1. Utilized as an educational tool and be related to the child's actions initiating the disciplinary process; and

2. Consistent with the child's ITP and in response to the child's lack of control or misbehavior.

(c) A group of children shall not be punished due to the misbehavior of one (1) or more individual group members.

(d) The following practices shall not be allowed:

1. Cursing;

2. Screaming;

3. Name calling;

4. Threatening of physical harm;

5. Intimidation;

6. Humiliation;

7. Denial of food or sleep;

8. Corporal physical discipline, except in accordance with KRS 199.640(6);

9. Hitting;

10. Unnecessarily rough handling;

11. Other physical punishment; or

12. Denial of visitation with family or custody holder as punishment.

(e) With the exception of a parent disciplining a child, a child shall not directly discipline another child.

(f) Handcuffs, weapons, mechanical restraints, chemical restraints, or other restraint devices shall not be used.

(g) A child placed in a time-out area shall be:

1. In sight or hearing of staff; and

2. Checked by staff at least every five (5) minutes until it is determined the child is ready to continue normal activity.

Section 7. Child-caring Program Services. (1) Admissions and intake.

(a) The child-caring facility shall have clearly defined written policy and procedure for an admission that identifies the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment that the child's need is one that:

1. The service of the child-caring facility is designed to address; and

2. Cannot be met in a less restrictive setting.

(c) The child-caring facility shall not accept into care a child for whom a service cannot be provided based on the child-caring program's mission statement and its available resources.

(d) The child-caring facility shall have a written placement agreement with the child's custodian.

(e) The child-caring facility shall conduct a:

1. Preadmission interview with the child; or

2. Screening of the child's available information, if a preadmission interview is not possible due to an emergency placement.

(f) The following information regarding the child shall be obtained by the child-caring facility from the child's custodian during intake, or it shall be documented that the information was requested and not available:

1. Commitment order or signed voluntary admission form;

2. Verification of birth;

3. Immunization record; and

4. Social history and needs assessment that includes medical, educational, developmental, and family history.

(g) A written consent pertaining to the child's care shall be obtained from the child's custodian for:

1. Photograph, video, and audio tape;

2. Emergency and routine medical care; and

3. Release of case record information.

(h) Before admission, the child and custodian shall be informed in writing of their rights and the child-caring facility's responsibilities, including policy pertaining to services offered to the child.

(i) A child shall be informed upon admission of the right to file a grievance.

(j) Upon admission, the child shall be oriented to life at the

child-caring facility, including rules and consequences for violation of the rules.

(2) Casework planning.

(a) The child-caring facility shall have written policy and procedure for the ITP process including:

1. Assessment;

2. Assignment;

3. Designation of a case coordinator; and

4. Development, implementation, and evaluation of the ITP and family involvement.

(b) An initial assessment shall be completed by designated staff within twenty-four (24) hours of admission to include:

1. Identifying information;

2. Presenting problem;

3. History (developmental, social, emotional health, education); and

4. Current level of functioning including strengths and weakness.

(c) An initial ITP shall be developed by designated staff and implemented within twenty-four (24) hours of admission.

(3) Comprehensive assessment and treatment plan.

(a) A comprehensive emotional and behavioral assessment of a child shall be completed by the treatment team and entered in the case record within twenty-one (21) days of admission, including the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The child's current emotional, behavioral, and developmental functioning, including strengths and weakness;

3. A psychiatric or psychological evaluation if recommended by the treatment team;

4. Other functional evaluation of language, self-care, social effectiveness, and visual-motor functioning, if recommended by the treatment team;

5. Social assessment that includes:

a. Environment and home;

b. Religion;

c. Ethnic group;

d. Developmental history;

e. Family dynamics and composition; and

f. Education; and

6. Recommendation for provision of treatment.

(b) A coordinated treatment team approach shall be utilized in the development, implementation, and evaluation of a comprehensive ITP.

(c) A comprehensive ITP shall be developed and implemented, in accordance with KRS 199.640(5)(a)4, to improve child functioning based upon the individual need of the child, and the child's family if appropriate, and shall include at least the following components:

1. Goals and objectives for permanence;

2. Time frame projected for completion of each goal and objective;

3. Method for accomplishing each goal and objective, including utilization of community providers;

4. Person responsible for completion of each goal and objective; and

5. Projected discharge date and placement plan.

(d) The comprehensive ITP shall be developed within twenty-one (21) days of admission.

1. A treatment team review of the child's and family's progress toward meeting each treatment goal shall occur at least monthly.

2. Every effort shall be made to involve the child and his family in the monthly treatment team review.

3. Treatment team evaluation of the comprehensive ITP shall occur at least quarterly.

4. An additional assessment shall be completed upon the recommendation of the treatment team.

5. Evaluation and assessment information shall be documented and maintained in the child's record.

(e) The child shall be offered the opportunity to sign an ITP and ITP review, signifying understanding of the ITP.

1. If the child refuses to sign or is developmentally unable to

understand the circumstance, this shall be documented in the record.

2. The child and his family or custodian shall receive a copy of the ITP.

(4) Treatment environment. The daily child-caring program shall be planned in the following manner in order to create an atmosphere conducive to treatment:

(a) The child-caring facility shall have written policy and procedure describing its daily routine, rules, activity, and child and staff interaction.

(b) The daily child-caring program shall be:

1. Planned to provide a framework for daily living; and  
2. Reviewed and revised as the needs of the individual child or living group change.

(c) The daily routine shall be written and available to each child.

(d) Each rule shall be clearly stated in language that a child can understand.

(e) Staff shall interact with a child in a warm, supportive, constructive, and confidential manner and shall treat the child with respect.

(f) Counseling and interviewing a child and the child's family shall be conducted in a private area.

(g) A daily recreational activity shall be available to promote mastery of:

1. Developmental tasks;
2. Development of relationships; and
3. Increase in self-esteem, in accordance with the child's ITP.

(h) The child-caring facility shall provide recreational equipment, maintained in usable and safe condition, to implement the recreational program.

(5) The child-caring facility shall make available a quality program for substance abuse prevention and treatment in compliance with KRS 199.640(5)(a)7.

(6) Discharge and aftercare.

(a) The child-caring facility shall have written policy and procedure that describe the condition under which a child may be discharged, including criteria for an unplanned or emergency discharge and a discharge inconsistent with the ITP.

(b) The approval of the program director shall be required for an unplanned or emergency discharge.

(c) Discharge planning shall begin with the development of the ITP and shall continue throughout subsequent ITP reviews. The treatment team shall consider the following matters related to discharge planning:

1. Identification of placement;
2. Community resources to provide support for youth; and
3. Family services.

(d) When a child is leaving a facility as a planned discharge, a predischarge conference shall be held to ensure that the child and family are prepared for successful transition into placement. The parent, guardian or custodian, the child, and the treatment team shall attend this conference.

(e) The child shall have at least one (1) preplacement visit prior to the planned discharge, or the facility shall document unsuccessful efforts to arrange a visit.

(f) The child-caring facility shall prepare a written discharge summary within fourteen (14) days following the date of discharge. A copy shall be provided to the custody holder. The summary shall include:

1. Information related to progress toward completion of each ITP goal;
2. Each barrier to treatment;
3. Each treatment method used in working with the child;
4. Date of discharge;
5. Reason for discharge; and
6. Name, telephone number, and address of person or child-caring facility to whom the child was discharged.

(g) An aftercare service shall be provided to a child where no other agency has responsibility for the child's transition or adjustment to a new environment. Upon discharge, the following needs of the child shall be assessed and a referral made for needed aftercare service:

1. Educational;
2. Medical;
3. Vocational;
4. Psychological;
5. Legal; and
6. Social.

(7) Case record. The child-caring facility shall:

(a) Maintain, in a confidential and secure manner, a current case record on each child, including:

1. Identifying information on the child to include:

- a. Name, ethnic origin and gender;
- b. Date of birth and Social Security number;
- c. Former residence;
- d. Name, address, and occupation of each parent, if available;
- e. Date of admission; and
- f. Type of commitment;

2. Commitment order or custodian's consent form for admission;

3. Birth and immunization certificates;

4. Education;

5. Medical and dental records that may be maintained separately from the case record;

6. Assessment data or social history;

7. ITP and each review;

8. Each incident report, with a paper or electronic copy maintained in a centralized location within the licensed facility;

9. Chronological recording;

10. Correspondence with court, family, and custody holder;

11. Discharge summary; and

12. Written consent;

(b) Document, at least weekly, progress made by the child and his family toward meeting the treatment goal;

(c) Record the aftercare service it provides until the service is terminated;

(d) Have a written policy regarding maintenance, security, and disposal of a case record maintained by, or in possession of, the child-caring facility;

(e) Not disclose information concerning a child or his family to a person not directly involved in the case, without the written consent of the custodian of the child;

(f) Forward, within twenty-four (24) hours, a request made by an individual or an agency to review the case record of a committed child, to the:

1. Commissioner, Department for Community Based Services, if the child is committed to the cabinet; or
2. Other legal custodian, if the child is not committed to the cabinet;

(g) With the exception of a sealed adoptive record, release identifying or personal information including a Social Security card, birth certificate, or driver's license to the child at discharge;

(h) After the discharge of a child:

1. Maintain the case record at the child-caring facility for at least three (3) years; and

2. After three (3) years, the child-caring facility may archive the case record ~~and have it transferred to one (1) of the cabinet's designated record centers~~; or

3. Maintain the case record permanently at the child-caring facility;

(i) If the child-caring facility ceases to operate, transfer the case record to the cabinet ~~[Cabinet for Health and Family Services]~~;

(8) The cabinet shall maintain a file on each record transferred to one (1) of its record centers. The file shall include the following information:

- (a) The child's name, case number, date of birth; and
- (b) Date the case record was sent to the cabinet.

(9) All records maintained by the child-caring facility shall be made available to the cabinet or designee upon request.

**Section 8. Residential Treatment Program. The requirements of this section shall apply to a residential child-caring facility that provides intensive treatment services.**

**(1) Professional treatment services.**

(a) The facility shall secure needed services for a child who has an assessed need for a psychological, psychiatric, or other professional treatment service not provided by the residential child-caring facility.

(b) The admission decision shall be the responsibility of a treatment team comprised of clinical, social service, and other disciplines designated by the residential child-caring facility's treatment director.

(c)1. After assessment and development of the ITP in accordance with Section 7 of this administrative regulation, the treatment team shall identify services to meet the needs of the child and family.

2. The services shall:

a. Be provided by the residential child-caring facility or arranged through contract with another qualified residential child-caring facility or child-placing agency, as established in 922 KAR 1:310, or a treatment professional; and

b. Include, as developmentally appropriate, a minimum of weekly:

(i) Individual therapy from a qualified mental health professional or other treatment professional; and

(ii) Group therapy conducted by a qualified mental health professional or other treatment professional, as determined appropriate by the treatment team and under the supervision of the treatment director.

(d) Other services identified after the assessment and development of the ITP by the treatment team may include:

1. Psychiatric counseling;

2. Specialized therapy recognized by a mental health credentialing authority; or

3. Family counseling.

(2) Staffing requirement.

(a) Staff-to-child ratios shall be in accordance with Section 3(5) of this administrative regulation.

(b) The treatment director shall:

1. Hold at least a master's degree in a human service discipline; and

2. Have at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

a. Supervision;

b. Evaluation; and

c. Monitoring of the:

(i) Treatment program;

(ii) Social work; and

(iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d)1. A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director if at least fifty (50) percent of his or her duties are spent supervising the treatment program.

2. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.

(3) Seclusion.

(a) If seclusion is used, a residential child-caring facility shall:

1. Before a child is placed in seclusion, develop and maintain clearly-written policy and procedures governing the placement of a child in seclusion, including a requirement for a de-escalation plan in the child's ITP that is consistent with accreditation standards;

2. Provide a copy of the policy and procedures to staff members responsible for the placement of a child in seclusion;

3. Require a staff member who uses seclusion to complete at least sixteen (16) hours of training in approved methods of de-escalation, physical management, and the use of seclusion from a nationally-recognized organization approved by the cabinet. This training shall count toward the forty (40) hours of

annual training required by Section 3 of this administrative regulation and shall include the following topics:

a. Assessing physical and mental status, including signs of physical distress;

b. Assessing nutritional and hydration needs;

c. Assessing readiness to discontinue use of the intervention; and

d. Recognizing when medical or other emergency personnel are needed.

4. Use seclusion only in an emergency or crisis situation when:

a. A child is in danger of harming himself or another; and

b. The effort made to de-escalate the child's behavior prior to placement was ineffective;

5. Prohibit the use of seclusion for:

a. Punishment;

b. Discipline;

c. Convenience of staff;

d. Forced compliance;

e. Retaliation; or

f. A substitute for appropriate behavioral support.

6. Provide that approval from the treatment director or treatment staff designee is obtained prior to or within fifteen (15) minutes of the placement of a child in seclusion.

7. Place no more than one (1) child into the same seclusion room at a time;

8. Remove an object that may be used for self-harm from a child before the child is placed in seclusion;

9. Not remove a child's clothing, except for belt and shoes, while the child is placed in seclusion;

10. Within a twenty-four (24) hour period of time, not to allow a child to remain in latched seclusion for more than:

a. Fifteen (15) minutes if the child is age nine (9) and younger; and

b. One (1) hour, if the child is age (10) and older;

11. If a child's behavior is stabilized, release the child from seclusion prior to the time period specified in this section;

12. Discontinue seclusion if a child displays adverse side effects including:

a. Illness;

b. Severe emotional or physical stress; or

c. Physical damage to self or items in seclusion;

13. Provide a child in seclusion with food, water, and access to a lavatory; and

14. Use a room for seclusion that is:

a. Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-caring facility;

b. Internally observable if the door is closed;

c. At least fifty-six (56) square feet in size; and

d. Free from an object that allows the child to do self-harm.

(b) If a child requires repeated placement in seclusion, the treatment director shall conduct a treatment team meeting to reassess the child's ITP, including referring the child to a higher level of care.

(c) A staff member shall observe visually every five minutes a child who is in seclusion.

(d) Staff shall have visual contact with a child in latched seclusion at all times.

(e) Staff shall document, in the child's record, the following information regarding seclusion of a child:

1. An intervention to de-escalate the child's behavior prior to placement;

2. Date and time of placement;

3. Date and time of removal;

4. Reason for placement;

5. Name of each staff member involved;

6. Treatment director's or designee's approval;

7. Five (5) minute visual observation by staff of the child's placement; and

8. Intervention provided by treatment staff when the child leaves seclusion.

(f) Immediately upon the child's exit from seclusion,

treatment staff shall provide therapeutic intervention.

(4) Incident report.

(a) Exclusive of weekends and holidays, within twenty-four (24) hours of the physical management of a child, including a child's placement in seclusion, designated treatment staff shall complete an incident report that shall:

1. Undergo an administrative review no later than seventy-two (72) hours after the use of physical management;

2. Document an assessment by the treatment director or designee that shall include consideration of the:

a. Necessity of the physical management or seclusion;

b. Congruence of the physical management or seclusion with the residential child-caring facility's policy and procedures; and

c. Need for a corrective action;

3. Contain documentation of written feedback provided by the treatment director or designee to all treatment staff involved in the incident; and

4. Be signed by the treatment director or designee and the program director or designee.

(b) The residential child-caring facility shall establish a system to track the frequency, location, and type of critical incidents involving physical management of a child that occurs, including seclusion.

Section 9. Crisis Intervention Unit. (1) An emergency service provided in a crisis intervention unit shall include the following:

(a) A mental status evaluation and physical health questionnaire of the child upon admission;

(b) A treatment planning process;

(c) Procedure for crisis intervention; and

(d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis intervention unit.

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

a. Four (4) children during normal waking hours; and

b. Six (6) children during normal sleeping hours.

2. Administrative oversight of the program shall be provided by a staff member who shall be a:

a. Treatment director; or

b. Person qualified to be executive director.

(b) A licensed psychiatrist shall be available to evaluate, provide treatment, and participate in the treatment planning.

(c) Intake and service.

1.a. Upon admission, the crisis intervention program shall provide the child and parent, guardian, or other legal representative with a clearly written and legible statement of rights and responsibilities; or

b. If unable to read the statement of rights and responsibilities, the statement shall be read to the child and parent, guardian, or other legal representative.

2. Written policy and procedure developed in consultation with professional and direct-care staff shall provide:

a. For behavior management of a child, including the use of time-out; and

b. An explanation of behavior management techniques to a child and parent, guardian, or other legal representative.

(3) The crisis intervention unit shall prohibit the use of:

(a) Seclusion; or

(b) Mechanical restraints.

Section 10. Group Home. The following additional requirements shall apply to a group home program:

(1) Documentation of evidence of publication of a "notice of intent" in an area newspaper, in accordance with KRS Chapter 424, advertising that:

(a) A public hearing shall be held if requested by citizens in the community or an appropriate local governmental entity; and

(b) Information obtained at the hearing shall be made

available to the public and the cabinet;

(2) A staff-to-child ratio in accordance with Section 3(5) of this administrative regulation; and

(3) Documentation of the use of community resources and efforts to encourage a child to participate in community activities.

Section 11. Independent Living Services. A child-caring facility shall:

(1) Provide independent living services:

(a) To a child:

1. In the custody of a state agency; and

2. Twelve (12) to twenty-one (21) years of age;

(b) As prescribed in the child's ITP; and

(c) In accordance with 42 U.S.C. 677(a); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and

2. Sixteen (16) years of age and older; and

(b) Developed in accordance with 922 KAR 1:340, Section 3(1)(e).

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 10, 2021

FILED WITH LRC: September 15, 2021 at 10:17 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for private child-caring facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standards for all private child-caring facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.640(5) and 199.645 require the cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the standards for private child-caring facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation makes technical corrections and updates standards to conform with statutory and federal changes relating to reasonable and prudent parenting standards, transportation safety, and the use of physical management. The minimum age of direct care staff is increased from eighteen to twenty-one years of age. The administrative regulation is being further amended in response to comments submitted by the Children's Alliance. As suggested, the contents of 922 KAR 1:390 are being incorporated into this administrative regulation due to duplicative requirements. 922 KAR 1:390 will be repealed once this amendment is effective. The administrative regulation was also amended to specify the scope of the administrative regulation being specific to child-caring facilities, to update definitions for consistency, to allow for alternative treatment professionals, to clarify requirements relating to sleeping arrangements and the use of cameras, to delete references to 922 KAR 1:390, and to amend the new staffing requirement to be effective July 1, 2022, and for only newly-hired staff.

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



necessary to make updates to standards consistent with federal and state laws and makes technical corrections. The amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates standards of care and service provided by child-caring facilities, as required by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its updates relating to prudent parenting standards and physical management.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 30 private child-caring facilities licensed in Kentucky that provide residential services to 707 children as of March 2021 (Children's Review Program Private Provider Occupancy Dashboard).

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will ensure that children placed within a private child-caring facility are provided quality care and services.

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

(a) Initially: The amendment to this administrative regulation has no cost associated, but the administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the child-caring facility.

(b) On a continuing basis: The administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the residential child-caring facility

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The amendment to this administrative regulation will be implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the child-caring facility.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, as the requirements for these facilities are the same.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

2. State compliance standards. KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

3. Minimum or uniform standards contained in the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

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

additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services and Office of the Inspector General, will be impacted as the regulatory and monitoring agencies overseeing these facilities and the services they provide.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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](#).

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**  
**Division of Student and Administrative Services**  
**(Amendment)**

**11 KAR 16:001. Definitions for 11 KAR Chapter 16.**

RELATES TO: KRS 164.518, 164.740

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) "Academic term" means the fall, spring, or summer semester or its equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Authority" is defined in KRS 164.740(1).

(3) "Award year" means a period that begins July 1 of one (1) calendar year and ends June 30 of the next succeeding calendar year.

(4) "Capstone semester" means the culmination semester in an Interdisciplinary Early Childhood Education (IECE)/Early Childhood Program which:

- (a) Requires additional hours of direct work with children; and
- (b) May be listed as student teaching or a practicum.

(5) "Early childhood facility" means:

(a) A licensed Type I or a Type II child-care center defined in 922 KAR 2:110, Sections 1(14) and (15) that is located in Kentucky;

(b) A certified family child care home pursuant to KRS 199.8982 and 922 KAR 2:100 that is located in Kentucky;

(c) An organization approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer training in early childhood development; or

(d) A developmentally appropriate preschool program defined in KRS 157.3175(2).

(6) "ECAC" means Early Childhood Advisory Council.

(7) "ECAC-approved early childhood development credential" means the Child Development Associate's credential or a postsecondary, undergraduate degree, certificate or diploma that is:

(a) An associate degree in early childhood education or baccalaureate or master degree in interdisciplinary early childhood education, or a related program that is approved by the Early Childhood Advisory Council; or

(b) The Kentucky Early Childhood Development Director's Certificate.

(8) "Eligible institution" is defined in KRS 164.740(4).

(9) "Participating early childhood facility" means an early childhood facility that agrees to provide monetary incentives pursuant to 11 KAR 16:060 to early childhood development scholarship recipients employed by the facility.

(10) "Participating educational institution" means an eligible institution located in Kentucky that:

- (a) Actively participates in the federal Pell Grant Program;
- (b) Offers a scholarship program curriculum;
- (c) Has a contract in force with the authority relating to the administration of the Early Childhood Development Scholarship Program and other programs administered by the authority; and
- (d) 1. Is publicly operated; or
  - 2.a. Is licensed by the Commonwealth of Kentucky;
  - b. Has operated for at least ten (10) years;
  - c. Offers a program of study not comprised solely of sectarian instruction; and
  - d. Admits as regular students only:
    - (i) High school graduates;
    - (ii) Recipients of a general equivalency diploma; or

(iii) Students transferring from another accredited degree granting institution.

(11) "Preschool associate teacher" means a classified employee who:

(a) Is employed by a local school district in a paraprofessional role to organize, manage, and provide direct instruction to children below primary school age under the supervision of a qualified professional; and

(b) Meets the requirements of 704 KAR 3:420.

(12) "Professional development counselor" means an individual with the responsibilities to recruit candidates, process the applications, and follow as indicated the procedures established in 11 KAR Chapter 16.

(13) "Professional development funds" means state or federal training funds available through the Head Start Program, a public preschool program, or the Kentucky Early Intervention System (First Steps Program).

(14) "Scholarship" means an Early Childhood Development Scholarship.

(15) "Scholarship program curriculum" means an academic course or series of courses that is ~~is [does not lead to a certificate, diploma, or degree in theology, divinity, or religious education]~~ offered by a participating educational institution and needed to obtain an ECAC-approved ~~[ECDA-approved]~~ early childhood development credential.

(16) "Teaching assistant" means an instructional aide in a public school preschool program as set forth in 704 KAR 3:410.

WES CORNETT, Chair

APPROVED BY AGENCY: August 26, 2021

FILED WITH LRC: September 14, 2021 at 12:13 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, November 23, 2021, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 the proposed administrative regulation. Written comments shall be accepted through November 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: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@khea.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions of terms used in the administration of the Early Childhood Development Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define or reference certain statutory definitions of terms commonly used in the administration of the Early Childhood Development Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority

to promulgate administrative regulations for the administration of the Early Childhood Development Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by defining terms applicable to the Early Childhood Development Scholarship program.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by adding "master degree in interdisciplinary early childhood education" to the definition of the "ECAC-approved early childhood development credential" in Subsection (7)(a). Additionally, the amendment will remove the specific exclusion of religious education from the definition of "scholarship program curriculum" set forth in Subsection (15). Finally, the amendment will update the description of the early childhood development earned under the curriculum from "ECDA-approved" to "ECAC-approved" in order to be consistent with the definition set forth in Subsection (7).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to expand the types of credentials for which Early Childhood Development Scholarship funds can be used to include Master's degrees at the request of the Cabinet for Health and Family Services (CHFS) and the Kentucky Governor's Office of Early Childhood. This expansion of the definition of eligible credentials will enable utilization of the newly awarded grant funds under the American Rescue Plan. Further, it is necessary to remove the religious education exclusion since this has been deemed irrelevant to this scholarship program. Finally, "ECAC" needs to be substituted as the proper approval entity for the program – the Early Childhood Advisory Council – to be consistent with the remainder of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by identifying eligible credentials for which an award under this program is eligible and expanding that to include the master's degree.

(d) How the amendment will assist in the effective administration of the statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions in order to administer the Early Childhood Development Scholarship program. The amendment to this administrative regulation enhances the administration thereof by expanding eligible credentials under the program and correctly identifying the Early Childhood Advisory Council as the governing body for this program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for the Early Childhood Development Scholarship will be positively impacted by the amendment to this administration regulation in that they will now be eligible to pursue a post-baccalaureate degree with scholarship award funds, enroll in more hours each semester and receive a larger award.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: No action will be required of those individuals impacted by this regulation in order to comply therewith.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be imposed on those individuals impacted

by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals who meet the eligibility criteria for this program and apply therefore will be considered for scholarship awards.

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

(a) Initially: None.

(b) On a continuing basis: See paragraph (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program has previously been provided through a combination of money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, Part XI and civil penalties. However, in Fiscal Year 2019, the Kentucky General Assembly redirected the tobacco settlement funds to other state initiatives. Since that time, KHEAA has been able to keep the program going by spending down the funds that continued from year to year. All available funding would have been exhausted during the current year had the CHFS received a \$30.0 million grant under the American Rescue Plan. This grant will provide the funding for the enhanced ECDS program for a period of three (3) years, from 2022 to 2024.

(7) Provide an assessment of whether an 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. Increased funding will be required and is being provided through the American Rescue Plan as described in (6) above.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What 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 Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.748(4)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness. Although additional funds will be expended for the program, these will be provided by the Cabinet for Health and Family Services through a \$30.0 million grant under the American Rescue Plan.

a. How much 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 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 regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No additional costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No additional costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(Amendment)**

**11 KAR 16:010. Early Childhood Development Scholarship  
Program applicant selection process.**

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:

(a) Be:

1. A citizen, national, or permanent resident of the United States;

2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established in 13 KAR Chapter 2 by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

3. A high school graduate or a General Educational Development (GED) recipient;

4. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester:

a. Employed at least twenty (20) hours per week in a participating early childhood facility;

b. Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer the training; or

c. Employed at least twenty (20) hours per week, providing direct instruction to children as a preschool associate teacher or as a teaching assistant in a public preschool program by a participating early childhood facility;

5. ~~[a.] Enrolled in the scholarship program curriculum at a participating educational institution; [Except as provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution;~~

~~— b. An applicant who is enrolled in the final semester of study before earning an ECAC-approved early childhood credential, associate degree, or bachelor's degree may be enrolled in a capstone course requiring full-time enrollment, but shall not receive an award amount for more than nine (9) credit hours of enrollment;~~

6. Pursuing an ECAC-approved:

a. Early childhood credential;

b. Associate degree; ~~[or]~~

c. Bachelor's degree; ~~or~~ ~~[-]~~

d. Master's degree.

7. Ineligible to receive professional development funds from another education program; and

8. Maintaining satisfactory academic progress as determined by the participating institution;

(b) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and

(c) Not be:

1. In default on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099, unless eligibility has been reinstated;

2. Liable for any amounts that exceed annual or aggregate limits on any loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099; and

3. Liable for overpayment of any grant or loan under Title IV of the federal act, codified as 20 U.S.C. 1070 to 1099.

(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:

(a) Meet the eligibility requirements of subsection (1) of this section; and

(b) Be making satisfactory academic progress toward the completion of the ECAC-approved early childhood credential as determined by the participating institution.

(3) Appeal of determination.

(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECAC.

(b) A student shall submit a written statement of appeal to the ECAC within fifteen (15) calendar days after the date of notification of denial.

(c) If a student appeals a scholarship denial, the ECAC shall ensure that:

1. A hearing officer or committee appointed by ECAC shall consider the student's appeal and make a decision on the issues involved; and

2. The student's due process rights, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel, are protected.

(4) Commitment of service. A scholarship applicant shall commit that he or she shall subsequently render service:

(a) For six (6) months at a participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;

(b) For one (1) year at a participating early childhood facility upon obtaining the early childhood credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship; or

(c) For six (6) months at a participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood credential of a baccalaureate degree, paid for in part by a scholarship.

Section 2. Application. (1) Prior to the beginning of each academic term, a person seeking an early childhood development scholarship shall obtain an Early Childhood Development Scholarship Application set forth in 11 KAR 4:080, Section 1(4)(b), from the KHEAA Web site, [http://www.kheaa.com/prog\\_ecds.html](http://www.kheaa.com/prog_ecds.html). The applicant shall complete the online application.

(2) The applicant shall:

(a) Print the employer verification page from the completed application;

(b) Have this page certified by an authorized representative of the participating early childhood facility; and

(c) Submit the certified page to the professional development counselor on or before:

1. July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

2. November 15, or the next regular business day if November

15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

3. April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(3) The applicant shall also complete and submit to the United States Department of Education the Free Application for Federal Student Aid ("FAFSA") set forth in 11 KAR 4:080, Section 1(4)(a). This application shall be completed either in paper format or electronically via the Internet.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:

(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is submitted.

(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

(3) The professional development counselor shall forward to the ECAC the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECAC no later than:

(a) July 22, or the next regular business day if July 22 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;

(b) November 22, or the next regular business day if November 22 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

(c) April 22, or the next regular business day if April 22 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(4) The employer signature page shall be received by the ECAC no later than August 1, December 1, and May 1 of the appropriate semester.

(5) ECAC shall certify the eligibility determination of approved applicants.

Section 4. (1) Award amount. The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status, but shall not exceed the maximum award amount[:

~~(a) The amount of tuition charged for enrollment in nine (9) credit hours; and~~

~~—(b) The award maximum.]~~

(2) Award maximum. The maximum scholarship amount awarded to an eligible applicant for an award year shall be up to the tuition and mandatory fees at the participating institution in which the recipient is enrolled for the number of hours enrolled not to exceed the undergraduate tuition and mandatory fees at the highest priced in-state public participating institution. [be \$1,800].

WES CORNETT, Chair

APPROVED BY AGENCY: August 26, 2021

FILED WITH LRC: September 14, 2021 at 12:13 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, November 23, 2021, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 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: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship program as authorized by KRS 164.518(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the application selection process for the Early Childhood Development Scholarship program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations pertaining to the Early Childhood Development Scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the applicant selection process for the Early Childhood Development Scholarship program.

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

How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by eliminating the per semester enrollment cap of nine (9) hours. Further, this amendment will change the existing administrative regulation will by allowing recipients to pursue a master's degree using scholarship funds. Finally, the amendment will change this existing administrative regulation by increasing the maximum award amount to the amount assessed as tuition and fees for the number of ours the recipient is enrolled at a participating institution up to the full-time undergraduate tuition and fees rate at the highest cost participating public institution in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to expend the recent grant funds award to the Cabinet for Health and Family Services (CHFS) under the American Rescue Plan. These funds can best be utilized by increasing both the number of permissible hours and the maximum award amount for participating recipients. KHEAA has been requested to make these changes jointly by CHFS and the Kentucky Governor's Office of Early Childhood (KYCOEC).

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions for the administration of the Early Childhood Development Scholarship program. The amendment to this administrative regulation conforms to the content of those statutes by expanding both the permissible credential types that may be pursued by a recipient as well as the number of semester hours in which a recipient may be registered. Further, the amendment to this administrative regulation conforms to the context of the authorizing statutes by increasing the maximum award amount.

(d) How the amendment will assist in the effective administration of the statutes: The authorizing statutes require the Authority to promulgate administrative regulations establishing terms and conditions in order to administer the Early Childhood Development Scholarship program. The amendment to this administrative regulation enhances the administration thereof by enhancing the scholarship program to permit both post-baccalaureate education and full-time enrollment as well as

establishing an increased maximum award amount.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for the Early Childhood Development Scholarship will be positively impacted by the amendment to this administrative regulation in that they will now be eligible to pursue a post-baccalaureate degree with scholarship award funds, enroll in more hours each semester and receive a larger award.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: No action will be required of those individuals impacted by this regulation in order to comply therewith.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be imposed on those individuals impacted by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those individuals who meet the eligibility criteria for this program and apply therefore will be considered for scholarship awards.

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

(a) Initially: There will be no cost associated with this amendment.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program was previously provided through a combination of money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, Part XI and civil penalties. However, in Fiscal Year 2019, the Kentucky General Assembly redirected the tobacco settlement funds to other state initiatives. Since that time, KHEAA has been able to keep the program going by spending down the funds that continued from year to year. All available funding would have been exhausted during the current year had the CHFS received a \$30.0 million grant under the American Rescue Plan. This grant will provide the funding for the enhanced ECDS program for a period of three (3) years, from 2022 to 2024.

(7) Provide an assessment of whether an 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. Increased funding will be required and is being provided through the American Rescue Plan as described in (6) above.

(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? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

## FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What 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 Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 164.518(3), 164.748(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness. Although additional funds will be expended for the program, these will be provided by the Cabinet for Health and Family Services through a \$30.0 million grant under the American Rescue Plan.

a. How much 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 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 regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amendment)

### 16 KAR 2:040. Interdisciplinary early childhood education, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board (EPSB). KRS 161.028(1)(a) requires the EPSB[Education Professional Standards Board] to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires an educator preparation provider[institution] be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the EPSB[Education Professional Standards Board]. KRS 161.028(1)(f) requires the Education Professional Standards Board to issue and renew any certificate. This administrative regulation establishes the professional certificate for interdisciplinary early childhood education, birth to primary[; the interdisciplinary early childhood education teacher performance standards;] and the standards for approval of a program leading to this certificate.

Section 1. Definition[Definitions:] (1) ["Culturally diverse"]

means the wide range of differences among individuals that result from cultural and ethnic backgrounds, socioeconomic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.

(2) "Family-centered services" means services in which family needs and desires determine all aspects of service delivery and resource provisions that promote family decision-making capabilities and competencies.

(3) "Interdisciplinary" means a preparation program combining early childhood and early childhood special education.[

(4) "Teacher performance standard" means a set of teaching and managing tasks that an early childhood educator shall be able to demonstrate in early childhood programs.]

Section 2. (1) A candidate shall be eligible for the [The] professional certificate for interdisciplinary early childhood education, birth to primary, upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements[shall be issued to an applicant who has completed]:

(a) A bachelor's degree and the approved program of preparation for this certificate as described in Section 5[Sections 6, 7, and 8] of this administrative regulation at an educator preparation provider[institution] approved by the EPSB[Education Professional Standards Board] with:

1. A cumulative minimum grade point average of 2.75[2.50] on a 4.00 scale; or

2. A minimum grade point average of 3.00 on a 4.00 scale on the last thirty (30)[sixty (60)] hours of credit completed, including undergraduate and graduate coursework;

(b) The approved written assessments established in 16 KAR 6:010; and

(c) The Kentucky Teacher Internship Program established in 16 KAR 7:010.[

(2) To apply for the professional certificate for interdisciplinary early childhood education, birth to primary, an applicant shall submit a completed Form TC-1, incorporated by reference in 16 KAR 2:010, to the Education Professional Standards Board.]

Section 3. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be renewed in accordance with 16 KAR 4:060.[issued and renewed in accordance with the provisions of KRS 161.030, 16 KAR 2:010, and 16 KAR Chapter 4.]

Section 4. (1) The professional certificate for interdisciplinary early childhood education, birth to primary, shall be valid for teaching children from birth to entry into the primary program, including teaching children in kindergarten or another program for five (5) year old children if the program is operated separately from the primary program.

(2) A person holding this certificate shall serve as a primary developer and implementer of an individual program for children with or without disabilities including an individual education plan (IEP) and individual family service plan (IFSP) with consultation and support from a specialist according to the needs of the child.[]

~~Section 5. An educator preparation institution offering an approved program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall establish an assessment system to judge the performance of a candidate on the interdisciplinary early childhood education teacher performance standards identified for this certificate.]~~

Section 5.[Section 6.] The interdisciplinary early childhood education, birth to primary, program shall be subject to the program approval requirements established in 16 KAR 5:010 and shall incorporate the National Association for the Education of Young Children (NAEYC) Professional Standards and Competencies for Early Childhood Educators and the Council for Exceptional Children (CEC) Early Interventionist/ Early Childhood Special Educator Preparation Standards. [Standards for Program

~~of Preparation. In order to receive approval of the Education Professional Standards Board], a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall meet the standards established in this section:~~

~~(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the teacher performance standards established in Section 8 of this administrative regulation and as required in the "New Teacher Standards for Preparation and Certification: Interdisciplinary Early Childhood, Birth to Primary – Standards with Criteria and Preamble."~~

~~(2) The program shall include a system of continuous assessment to evaluate a candidate's progress and level of attainment on the interdisciplinary early childhood education teacher performance standards. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of children across abilities and contexts.~~

~~(3) The program shall ensure that candidates from culturally diverse backgrounds are recruited and retained in the program.~~

~~(4) The program shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the teacher performance standards with children from culturally diverse backgrounds.~~

~~(5) The program shall include a student teaching experience in accordance with 16 KAR 5:040, which shall be supervised by a teacher who has a:~~

~~(a) Letter of approval issued by the Education Professional Standards Board certifying eligibility to continue teaching in an interdisciplinary early childhood position; or~~

~~(b) Rank II certification with emphasis in early childhood and at least three (3) years of teaching experience.~~

~~(6) The program shall be based on:~~

~~(a) The National Association for the Education of Young Children (NAEYC) Standards for Early Childhood Professional Preparation; and~~

~~(b) The Council for Exceptional Children (CEC) content standards for:~~

~~1. Beginning special education teachers of early childhood students set out in CEC Content Standards for All Beginning Special Education Teachers; and~~

~~2. Beginning special education teacher common core set out in CEC Knowledge and Skill Base for All Beginning Special Education Teachers of Early Childhood Students.~~

~~(7) The program shall adhere to the program guidelines established in 16 KAR 5:010.~~

~~Section 7. Application for Program Approval. An educator preparation institution that proposes to offer a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall make application for approval to the Education Professional Standards Board. The application for approval shall include a program description including the following:~~

~~(1) Program outcomes that include teacher performance standards for interdisciplinary early childhood education;~~

~~(2) Program components that provide a list of coursework, clinical and field experiences, and student teaching related to general education, interdisciplinary specialty studies, and professional studies;~~

~~(3) A list of faculty responsible for and involved with the conduct of the specific program and their qualifications;~~

~~(4) A description of candidate admission and retention policies and procedures that are specific to this program;~~

~~(5) A description of the system of continuous assessment of interdisciplinary early childhood education teacher performance standards; and~~

~~(6) Adherence with the program approval guidelines established in 16 KAR 5:010.~~

~~Section 8. Interdisciplinary Early Childhood Education Teacher Performance Standards. (1) Teacher Performance Standard I. The interdisciplinary early childhood education (IECE) educator designs and plans experiences and instruction that support the~~



development and learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities.

(2) ~~Teacher Performance Standard II. The IECE educator creates and maintains learning environments in a variety of settings that support the development and learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities.~~

(3) ~~Teacher Performance Standard III. The IECE educator introduces, implements, and facilitates experiences and instruction that support development and learning for infants, toddlers, preschool children, and kindergarten children, including those with disabilities.~~

(4) ~~Teacher Performance Standard IV. The IECE educator, in collaboration with others, assesses the development and ongoing learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities, and communicates the results with partners, including families.~~

(5) ~~Teacher Performance Standard V. The IECE educator reflects on and evaluates professional practices that support the development and learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities.~~

(6) ~~Teacher Performance Standard VI. The IECE educator collaborates and consults with team members including colleagues, families, primary caregivers, agency personnel, and other service personnel to design and implement experiences and instruction that support the development and learning of infants, toddlers, preschool children, and kindergarten children, including those with disabilities.~~

(7) ~~Teacher Performance Standard VII. The IECE educator engages in self-evaluation of professional practices and implements a professional development plan to improve the educator's performance.~~

(8) ~~Teacher Performance Standard VIII. The IECE educator supports families through family-centered services that promote independence and self-determination.~~

(9) ~~Teacher Performance Standard IX. The IECE educator uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, families, and community agencies; and conduct research.]~~

Section 6.[Section 9.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Council for Exceptional Children (CEC) Early Interventionist/ Early Childhood Special Educator Preparation Standards", 2020; and

(b) "The National Association for the Education of Young Children (NAEYC) Professional Standards and Competencies for Early Childhood Educators", 2020.["The Council for Exceptional Children (CEC) Content Standards for All-Beginning Special Education Teachers", 2001;

(b) "CEC Knowledge and Skill Base for All-Beginning Special Education Teachers of Early Childhood Students", 2001;

(c) "The National Association for the Education of Young Children (NAEYC) Standards for Early Childhood Professional Preparation", 2001; and

(d) "New Teacher Standards for Preparation and Certification: Interdisciplinary Early Childhood Education, Birth to Primary - Standards with Criteria and Preamble", September 2002, Education Professional Standards Board.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Blvd., [400 Airport Road, 3rd 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?2>.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: August 17, 2021

FILED WITH LRC: August 24, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on

November 29, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the professional certificate for interdisciplinary early childhood education, birth to primary and the standards for approval of a program leading to this certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for issuance of the interdisciplinary early childhood education, birth to primary certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. This administrative regulation sets the standards and procedures for issuance of the interdisciplinary early childhood education, birth to primary certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for issuance of the interdisciplinary early childhood education, birth to primary certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the grade point average required for issuance of the certificate to align with other certificates and updates the standards of preparation to the most recent versions. The amendment also removes portions of the regulation that are now contained in other regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the required grade point average, update the standards of preparation, and remove portions that are now contained in other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the grade point average required for issuance to align with other certificates and updates the standards to the current versions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts, 30 educator preparation program providers, and educators seeking this certificate.

(4) Provide an analysis of how the entities identified in question



(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will be required from districts. Educator preparation providers will have to ensure that their programs align to the current standards of preparation. Applicants for the certificate will have to ensure that they have the requisite grade point average.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be some costs to the educator preparation providers in reviewing programs and ensuring that they align to the updated standards. There is no cost associated with this amendment for districts and applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Educators will be prepared with the current standards for teaching interdisciplinary early childhood education, birth to primary. Districts will have access to a pool of certified candidates that have been prepared under the current standards and meet the GPA requirements.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost

incurring program but, rather, establishes the standards for the interdisciplinary early childhood education, birth to primary certificate.

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amendment)

#### 16 KAR 2:050. Certificates for teachers of exceptional children/communication disorders.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.053, 334A.020, 334A.033, 334A.035, 334A.060, 334A.190

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.053

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation and other requirements prescribed by the Education Professional Standards Board (EPSB). KRS 161.030 requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the EPSB [Education Professional Standards Board]. KRS 161.053 requires the EPSB [Education Professional Standards Board] to promulgate administrative regulations to establish requirements relating to certification of teachers of exceptional children/communication disorders. This administrative regulation establishes the certificates for teachers of exceptional children/communication disorders and the corresponding standards for issuance [and procedures for program approval.]

Section 1. [A student who meets the deadlines established in subsection (5) of this section shall meet the requirements established in this section for a standard certificate.

~~(1) The standard certificate for teachers of exceptional children and youth communication disorders shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board administrative regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 16 KAR 5:010.~~

~~(2)(a) The standard certificate for teachers of exceptional children and youth communication disorders shall be issued in accordance with the testing and internship provisions of KRS 161.030, 16 KAR 6:010, and 16 KAR 7:010.~~

~~(b) Upon successful completion of the beginning teacher internship, the certificate shall be:~~

~~1. Extended for the remainder of a five (5) year period; and~~

~~2. Renewed for subsequent five (5) year periods upon completion by September 1 of the year of expiration of:~~

~~a. Three (3) years of successful experience as a teacher of communication disorders; or~~

~~b. At least six (6) semester hours of credit or the equivalent in PSDU's or CEU's, as defined in 16 KAR 8:021.~~

~~(3)(1) The standard certificate for teachers of exceptional children and youth communication disorders shall be valid at all age levels for the instruction of exceptional children and youth with communication disorders.~~

(2) The standard certificate shall be renewed for subsequent five (5) year periods upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of one of the following by September 1 of the year of expiration:

(a) Three (3) years of successful experience as a teacher of communication disorders;

(b) At least six (6) semester hours of graduate credit or the equivalent in exceptional children or communication disorders; or

(c) Current certification with the American Speech-Language-Hearing Association (ASHA).]

~~(4) The standard certificate for teachers of exceptional children and youth communication disorders shall be issued to an applicant who has completed a master's degree in communication~~

or speech language pathology.

~~(5) A student enrolled in an approved preparation program leading to the standard certificate for teachers of exceptional children and youth – communication disorders shall complete all required coursework by September 1, 2000 and apply for certification by December 31, 2000. A student failing to meet these deadlines shall complete the preparation and certification requirements established in Section 2 of this administrative regulation.]~~

~~Section 2. [A student who does not meet the deadlines established in Section 1(5) of this administrative regulation shall meet the requirements established in this section for a professional certificate.]~~

~~(1) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), the [The] professional certificate for teachers of exceptional children/communication disorders shall be issued [in accordance with the pertinent Kentucky statutes and Education Professional Standards Board administrative regulations] to an applicant who has completed;~~

~~(a) A master's degree in speech language pathology;~~

~~(b) The approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 16 KAR 5:010; and, [.]~~

~~(c) The testing requirements established in 16 KAR 6:010.~~

~~(2) The professional certificate for teachers of exceptional children/communication disorders shall be issued in accordance with the [testing and] internship provisions of KRS 161.030[, 16 KAR 6:010,] and 16 KAR 7:010. [Upon successful completion of the beginning teacher internship, the certificate shall be extended for the remainder of the five (5) year period and shall be renewed for subsequent five (5) year periods upon completion of the renewal requirements established in 16 KAR 4:010.]~~

~~(3) The professional certificate for teachers of exceptional children/communication disorders shall be valid at all age levels for the instruction of exceptional children with communication disorders.~~

~~(4) The professional certificate for teachers of exceptional children/communication disorders shall be renewed for subsequent five (5) year periods upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of one of the following by September 1 of the year of expiration:~~

~~(a) Three (3) years of successful experience as a teacher of communication disorders;~~

~~(b) At least six (6) semester hours of graduate credit or the equivalent in exceptional children or communication disorders; or~~

~~(c) Current certification with ASHA.]~~

~~(4) The professional certificate for teachers of exceptional children/communication disorders shall be issued to an applicant who has completed a master's degree in speech language pathology.]~~

~~Section 3. (1) The EPSB [Beginning July 14, 2000, the Education Professional Standards Board] shall certify teachers of exceptional children/communication disorders who hold licensure as a speech-language pathology assistant issued by the Kentucky Board of Speech Language Pathology and Audiology under KRS Chapter 334A who meet the qualifications established in this section of this administrative regulation.~~

~~(2) An applicant shall submit an application to the EPSB, comply with 16 KAR 2:010, Section 3(1), and submit proof of:~~

~~(a) Postsecondary education;~~

~~(b) Licensure as a speech-language pathology assistant;~~

~~(c) Experience in the Kentucky public schools; and~~

~~(d) Successful completion of the required content area assessments established for this certificate in 16 KAR 6:010.~~

~~(3)[(2)(a)] Applicants who possess a valid license for speech language pathology assistant issued under KRS Chapter 334A who have at least two (2) years [one (1) year] of successful experience in Kentucky's public schools in this position shall be issued the "professional certificate for exceptional children/communication disorders/SLPA only" valid for five (5) years.] and shall be renewed for subsequent five (5) year periods upon completion of the renewal requirements established in KAR~~

Title:

~~(b) Applicants shall submit Form TC-161 with documentation of postsecondary education, licensure and experience.]~~

~~(4)[(3)(a)] Applicants who possess a valid license for speech language pathology assistant issued under KRS Chapter 334A who do not have successful experience in Kentucky's public schools in this position shall be issued a statement of eligibility valid for five (5) years.~~

~~(a)[4.] The teacher shall complete the Kentucky Teacher Internship Program established in 16 KAR 7:010.~~

~~(b)[2.] Upon successful completion of the beginning teacher internship, the teacher shall be issued a "professional certificate for exceptional children/communication disorders/SLPA only" valid for the remainder of the five (5) year period, [and shall be renewed for subsequent five (5) year periods upon completion of the renewal requirements established in KAR Title 16.~~

~~(b) Applicants shall submit Form TC-161 with documentation of postsecondary education and licensure.]~~

~~(5) The professional certificate for exceptional children/communication disorders/SLPA only shall be renewed for subsequent five (5) year periods upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of one of the following by September 1 of the year of expiration:~~

~~(a) Three (3) years of successful experience as an SLPA;~~

~~(b) At least six (6) semester hours of graduate credit or the equivalent in exceptional children or communication disorders; or,~~

~~(c) Current certification with ASHA~~

~~(4) Beginning July 1, 2001, an applicant for the "professional certificate for exceptional children/communication disorders/SLPA only" shall successfully complete the required content area assessments established for this certificate in 16 KAR 6:010.]~~

~~(6)[(5)] A teacher certified under this section of this administrative regulation shall remain a speech language pathology assistant requiring supervision under KRS Chapter 334A until the teacher:~~

~~(a) Completes the master's degree in speech language pathology; and~~

~~(b) Gains the professional certificate for exceptional children/communication disorders established in Section 2 of this administrative regulation.]~~

~~Section 4. Incorporation by Reference. (1) Form TC – 161, 7/2000, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: August 17, 2021

FILED WITH LRC: August 24, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 29, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certificates for teachers of exceptional children/communication disorders and the corresponding standards for issuance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for issuance of the certificates for teachers of exceptional children/communication disorders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.053 requires the EPSB to promulgate administrative regulations to establish requirements relating to certification of teachers of exceptional children/communication disorders. This administrative regulation establishes the certificates for teachers of exceptional children/communication disorders and the corresponding standards for issuance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for issuance of certificates for teachers of exceptional children/communication disorders.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the references to certification deadlines and an application form that are no longer applicable. The amendment also updates the required years of experience for issuance of the speech language pathology assistant certificate from one (1) year to two (2) years to align with the requirements of KRS 161.053. Finally, the amendment expands upon the renewal requirements for the certificates for teachers of exceptional children/communications disorders.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the required years of experience for issuance of the speech language pathology assistant certificate from one (1) year to two (2) years to align with the requirements of KRS 161.053. It is also necessary to expand the options for certification renewal for teachers of exceptional children/communication disorders.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.053 requires the EPSB to promulgate administrative regulations to establish requirements relating to certification of teachers of exceptional children/communication disorders.

(d) How the amendment will assist in the effective administration of the statutes: The required years of experience for issuance of the speech language pathology assistant certificate will be updated from one (1) year to two (2) years to align with the requirements of KRS 161.053. The references to certification deadlines and an application form that are no longer applicable will also be removed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts, 30 educator preparation program providers, and educators seeking this certificate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will be required from

districts or educator preparation providers. Applicants for the speech language pathology assistant certificate will have to ensure that they have two (2) years of experience as required by statute.

(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): Speech language pathology assistants will meet the requirements of KRS 161.053 and educators holding certificates for exceptional children/communications disorders, will have additional options for certification renewal.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.028, 161.053.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the standards for the certificates of teachers of exceptional children/communication disorders.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amendment)

**16 KAR 4:020. Certification requirements for teachers of exceptional children.**

RELATES TO: KRS 157.200, 157.250, 161.020, 161.028(1), 161.030, [161.400,] 20 U.S.C. 1412; 34 C.F.R. 300.156 [4221(e), 1400-1419]

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.028 require the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate for all public-school positions, including those for teaching exceptional children. This administrative regulation establishes the certification requirements for teachers of exceptional children.

Section 1. Certification Requirements for Assignment of Special Education Personnel. (1) In accordance with Chapter 2 of Title XVI of the Kentucky Administrative Regulations, the EPSB shall issue certificates for teaching exceptional children with one or more of the disabilities defined in 34 C.F.R. 300.8 and 707 KAR 1:002.

(2) A teacher holding the following certification shall be assigned to serve students with moderate and severe disabilities at any grade level: Certification for Teaching Exceptional Children – Moderate and Severe Disabilities, Grades Primary Through 12.

(3) A teacher holding the following certification shall be assigned to serve students with learning and behavior disorders:

(a) Certification for Teaching Exceptional Children – Learning and Behavior Disorders, Grades 8 Through 12; or

(b) Certification for Teaching Exceptional Children – Learning and Behavior Disorders, Grades Primary Through 12

(4) A teacher holding the following certification shall be assigned to serve students with visual impairments at any grade level: Certification for Teaching Exceptional Children – Visually Impaired, Grades Primary Through 12.

(5) A teacher holding the following certification shall be assigned to serve students with hearing impairments at any grade level:

(a) Certification for Teaching Exceptional Children – Hearing Impaired, Grades Primary Through 12; or

(b) Certification for Teaching Exceptional Children – Hearing Impaired with Sign Proficiency, Grades Primary Through 12

(6) A teacher holding the following certification shall be assigned to serve students with speech and language and communications disorders: Certification for Teaching Exceptional Children – Communication Disorders, Grades Primary Through 12.

(7) A teacher holding the following certification shall be assigned to serve students with orientation and mobility disabilities: Certification for Teaching Exceptional Children – Orientation and Mobility Specialist. [Mild mental disability (MMD). A teacher holding the following certification shall be assigned to serve pupils with mild mental disabilities at any grade level:

(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).

(2) Orthopedic impairment (OI).

(a) A teacher holding the following certification shall be assigned to serve pupils with orthopedic impairments at any grade level:

1. Certification for orthopedically handicapped or physically handicapped, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

2. Certification for teaching exceptional children.

(b) A teacher possessing one (1) of the certificates identified in paragraph (a)2 of this subsection shall be assigned based on the learning characteristics and services needs of the child.

(3) Other health impairment (OHI).

(a) A teacher shall be assigned to serve pupils identified as other health impaired at any grade level based upon the learning characteristics and services needs of the child; and

(b) A teacher assigned to pupils identified as other health impaired shall possess a certificate for teaching exceptional children.

(4) Specific learning disability (LD). A teacher holding the following certification shall be assigned to serve pupils with learning disabilities at any grade level:

(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).

(5) Developmental delay (DD). A teacher holding the following certification shall be assigned to serve pupils with developmental delay at any grade level:

(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).

(6) Emotional-behavioral disability (EBD).

(a) A teacher holding the following certification shall be assigned to serve pupils identified as emotional-behavioral disabled at any grade level:

1. Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12);

2. Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

3. Certification for teaching exceptional children.

(b) A teacher possessing one (1) of the certificates identified in paragraph (a)6 of this subsection shall be assigned based on the learning characteristics and services needs of the child.

(7) Functional mental disability (FMD). A teacher holding the following certification shall be assigned to serve pupils with functional mental disabilities at any grade level:

(a) Certification for trainable mentally handicapped, grades K-12;

(b) Certification for teaching the trainable mentally retarded, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12);

(c) Certification for teaching the severely and profoundly handicapped at any grade level; or

(d) Certification for teaching the moderately and severely disabled, grades P-12.

(8) Multiple disabilities (MD).

(a) A teacher shall be assigned to pupils at any grade level who have multiple disabilities consistent with the nature of each of the student's different disabilities and based on the learning characteristics and services needs of the child; and

(b) A teacher assigned to pupils with multiple disabilities shall possess a certificate for teaching exceptional children.

(9) Deaf-blindness.

(a) A teacher shall be assigned to serve pupils identified with deaf-blindness at any grade level based on the learning characteristics and services needs of the child; and

(b) A teacher assigned to pupils identified with deaf-blindness shall possess a certificate for teaching exceptional children.

(10) Autism.

(a) A teacher shall be assigned to serve pupils identified with autism at any grade level based on the learning characteristics and services needs of the child; and

(b) A teacher assigned to pupils identified with autism shall possess a certificate for teaching exceptional children.

(11) Traumatic brain injury (TBI).

(a) A teacher shall be assigned to serve pupils identified as having a traumatic brain injury at any grade level based on the

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

learning characteristics and services needs of the child; and

(b) A teacher assigned to pupils identified as having a traumatic brain injury shall possess a certificate for teaching exceptional children.

(12) Hearing impaired (HI). A teacher holding the following certification shall be assigned to serve pupils with hearing impairments at any grade level:

(a) Certification for teaching the hard of hearing, deaf, or hearing impaired, grades K-12, one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

(b) Certification for teaching the hearing impaired, grades P-12.

(13) Visually impaired (VI). A teacher holding the following certification shall be assigned to serve pupils with visual impairments at any grade level:

(a) Certification for teaching the partially seeing, blind, or visually impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

(b) Certification for teaching the visually impaired, grades P-12.

(14) Communication disorders. A teacher holding the following certification shall be assigned to serve pupils who have been identified as needing instruction for speech or language disorders at any grade level:

(a) Certification for speech and hearing, grades one (1) through twelve (12);

(b) Certification for speech and communication disorders, grades K-12; or

(c) Certification for communication disorders, grades P-12.

Section 2. Certification Requirements for Assignment of Interdisciplinary Early Childhood Education Teachers for the Provision of Special Education Services. (1) A teacher holding the following qualifications shall be assigned to serve birth to primary pupils who have been identified as needing special education services:

(a) Certification for interdisciplinary early childhood education offered under 16 KAR 2:140 and 16 KAR 2:040;

(b) Exemption identified in 16 KAR 2:040; or

(c) Qualifications set forth in 704 KAR 3:410, Section 7(1)(a).

(2) A special education teacher identified in Section 1 of this administrative regulation shall not be precluded from providing services in the teacher's certification area to birth to primary pupils with disabilities if that certification is valid for the primary ages.

Section 3. Probationary and Emergency Provisions. (1) If no regularly certified teacher as delineated in Sections 1 and 2 of this administrative regulation is available to provide the special education services, the local district may employ a teacher certified on a probationary status under 16 KAR 2:160.

(2) If no probationary certified special education teacher is available, the district may employ a teacher certified on an emergency status under the requirements of KRS 161.100 and 16 KAR 2:120.]

Section 2.[Section 4.] Waiver Requests for Teacher Assignment. (1) Local school districts which need to assign teachers to teach exceptional classes or students[pupils], with the exception of students[pupils] receiving services for communication disorders, not consistent with the teacher's certification[the above criteria] shall request a waiver for the teacher assignment through the Kentucky Department of Education's (KDE) Office of Special Education and Early Learning[Education, Office of Special Instructional Services, Division of Exceptional Children] and be approved by the EPSB[Education Professional Standards Board].

(2) The EPSB[Education Professional Standards Board] and KDE[Department of Education] shall give consideration for this approval based on information provided by the local school district in its request. The request shall include:]

(a) Be made prior to September 15 or within fifteen (15) school days of the need for assignment if it occurs after September 15 of the school year for which a waiver is requested; and

(b) Include:]

[a][4-] The teacher's name, school assignment, certificate number, class plan assignment, and current certification;

[b][2-] A listing of pupils currently served by category of exceptionality;

[c][3-] A listing of pupils the district is requesting to be served by exceptionality; and

[d][4-] Any other relevant information which the district wishes to have considered in the decision-making process.

(3) Following consideration by the KDE[Department of Education] and approval by the EPSB[Education Professional Standards Board], the local district shall be promptly notified of the decision on the waiver request.

(4) The assignment shall not exceed the length of the school year for which it was initiated.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: August 17, 2021

FILED WITH LRC: August 24, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 29, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification requirements for teachers of exceptional children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for teachers of exceptional children and the procedures for requesting a waiver for the teacher assignments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate. This administrative regulation establishes the certification requirements for teachers of exceptional children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the certification requirements for the assignment of special education personnel and sets the procedures for requesting a waiver for the teacher assignments.

(2) If 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 references to special education certificates that are no longer issued and updates the assignment of special education personnel to align with current special education certificates. The amendment removes portions of the regulation that are now contained in other regulations and updates the procedures for requesting a waiver of the assignment of teachers of exceptional students to align with current practices.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the certification

requirements for the assignment of special education personnel to align with current special education certificates and to update the procedures for requesting a waiver of the assignment of teachers of exceptional students to align with current practices.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will remove references to certificates that are no longer issued and update the assignment of special education personnel to align with current special education certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts, 30 educator preparation program providers, and educators seeking this certificate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts will need to ensure that the assignment of special education personnel aligns with the updated certification requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certification requirements for the assignment of special education personnel will align to current certificates. District will have additional flexibility in when they may request waivers for the assignment of teachers.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

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

years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program.

#### CABINET FOR GENERAL GOVERNMENT

##### Department of State

##### Office of Business Services

##### (Amendment)

#### 30 KAR 3:010. Application for registration of trademarks and service marks.

RELATES TO: KRS 365.571, 365.573, 365.593

STATUTORY AUTHORITY: KRS 365.571(1), 365.573(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 365.571(1) requires the Secretary of State to promulgate an administrative regulation establishing application requirements for registration of trademarks and service marks. This administrative regulation establishes application requirements for registration of trademarks and service marks.

Section 1. Requirements for Application for Registration of a Trademark or Service Mark. (1) Application for registration of a trademark or service mark shall be made to the Secretary of State, pursuant to KRS 365.571(1), by submitting:

(a) A completed "Trademark/Service Mark Application";

(b) The registration fee required by KRS 365.571(6); and

(c) The mark specimens required by KRS 365.571(5).

(2) The application shall not be accepted for filing until the requirements of subsection (1) of this section have been met.

(3) The application shall be in English.

Section 2. Application Which Includes Multiple Classes. An application may be filed which includes goods or services falling into multiple classes if:

(1) The goods or services are specifically identified;

(2) An application fee of ten (10) dollars for each classification is submitted; and

(3) The application includes the dates of use and three (3) specimens for each class.

Section 3. Specimens. (1) An application for registration shall comply with KRS 365.571(5).

(2)(a) A trademark specimen shall be:

1. A label, tag or container bearing the trademark;

2. A point of sale display associated with the goods; or

3. If the nature of the goods or the nature of the mark makes the use of the mark on goods impractical, other documents related to the goods or the sale of the goods.

(b) A photocopy or photograph of a specimen identified in paragraph (a) of this subsection may be submitted.

(3) Service mark specimens shall show the mark as actually used in the sale or advertising of the services recited in the application.

(a) A service mark specimen shall be:

1. A newspaper or magazine advertisement, other form of advertisement, brochure or restaurant menu; or

2. Business documents such as letterhead, business cards or invoices, if the document shows the mark and refers to the relevant services.

(b) Printer's proofs for advertisements or words typed, printed

or written on plain paper shall not be acceptable as specimens of the mark.

Section 4. Period of Response. (1) Within thirty (30) days of notice of the secretary's determination that an applicant is not entitled to registration, an applicant shall submit:

(a) A reply to the secretary's determination; or

(b) An amended application conforming to the secretary's determination.

(2) After review of an applicant's reply or amended application, the secretary shall:

(a) Make a final determination on the application; or

(b) Permit the applicant to submit another amended application.

Section 5. Classifications. The system of classification of goods and services set out in 30 KAR 3:030 shall apply to trademark and service mark applications filed with the Secretary of State and to registrations issued on the basis of the applications. Renewals filed on registrations issued under a prior classification system shall be processed on the basis of the classification system in effect at the time the renewal application is filed.

Section 6. Incorporation by Reference. (1) The "Trademark/Service Mark Application (02/20[January–2003])" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, Suite 152, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or may be obtained at [www.sos.ky.gov](http://www.sos.ky.gov) [<http://www.kysos.com>].

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: August 27, 2021

FILED WITH LRC: August 27, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A 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 November 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 R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email [michael.wilson@ky.gov](mailto:michael.wilson@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and form for applying for trademarks and service mark registration.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process and form for applying for trademarks and service mark registration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets out the material required by statute and by the discretion of the Secretary of State as authorized by KRS 365.571.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving trademark and service mark applications

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment incorporates an updated Trademark/Service Mark Application and replaces and outdated website address.

(b) The necessity of the amendment to this administrative regulation: The Office of the Secretary of State no longer uses the form listed in the current version of this administrative regulation and the existing regulation references a website that is no longer utilized.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting out the material required by statute and by the discretion of the Secretary of State as authorized by KRS 365.571.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides uniformity and certainty to the trademark and service mark application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment any person, business, organization or state and local government that holds or seeks to receive a trademark or service mark registration.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with the contents of this regulation and incorporated form when applying for a trademark or service mark registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur negligible costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty to the trademark and service mark application process.

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

(a) Initially: There will be no costs to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing appropriations and fund sources for the Office of the Secretary of State.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and 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 impact the units, parts or divisions of state or local government only if they seek to register a trademark or service mark.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 365.571 and 365.573.

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

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to administer the processing and approval of trademark and service mark applications.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**CABINET FOR GENERAL GOVERNMENT**  
**Department of State**  
**Office of Business Services**  
**(Amendment)**

**30 KAR 3:020. Application for renewal of registration.**

RELATES TO: KRS 365.581

STATUTORY AUTHORITY: KRS 365.571(1), 365.581(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 365.581(1) requires the Secretary of State to promulgate an administrative regulation establishing the requirements for renewing registrations of trademarks or service marks. This administrative regulation establishes the requirements for renewing registrations of trademarks or service marks.

Section 1. Requirements for Application for Renewal of Registration of a Trademark or Service Mark. (1) Application for renewal of registration of a trademark or service mark shall be made to the Secretary of State, pursuant to KRS 365.581(1), by submitting:

(a) A completed "Trademark/Service Mark Renewal Application"; and

(b) The renewal fee required by KRS 365.581(1).

(2) The application for renewal shall:

(a) Include the required fee for each class for which renewal is sought in the registration;

(b) Specifically identify the particular class or classes for which renewal is sought if the registration is for multiple classes of goods or services;

(c) Include a verified statement that the mark has been and is still in use; and

(d) Provide one (1) specimen of use specific to each class of goods or services.

Section 2. Incorporation by Reference. (1) The "Trademark/Service Mark Renewal Application (02/20[January 2003])" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. This

material may also be obtained at [www.sos.ky.gov/www.kysos.com](http://www.sos.ky.gov/www.kysos.com)].

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: August 27, 2021

FILED WITH LRC: August 27, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A 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 November 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 R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email [michael.wilson@ky.gov](mailto:michael.wilson@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and form for applying for renewal of trademark and service mark registration.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process and form for applying for renewal of trademark and service mark registrations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets out the material required by statute and by the discretion of the Secretary of State as authorized by KRS 365.581.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving trademark and service mark renewal applications

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates an updated Trademark/Service Mark Renewal Application and replaces and outdated website address.

(b) The necessity of the amendment to this administrative regulation: The Office of the Secretary of State no longer uses the form listed in the current version of this administrative regulation and the regulation references a website address that is no longer utilized.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting out the material required by statute and by the discretion of the Secretary of State as authorized by KRS 365.581

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides uniformity and certainty to the trademark and service mark renewal process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any person, business, organization or state and local government that holds or seeks to receive a trademark or service mark registration.

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

(a) List the actions that each of the regulated entities identified



in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with the contents of this regulation and incorporated form when applying for a trademark or service mark renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur negligible costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty to the trademark and service mark renewal process.

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

(a) Initially: There will be no costs to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing appropriations and fund sources for the Office of the Secretary of State.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and 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 impact the units, parts or divisions of state or local government only if they seek to renew a trademark or service mark registration.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 365.581.

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

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to administer the processing and approval of trademark

and service mark registration renewal applications.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR GENERAL GOVERNMENT Department of State Office of Business Services (Amendment)

#### 30 KAR 3:030. Classification of goods and services for registration of trademarks and service marks.

RELATES TO: KRS 365.593

STATUTORY AUTHORITY: KRS 365.593

NECESSITY, FUNCTION, AND CONFORMITY: KRS 365.593

requires the Secretary of State to promulgate an administrative regulation establishing a system for classifying goods and services for purposes of application for registration of trademarks and service marks. To the extent practical, the Secretary of State is required to follow the classification of goods and services adopted by the U.S. Patent and Trademark Office. This administrative regulation establishes a system of classification of goods and services ~~conforming in compliance with~~ 37 C.F.R. 6.1 and the U.S. Patent and Trademark Office Trademark Manual of Examining Procedure [Third Edition] section 1401.

Section 1. The applicant shall indicate by number the classification of the goods or services recited in the application. The following classification of goods and services shall be used in the registration of trademarks and service marks:

(1) Chemical products[Chemicals] used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; [manures;] fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry;

(2) Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists;

(3) Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, non-medicated cosmetics and toiletary preparations; [hair lotions]; non-medicated dentifrices;

(4) Industrial oils and greases; lubricants; wax; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks;

(5) Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides;

(6) Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; iron-mongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores;

(7) Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements; incubators for eggs;

(8) Hand tools and implements; [(hand operated);-]cutlery; side arms (except firearms); razors;

(9) Scientific research, navigation [nautical], surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing

apparatus;

(10) Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials;

(11) Apparatus and installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes;

(12) Vehicles; apparatus for locomotion by land, air or water;

(13) Firearms; ammunition and projectiles; explosives; fireworks;

(14) Precious metals and their alloys and certain[or] goods made off[or] precious metals or coated therewith [with-precious metals that are, not included in other classes]; jewelry, precious and semiprecious stones; horological and chronometric instruments;

(15) Musical instruments and music stands for musical instruments; conductors' batons;

(16) Paper and [;] cardboard [and goods made from these materials that are not included in other classes]; printed matter, bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); playing cards; printers' type; printing blocks;

(17) Unprocessed and semi-processed rubber, gutta-percha, gum asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes tubes, and hoses, not of metal;

(18) Leather and imitations of leather, and goods made of these materials not included in other classes; animal skins, hides; luggage[trunks] and carrying [travelling] bags; umbrellas, parasols and walking sticks; whips, harness and saddlery;

(19) Building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments that are not of metal;

(20) Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, [ivory;] whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics;

(21) Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; unworked or semiworked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes;

(22) Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials;

(23) Yarns and threads[;] for textile use;

(24) Textiles and substitutes for textiles; houseld linens; curtains of textile or plastic[;] ~~textile goods, not included in other classes; bed and table covers;~~

(25) Clothing, footwear, headgear;

(26) Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair;

(27) Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (nontextile);

(28) Games, toys and playthings; video game apparatus; gymnastic and sporting articles not included in other classes; decorations for Christmas trees;

(29) Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats;

(30) Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, honey, treacle; yeast, baking powder, salt, mustard; vinegar, sauces (condiments); spices; ice;

(31) Raw and unprocessed agricultural, aquacultural, horticultural and forestry products and grains not included in other classes; live animals; raw and unprocessed grains and seeds;

fresh fruits and vegetables; bulbs, seedlings and seeds for planting;~~[seeds,]~~ natural plants and flowers; foodstuffs for animals, malt;

(32) Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages;

(33) Alcoholic beverages (except beers); alcoholic preparations for making beverages;

(34) Tobacco and tobacco substitutes; smokers' articles; matches; electronic cigarettes and oral vaporizers for smokers;

(35) Advertising; business management; business administration; office functions;

(36) Financial, monetary and banking services[;]~~insurance; financial affairs; monetary affairs;~~ insurance services; real estate affairs;

(37) Building construction; repair; installation services; mining extraction; oil and gas drilling;

(38) ~~[Telecommunications]~~ Telecommunication services;

(39) Transport; packaging and storage of goods; travel arrangement;

(40) Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services;

(41) Education; providing of training; entertainment; sporting and cultural activities;

(42) Scientific and technological services and research and design relating thereto~~[Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be placed in other classes];~~ industrial analysis, research and design services; quality control and authentication services; design and development of computer hardware and software;

(43) Services for providing food and drink; temporary accommodations;

(44) Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services; or

(45) Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: August 27, 2021

FILED WITH LRC: August 27, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 26, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A 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 November 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 R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7439, fax (502) 564-5687, email michael.wilson@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a system for classifying goods and services for the purpose of trademark and service mark registration.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish a uniform system for classifying goods and services for the purpose of trademark and service mark registration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes a system for classifying goods and services for the purpose of trademark and service mark registration as required by KRS 365.593.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish a uniform system for classifying goods and services for the purpose of trademark and service mark registration.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation provides greater conformity with the federal classification system by providing classification for modern and additional goods and services.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to conform Kentucky's classification of goods and services to the system adopted by the United States Patent and Trademark;

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing a system for classifying goods and services for the purpose of trademark and service mark registration.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides uniformity and certainty to trademark and service mark classification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any person, business, organization or state and local government that holds or seeks to receive a trademark or service mark registration.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with the contents of this regulation and incorporated form when applying for a trademark or service mark.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur negligible costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty to the trademark and service mark classification of goods and services.

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

(a) Initially: There will be no costs to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing appropriations and fund sources for the Office of the Secretary of State.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and 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 impact the units, parts or divisions of state or local government only if they seek to renew a trademark or service mark registration.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 365.593.

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

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to administer the processing and approval of trademark and service mark registration renewal applications.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Personnel Board (Amendment)

##### 101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075(1), 18A.0751(1), (4)[, 18A.115(4)]  
STATUTORY AUTHORITY: KRS 18A.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1) and (4) require the Personnel Board to promulgate administrative regulations for the classified service governing demotion, transfer, reinstatement, [reemployment,] and discipline. [KRS 18A.115(4) establishes requirements governing the promotion of a career employee to a position exempted from classified service.] This administrative regulation establishes the method for determining an employee's work station, the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written reprimands.

Section 1. [Definition. "Class series" means a group of positions that are similar as to the duties performed and have:

(1) Varying levels of:

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

- (a) Discretion;
  - (b) Responsibility; and
  - (c) Minimum requirements of training, experience, or skill; and
- ~~(2) Schedules of compensation that are commensurate with minimum requirements.~~

### Section 2.] Work Station.

(1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.

(3) Except as provided by Sections 2, 3, and 4, ~~and 5~~ of this administrative regulation, an appointing authority may assign an employee to work at a site other than his or her current work station if the:

- (a) Site is within the employee's county of employment; and
- (b) Assignment is not a transfer, demotion, or reinstatement.

Section 2.~~Section 3.]~~ Demotion. (1) A demotion for cause shall be intra-agency.

(2) Voluntary demotion.

(a) A voluntary demotion shall be made if an employee with status requests a voluntary demotion on the Voluntary Transfer/ Demotion/ Promotion Employee ~~[Salary Retention]~~ Agreement Form incorporated by reference ~~[prescribed]~~ by the Personnel Cabinet in 101 KAR 2:034.

(b) The form shall include:

1. ~~[A statement of the reason for the request;~~

2.] The effective date of the demotion;

2.~~3.]~~ The position from which the employee requests demotion;

3.~~4.]~~ The position to which the employee will be demoted;

4. The pay grade, salary, and work week for the position to which the employee will be demoted; and

5. A statement that the employee waives the right to appeal the demotion.

(c) The agency shall forward a copy of the form ~~[request]~~ to the Personnel Cabinet Secretary ~~[of Personnel]~~.

(3) A voluntary demotion shall be interagency or intra-agency.

Section 3.~~Section 4.]~~ Transfers. (1) The transfer of an employee with status shall conform to the requirements established in this section.

(2)(a) A transfer shall be on a voluntary or involuntary basis.

(b) An appointing authority shall establish cause ~~[a reasonable basis]~~ for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall:

1. Indicate that the employee:

a. Has been selected for transfer; and

b. Is required to report to the new work station; and

2. State the:

a. New work station;

b. Reason for the transfer;

c. Effective date of the transfer; and

d. Right of the employee to appeal the transfer to the board within sixty (60) calendar days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Personnel Cabinet Secretary ~~[of Personnel]~~.

(d) An employee shall report to the new work station upon the date specified in the notice.

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

(a) An employee shall be entitled to travel ~~[and moving]~~ expenses as provided by 200 KAR 2:006;

(b) An employee shall receive a written notice of involuntary

transfer at least thirty (30) calendar days prior to the effective date of the transfer;

(c) The notice shall contain:

1. The information specified in subsection (3)(b) of this section; and

2. A statement that the employee is entitled to:

a.] reimbursement of travel expenses incurred ~~[within]~~ thirty (30) calendar days following ~~[of]~~ the effective date of the transfer ~~[notice; and~~

b. Moving expenses, if any].

(5) An involuntary transfer shall be intra-agency.

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer/ Demotion/ Promotion Employee ~~[Salary Retention]~~ Agreement Form incorporated by reference ~~[prescribed]~~ by the Personnel Cabinet in 101 KAR 2:034.

(b) The form shall include:

1. ~~[A statement of the reason for the request;~~

2.] The effective date of the transfer;

2.~~3.]~~ The position number and job classification ~~[including identifying number,]~~ from which the employee requests a transfer;

3.~~4.]~~ The position number and job classification ~~[including identifying number,]~~ to which the employee requests a transfer;

4. The pay grade, salary, and work week for the position to which the employee will be transferred; and

5. A statement that the employee waives the right to appeal the transfer.

(c) The agency shall forward a copy of the form ~~[request]~~ to the Personnel Cabinet Secretary ~~[of Personnel]~~.

(7) A voluntary transfer shall be interagency or intra-agency.

Section 4.~~Section 5.]~~ Reinstatement. (1) A request for reinstatement shall be submitted by the appointing authority to the Personnel Cabinet Secretary ~~[of Personnel]~~.

(2) The request shall include a finding that the candidate for reinstatement:

(a) Meets the current qualifications for the job classification to which the employee is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If the reinstatement is to a job classification ~~[series]~~ where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.

(4) The request for reinstatement shall contain a copy of the board's order ordering reinstatement, if applicable.

Section 5.~~Section 6.]~~ Written Reprimand. (1) An employee or former employee may petition the Personnel Cabinet Secretary for removal of a written reprimand and all related documentation from the employee's official personnel file after a period of three (3) years from the date of the written reprimand.

(a) An employee's request shall not be granted if the employee has received any disciplinary action or written reprimand in the three (3) years prior to the request for removal.

(b) A petition for removal shall:

1. Be made by the employee, and be dated and signed; and

2. Include the following information:

a. The employee's current position number, job classification, agency, work phone number, and work address;

b. The employee's immediate supervisor at the time of the petition for removal;

c. The date the written reprimand was issued;

d. A statement by the employee that the employee has not received any disciplinary actions or written reprimands in the three (3) years prior to the petition; and

e. A statement that the information contained in the petition is correct and complete to the best of the employee's knowledge, and that the employee has provided notification ~~[a copy]~~ of the petition to the employee's current appointing authority.

(c) The petition for removal shall be mailed by first-class mail, [of] hand-delivered to the office of the Personnel Cabinet Secretary, or submitted electronically as permitted by the

Personnel Cabinet Secretary.

(2) A petition for removal of a written reprimand shall be subject to the approval of the Personnel Cabinet Secretary.

(a) The Personnel Cabinet Secretary shall approve or deny the petition for removal within thirty (30) calendar days of receipt of the petition.

(b) If the petition is denied, the Personnel Cabinet Secretary shall notify the employee in writing and provide justification for denial. The decision by the secretary with respect to the petition shall be final and not appealable to the Personnel Board.

(c) If the petition is approved, the Personnel Cabinet Secretary shall notify the employee and the appointing authority of the employee's agency in writing of the approval.

(3) Upon removal from an employee's official personnel file maintained by the Personnel Cabinet, a written reprimand shall be handled as established in this subsection.

(a) The written reprimand shall be delivered to the Office of Legal Services and remain in the custody and care of the Office of Legal Services.

(b) The Office of Legal Services shall maintain the written reprimand [document] as confidential work-product materials for the availability or use in any future legal proceeding.

(c) If no legal proceeding involving the employee's personnel file has been filed within five (5) years of receipt, the written reprimand shall be permanently destroyed.

(d) Upon removal from the official personnel file, but prior to destruction, a written reprimand shall not be considered as part of any personnel action.

(e) The employing agency shall be notified by the Personnel Cabinet of the removal of a written reprimand from an employee's official personnel file.[]

~~Section 7. Incorporation by Reference. (1) "Voluntary Transfer/Demotion/ Salary Retention Agreement Form", March 2011, Personnel Cabinet, is incorporated by reference.~~

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

MARK A. SIPEK, Executive Director, Personnel Board

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, 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 November 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email [stafford.easterling@ky.gov](mailto:stafford.easterling@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the method for determining an employee's work station, the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written

reprimands.

(b) The necessity of this administrative regulation: This regulation is necessary to adopt requirements and procedures of any actions taken or requested involving classified employees work station, demotion, transfer, reinstatement and written reprimands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.078(1) and (4) requires the Board to promulgate administrative regulations for the classified service governing employee actions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to process classified employee actions.

(2) If 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 time and method requirements for filing, releases the incorporation of the Voluntary Transfer/Demotion/Promotion Employee Agreement Form from this regulation as it is a Personnel Cabinet form properly incorporated in 101 KAR 2:034, and corrects various syntax and grammar errors.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide uniform employee actions across all state agencies.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is required by KRS 18A.075 to administer regulations for the classified service employees governing demotion, transfer, reinstatement, and discipline.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistency for effective administration of the procedures governing employee actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies with classified 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: There will not be any new actions required of the entities identified in question (3) 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 additional cost to the entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continued compliance of this regulation will provide uniformity to the classified employee actions.

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

(a) Initially: There will be no cost to implement this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? Personnel Board, Personnel Cabinet, and all other state government agencies with classified employees covered under KRS Chapter 18A.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, 18A.075(1) (4), 18A.005 to 18A.200.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are no estimated costs to administer the amendments to this regulation.

(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. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

**GENERAL GOVERNMENT CABINET  
Personnel Board  
(Amendment)**

**101 KAR 1:345. Disciplinary actions.**

RELATES TO: KRS 18A.020, 18A.075, 18A.0751, 18A.095, 29 U.S.C. 201

STATUTORY AUTHORITY: KRS 18A.075 (1) [Chapter 13A], 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing dismissals, suspensions, fines, and other disciplinary measures. This administrative regulation describes conditions for instituting disciplinary measures and the manner of notification. [KRS 18A.095 relates specifically to dismissals, suspensions and other penalizations. KRS 18A.020 relates, in part, to written reprimands. This administrative regulation will replace 101 KAR 1:340 which includes repetition of statutory language which is being repealed.]

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 2. Dismissal. (1) The notice required by KRS 18A.095(6) and (7) may be combined provided all requirements are satisfied.

(2) When the employee is notified, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the [Commissioner-of] Personnel Cabinet Secretary [on the same date notice is delivered to the employee].

Section 3. Demotion. When the employee is notified, copies of the notice of demotion shall be forwarded to the [Commissioner-of] Personnel Cabinet Secretary [on the same date notice is delivered to the employee].

Section 4. Suspension. (1) A suspension shall not exceed thirty (30) working days.

(2) An employee on initial probation [without status] may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(3) When the employee is notified, copies of the notice of suspension shall be forwarded to the [Commissioner-of] Personnel Cabinet Secretary [on the same date notice is delivered to the employee].

Section 5. Disciplinary Fine. (1) A disciplinary fine shall not exceed ten (10) days' pay. The fine shall be computed on the basis of the employee's current salary. The fine shall not conflict with requirements of the Fair Labor Standards Act of 1938, 29 U.S.C. 201, or other minimum wage requirements established by legislative or executive authority.

(2) Prior to imposition of a disciplinary fine, the employee shall be notified in writing of the amount of the fine by the appointing authority [in writing of the amount of the fine].

(3) An employee on initial probation [without status] may also be fined for a period not to exceed ten (10) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(4) When the employee is notified, copies of the notice of disciplinary fine shall be forwarded to the [Commissioner-of] Personnel Cabinet Secretary [on the same date notice is delivered to the employee].

MARK A. SIPEK, Executive Director, Personnel Board

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, 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 November 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email [stafford.easterling@ky.gov](mailto:stafford.easterling@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines conditions for instituting disciplinary measures and the manner of notification.

(b) The necessity of this administrative regulation: This regulation is necessary to set the requirements of processing disciplinary actions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 18A.075, 18A.005 to 18A.200 specifies that the Board adopt a regulation describing conditions for properly instituting disciplinary measures and notification to the employee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to process disciplinary actions.

(2) If 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 Chapter 13A from the Statutory Authority and adds 20 U.S.C. 201 as it relates to this regulation regarding a disciplinary fine.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide uniformity with the requirements of the Fair Labor Standards Act.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment verifies conformity with KRS 18A.075 and KRS 18A.0751 by fully describing the procedures for instituting a disciplinary action.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistently required for effectively processing disciplinary actions.

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

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

(a) List 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 not be any new actions required of the entities identified in question (3) 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 additional cost to the entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continued compliance of this regulation will provide uniformity among all entities identified in question 3.

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

(a) Initially: There will be no cost to implement this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees 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? Personnel Board, Personnel Cabinet, and all other State Government Agencies required to administer disciplinary actions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075 and 18A.0751.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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 are no estimated costs to administer the amendments to this regulation.

(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. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

#### GENERAL GOVERNMENT CABINET Personnel Cabinet (Amendment)

#### 101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS Chapter 13B, 18A.075, 18A.0751, 18A.095, 344.030

STATUTORY AUTHORITY: KRS 13B.170, 18A.075, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations to carry out the provisions of KRS Chapter 13B and enact administrative hearing procedures. KRS 18A.075 provides that the Personnel Board shall promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 provides that the Personnel Board shall promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation establishes Personnel Board hearing procedures.

Section 1. Definitions. (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).

(2) "Qualified individual with a disability" is defined by KRS 344.030(1).

(3) "Reasonable accommodation" is defined by KRS 344.030(6).

(4) "Religion" is defined by KRS 344.030(7).

(5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

Section 3. Filing. (1) An appeal or a document relating to an appeal shall be filed with the Personnel Board through the office of the executive director within the time period set forth in KRS 18A.095 [~~after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence~~].

(2)(a) An appeal, motion, request, objection, exception, response, witness list or other document may be filed by a party with the board by means of facsimile transmission or other electronic means including email.

(b) If a party transmits a document to the board by facsimile transmission or other electronic means, they [he] shall attempt to transmit the document to all parties by the same method [~~facsimile transmission~~].

VOLUME 48, NUMBER 4– OCTOBER 1, 2021

(3) To be timely filed, a document transmitted by facsimile or other electronic means shall be received by the board within the statutory or regulatory times specified for filing and be received by the board no later than midnight on the last day for filing.

(4) The submission of an original copy of a facsimile transmission or email shall not be required, unless upon request.

(5) ~~[be received by the Personnel Board no later than three (3) business days after transmission or the document transmitted shall be voided unless good cause is shown.]~~

(5) ~~The date of filing of a document filed by facsimile transmission shall be the date the original of the document was received by the board, if the board fails to receive the facsimile transmission.~~

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal without the advance written permission of an appointing authority in their employing agency.

(6) ~~[(7)]~~ An appeal shall be heard in Franklin County ~~[Frankfort]~~, Kentucky.

Section 4. Designation of Hearing Officer. (1) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to an appeal.

(2) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief hearing officer.

(3) If an appeal will be heard by the full board, ~~[the chairman of]~~ the board shall designate a ~~[serve as the]~~ chief hearing officer.

Section 5. Continuances. (1) A continuance of a scheduled hearing may be granted by a hearing officer for good cause.

(2) The hearing officer has the discretion to require that a request for continuance must ~~[A request for a continuance shall]:~~

(a) Be written;

(b) State the reason for the request;

(c) Include proposed dates for rescheduling the hearing; and

(d) Be filed with the board; and

~~(e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.]~~

(3) The hearing officer has the discretion to require that any objection to a request for continuance must ~~[An objection to a request for a continuance shall]:~~

(a) Be written;

(b) State the reason for the objection to the request for continuance; and

(c) Be filed with the board; and

~~(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.]~~

(4) (a) At the direction of the hearing officer, the executive director may ~~[shall]~~ execute and transmit to all parties an interim order either granting or denying the request for continuance.

(b) If the request for continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 6. Prehearing Procedures. (1) A motion, request, or filing shall be in writing, filed with the board through the office of the executive director, and served on all parties.

(2) Unless an interim order provides for review by the board prior to the conclusion of a hearing, which shall only be granted at the sole discretion of the hearing officer, the board shall review an interim order when it considers the recommended order, record, and exceptions.

(3) If an employee retains counsel subsequent to filing an ~~[his]~~ appeal, their ~~[his]~~ attorney may be required to ~~[shall]~~ file a written entry of appearance.

(4) An employee shall notify all parties and the board in writing of a change of address.

(5) (a) A Kentucky Personnel Board subpoena form shall be available in the office of the executive director and shall be issued by the executive director.

(b) Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(6) A deposition may be taken in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least fifteen (15) calendar days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.

(7) At the discretion of the ~~[Upon agreement of all parties and approval by the]~~ hearing officer, two (2) or more appeals that ~~[which]~~ involve the same or similar facts may be consolidated. Upon motion of a party, or upon their ~~[his]~~ own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

(8) An agreed settlement shall be submitted in writing for review by the Personnel Cabinet Secretary and final action by the board.

Section 7. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

(2) A party shall provide at least four (4) copies of an exhibit that is to be introduced as evidence. The parties may exchange documents through appropriate electronic means, including email. The hearing officer shall have the discretion to appropriately fashion the evidentiary record at all times. ~~[Copies shall be prepared prior to the hearing.]~~

Section 8. Board Review and Action. (1) A response to a written exception to a recommended order may be filed by a party within fifteen (15) ~~[five (5)]~~ calendar days after the date the written exception is filed with the board. A response shall be:

(a) In writing; and

(b) Served on all parties.

(2) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:

(a) In writing; and

(b) Filed with the board within fifteen (15) days of issuance of a recommended order.

(3) A final order shall be prepared, executed, and entered at the direction of the board by the secretary to the board.

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Kentucky Personnel Board Appeal Form (1-~~[f]~~2018)"; and

(b) "Kentucky Personnel Board Subpoena Form (2-~~[f]~~90)".

(2) These forms may be inspected, copied, or obtained at the office of the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, 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 November 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email [stafford.easterling@ky.gov](mailto:stafford.easterling@ky.gov).



# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the Personnel Board appeal and hearing procedures.

(b) The necessity of this administrative regulation: This regulation is necessary in order to set procedures and guidelines for the Board to process appeals and conduct hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.075, 18A.0751 and KRS 13B.170 provides that the Board promulgate this regulation adopting procedures to be used when conducting hearings and processing appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to establish appeal and 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: This amendment clarifies time and method requirements for filing an appeal and updates the location where an appeal shall be heard. A state employee may use state time, equipment, materials, or personnel in pursuing an appeal if the employee receives advance written permission from the appointing authority. Also, clarifies that the Hearing Officer is granted sole discretion in determining whether an interim order provides for review by the Board prior to the conclusion of a hearing.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the procedures for the appeal process and hearing procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies the procedures for conducting hearings and conforms with KRS 13B.170, 18A.075, 18A.0751, that authorize the board to do so.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistently required for effective administration of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies and state employees who choose to file an appeal.

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

(a) List 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 not be any new actions required of the entities identified in question (3) 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 additional cost to the entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continued compliance of this regulation will provide uniformity to the appeal process and hearing procedures.

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

(a) Initially: There will be no cost to implement this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or a necessity in funding to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended assures hearings are held equally and appeals processed uniformly.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, KRS 18A.0751, 18A.005 to 18A.200, and KRS 13B.170.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are no estimated costs to administer the amendments to this regulation.

(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. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

## GENERAL GOVERNMENT CABINET Personnel Board (Amendment)

**101 KAR 1:367. Standards of conduct and technology governing recording ~~[electronic media and still photography coverage of]~~ board proceedings.**

RELATES TO: KRS 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations provisions for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation will govern any and all recordings ~~[the use of electronic media and still photography coverage]~~ of ~~[board]~~ Personnel Board proceedings.

Section 1. Equipment, ~~[and] Personnel, [-] and Location. The Personnel Board, its hearing officers, and staff shall have the discretion to determine:~~

(1) The appropriate and permissible equipment used for recording Personnel Board proceedings;

(2) The appropriate and permissible personnel allowed to

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

record Personnel Board proceedings; and

(3) The appropriate and permissible location(s) for the equipment and personnel allowed to record Personnel Board proceedings. The Personnel Board, its hearing officers, and staff may use the discretion afforded them primarily to ensure that the process of recording Personnel Board proceedings does not produce distracting sound or light, which would unduly disrupt the orderly conduct of those proceedings. (1) Not more than one (1) portable television camera (film camera – sixteen (16) mm sound on film (self-blimped) or video tape electronic camera), operated by not more than one (1) camera person, shall be permitted in any board proceeding. Not more than two (2) television cameras, operated by not more than one (1) camera person each, shall be permitted in any meeting of the board.

(2) Not more than one (1) still photographer, utilizing not more than two (2) still cameras with not more than two (2) lenses for each camera and related equipment for print purposes shall be permitted in any board proceeding.

(3) Not more than one (1) audio system for radio broadcast purposes shall be permitted in any board proceeding. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the hearing room. If no technically suitable audio system exists in the hearing room, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the presiding hearing officer.

(4) Requests for coverage, which need not be in any particular form, shall be made to the presiding hearing officer. Subject to the provisions of subsection (5) of this section, approval of such requests shall be regarded as approval of coverage for the print (photographs) or broadcast (radio and television) media generally.

(5) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the hearing officer to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the hearing officer shall exclude all contesting media personnel from a proceeding.

Section 2. Sound and Light Criteria. (1) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover board proceedings. Specifically, such photographic and audio equipment shall produce no greater sound or light, when such equipment is in good working order than the following equipment:

(a) Ikegami	HL-74A, HL-53, HL-77, HL-33, HL-34, HL-35, HL-51, HL-79, HL-78A, HL-79A, HL-79D, ITC-350, ITC-240
(b) RCA	TK76, TK78
(c) Sony	DXC-1600 Trinitron, BVP-200, BVP-3000, DXC-1640
(d) ASACA	ACC-2006
(e) Hitachi	SK80, SK90
(f) Hitachi	FP-3030, FP3060A, FP-205, FP-405, GP7
(g) Philips	LDK-25
(h) Sony BVP-200	ENG Camera
(i) Fernseh	Video Camera
(j) JVC-8800u	ENG Camera
(k) AKAI	CVC-150, VTS-150
(l) Panasonic	WV-3085, NV-3085, AK-750, WV-3800
(m) JVC	GC-4800u, KY-2000

No artificial lighting device of any kind shall be employed in connection with the television camera.

(2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, such still camera equipment shall produce no greater sound or light than a thirty-five (35) mm Leica "M" Series Rangefinder camera, including blimped still reflect cameras, e.g., Nikon F2 or F3, which meet this sound and light criteria. No artificial lighting device of any kind shall be employed in

connection with a still camera.

(3) It shall be the affirmative duty of media personnel to demonstrate to the hearing officer adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein. A failure to obtain advance approval for equipment shall preclude its use in any proceeding.

Section 3. Location of Equipment Personnel. (1) Television camera equipment shall be positioned in such location in the hearing room as shall be designated by the hearing officer. The area designated shall provide reasonable access to coverage. If areas remote from the hearing room which permit reasonable access to coverage are provided, all television camera and audio equipment shall be positioned only in such area. Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the hearing room.

(2) A still camera photographer shall position himself in such location in the hearing room as shall be designated by the hearing officer. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once a photographer has established himself in a shooting position, he shall act so as not to call attention to himself through further movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of board proceedings.

(3) Broadcast media representatives shall not move about the hearing room while proceedings are in session, and microphones or taping equipment once positioned as required by Section 1(3) of this administrative regulation shall not be moved during the proceeding.]

Section 2.[Section 4.] Movement During Proceedings. At the discretion of the board, recording [News media photographic or audio] equipment shall not be placed in or removed from the hearing room except prior to commencement or after adjournment of proceedings each day, or during a recess. [Neither television film magazines nor still camera film or lenses shall be changed in the hearing room except during a recess in the proceeding.

Section 5. Hearing Room Light Sources. With the concurrence of the hearing officer, modifications and additions may be made in light sources existing in the hearing room, provided such modifications or additions are installed and maintained without public expense.]

Section 3.[Section 6.] Conferences of Counsel. To protect the attorney-client privilege and the effective right to counsel, there shall be no audio pickup or broadcast of conferences that [which] occur in the hearing room between attorneys and their clients, between co-counsel of a client, or between counsel and the hearing officer held at the bench.

Section 4.[Section 7.] Use of Media Material. Unless specifically permitted by the board, none of the recordings [film, video tape, still photographs or audio reproductions] developed during or by virtue of coverage of a board proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any rehearing or appeal of such proceedings.

Section 5.[Section 8.] Confidentiality. (1) In order to protect the legally recognized interests in confidentiality of individuals, any party may move to exclude electronic media or still photographers from the hearing room during all or any portion of a hearing. [The hearing officer shall not unreasonably refuse such a request.]

(2) The hearing officer, on their [his] own motion, may exclude electronic media or still photographers from the hearing room during all or a portion of a hearing in their [his] sound discretion.

Section 6.[Section 9.] Applicability[Board Meetings]. This administrative regulation shall apply to all Personnel Board proceedings[meetings of the full board]. Where this administrative

regulation is to be applied to a meeting of the full board, the discretion afforded the board [any function of the hearing officer] as set out herein shall be exercised [performed] by the chairman or vice-chairman of the board or, in their absence, the member of the board who is moderating the board meeting. Where this administrative regulation is to be applied to any other Personnel Board proceeding, the discretion afforded the board as set out herein shall be exercised by the hearing officer and/or member of Personnel Board staff.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, 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 November 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:** Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email [stafford.easterling@ky.gov](mailto:stafford.easterling@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs all recordings of Board proceedings.

(b) The necessity of this administrative regulation: This regulation is necessary to allow the Board to set procedures on allowable and appropriate recording equipment to be used for Board proceedings. The regulation adopts use of medial material and confidentiality requirements.

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

KRS 13a and KRS 18A.0751 requires the Personnel Board to promulgate regulations that specifies procedures to conduct Board hearings and the technology governing the recording of all Board proceedings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to process updated recording procedures.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the authority of the Board regarding permissible recording equipment and proper procedures for all board recordings.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated information regarding recording equipment used for Board proceedings.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment assures the Board has updated the permissible and appropriate recording devices for board proceedings in accordance with the Statute(s).

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and guidance on recording board proceedings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administration: This regulation affects anyone who is authorized by the board to record board proceedings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any entities wishing to record a board proceeding must be in compliance with the regulation regarding proper equipment and procedures. No distracting sound or light can be produced. Any recording developed may not be admissible as evidence unless specifically permitted by the Board. Entities must comply with the times equipment may be placed and removed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any costs by complying with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will assure that only authorized persons and equipment will be allowed when recording Board proceedings.

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

(a) Initially: There will be no cost to implement this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities 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? Anyone that meets the guidelines for recording Board proceedings will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A, 18A.005 to 18A.200 and 18A.0751.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are no estimated costs to administer the amendments to this regulation.

(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. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

**GENERAL GOVERNMENT CABINET  
Personnel Board  
(Amendment)**

**101 KAR 1:375. Employee grievances and complaints.**

RELATES TO: KRS 18A.075, 18A.0751[~~, 18A.095~~]

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 and 18A.0751 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(i) requires the Personnel Board to promulgate an administrative regulation governing employee grievances and complaints. This administrative regulation establishes the requirements governing employee grievances and complaints.

Section 1. Definitions: Grievance. A grievance is[Definition: "Grievance" means] a complaint filed by an employee that [which] concerns some aspect of their [his—or—her] conditions of employment;

(1) Over which their [the employee's] cabinet or agency has control, and

(2) Which has occurred, or of which the employee has become aware[,], through the exercise of due diligence, [,] within thirty (30) days prior to filing.

Section 2. General Provisions.

(1) An employee in the classified service who believes that they have [he—or—she—has] been subjected to unfair or unjust treatment concerning their conditions of employment may file a grievance in accordance with this procedure[administrative regulation].

(2) A grievance concerning an action that [which] is appealable directly to the board pursuant to KRS 18A.095 may also be filed with the cabinet or agency. The filing of a grievance with the cabinet or agency shall not:

(a) prohibit the employee from also filing an appeal with the board[;] or

(b) Extend the statutory appeal period.

(3) An employee utilizing this procedure shall be entitled to file a grievance without interference, coercion, discrimination, or reprisal.

(4) An appointing authority shall inform its employees of the provisions of this administrative regulation, or any modifications in the levels of review that have been approved by the Personnel Board for the employee's cabinet or agency pursuant to Section 4(3)[(4)] of this administrative regulation.

(5)(a) The Personnel Cabinet shall provide to the employees, through the appointing authorities, a grievance form to be used for the filing a grievance.

(b) "Grievance Form (Revised October 2011)" is incorporated by reference.

(c) This form may be inspected, copied, or obtained at the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 3. Procedures.

(1) A grievance shall be filed [~~on a Grievance Form~~] with an employee's immediate supervisor within thirty (30) days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action that is the subject of the grievance. If the action or conduct of the first line supervisor is the basis of an employee's grievance, the grievance may be filed with the second

line supervisor.

(2) An employee shall state in writing the basis of their [the] grievance or complaint together with the corrective action desired. If an employee wishes to submit additional information or documentation, they [the employee] may attach it to the grievance [~~Form~~].

(3) If a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, disability or age forty (40) or over, the recipient of this grievance shall immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle them to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Parties may have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels.

(1) Except as provided by Section 3(1) of this administrative regulation, the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) work days after receipt of the grievance. If the responding supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) work days of receipt of the decision by the next appropriate level.

(2) The next line supervisors shall each have five (5) work days to respond to the grievance. The employee has[shall have] five (5) work days after each intermediate supervisory review to decide to appeal the grievance to the next level.

(3) If the line supervisors are unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) work days of receipt of the decision of the final line supervisor by the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within twenty (20) work days.

(4) Unless the time limits have been extended by agreement of the parties, failure of supervisory or management personnel to respond within prescribed time limits shall automatically advance the grievance to the next review level.

(5) An intermediate grievance level may be waived by written agreement of the parties.[]

Section 5. Incorporation by Reference. (1) "Grievance Form", October 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

MARK A. SIPEK, Executive Director, Personnel Board

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, 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 November 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements governing employee grievances and complaints.

(b) The necessity of this administrative regulation: This regulation is necessary to set guidelines for classified employees on filing a grievance or complaint and the proper procedures for state agencies to process the filings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A and KRS 18A.0751 requires the Board to promulgate a regulation on the filing of grievances and complaints.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets timelines and procedures on the proper filing, and responding to, a grievance and complaint.

(2) If 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 Grievance Form and the correct address for the Board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to incorporate by reference the updated Grievance Form.

(c) How the amendment conforms to the content of the authorizing statutes: By updating the Board's address and the current revised Grievance Form the amendment fulfills the statutory requirement of KRS 18A.0751 and KRS 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates required information for effectively filing a grievance or complaint.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administration: This regulation affects all state government agencies and classified 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: To comply with the regulation the Personnel Cabinet provides the Grievance Form to appointing authorities. The Board maintains the forms for distribution, inspection, or copying. All state government agencies must comply with the regulation when a classified employee files a grievance. All appointing authorities must inform its employees of the provisions of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost by complying with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Classified employees and the agencies have clear concise guidelines on filing and receiving grievances and complaints thereby assuring the grievance or complaint is properly heard.

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

(a) Initially: There will be no cost to implement this amendment.

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

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

There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities 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? There are none impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, 18A.0751, 18A.005 to 18A.200 and KRS 13A.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No 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 are no estimated costs to administer the amendments to this regulation.

(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. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

## GENERAL GOVERNMENT CABINET Personnel Board (Amendment)

### 101 KAR 1:395. Restoration from military duty.

RELATES TO: KRS 61.371-61.379

STATUTORY AUTHORITY: KRS Chapter 13A, 61.379

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.379 directs the Personnel Board to adopt administrative regulations to carry out the provisions of KRS 61.371 to 61.379. [This administrative regulation will replace 101 KAR 1:390 which includes repetition of statutory language which is being repealed.]

Section 1. Restoration from Military Duty. (1) If an employee advises their [his] employer that they are [he is] leaving their [his] position to perform military duty, the employer shall advise the employee in writing of their [his] rights under KRS 61.371 to 61.379.

(2) An employee who returns from military duty and is denied restoration of employment shall be advised in writing of such denial by the employer.

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

(3) The required notice of denial by the employer shall include the employee's right to appeal to the Kentucky Personnel Board [state personnel board] within the time limits prescribed by KRS 413.160.

(4) Appeals filed under this section shall be heard by the Board [board] pursuant to 101 KAR 1:365.

MARK A. SIPEK, Executive Director, Personnel Board

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, 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 November 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does:

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 61.371 to 61.379.

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

KRS 13A, 61.379 directs the Board to adopt guidelines for restoration rights for employees returning from military duty.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide employees returning from military duty restoration rights.

(2) If 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 strictly for correcting syntax and grammar.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct improper use of grammar and syntax.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with KRS Chapter 13A, and KRS 61.379 by providing updates.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity by correction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state agencies and prior military state employees returning from duty and their right to restoration.

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

(a) List 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 are no actions required to be taken by the entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost by complying with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the regulation, military state employees returning from duty have the right to be restored to their prior position.

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

(a) Initially: There will be no cost to implement this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities 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? All state government agencies and military state employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A, and KRS 61.371 to 61.379.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are no estimated costs to administer the amendments to this regulation.

(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. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

**GENERAL GOVERNMENT CABINET  
Personnel Board  
(Amendment)**

**101 KAR 1:400. Promotion.**

RELATES TO: KRS 18A.075, 18A.0751, 18A.115

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 18A.075,  
18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 [18A.057] requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service governing promotion. KRS 18A.115 relates to promotion of career employees. [The amendment to] This administrative regulation establishes the requirements governing promotion of a classified employee [is required to conform to Senate Bill 61 (1994 session), and to the requirements of KRS 18A.112, 13A.200, and 13A.222].

Section 1. Promotion. (1) Agencies shall consider an applicant's qualifications, record of performance, conduct, seniority, and performance evaluations in the selection of an employee for a promotion.

(2) Promotions may be interagency or intra-agency.[

~~(3)(a) An employee in the classified service, other than a career employee, may be promoted to a position in the unclassified service.~~

~~(b) He shall not have reversion rights to a position in the classified service.~~

~~(c) An employee who was promoted or changed as a result of other action, with no break in service, from a position in the classified service to a position in the unclassified service prior to July 15, 1986, shall retain the reversion rights he held at the time of promotion or other action.]~~

Section 2. Promotion Documentation. (1) Prior to a promotion in the classified service, an employee with status shall request a promotion on the Voluntary Transfer/Demotion/Promotion Employee Agreement Form incorporated by reference by the Personnel Cabinet in 101 KAR 2:034.

(2) The form shall include:

(a) The effective date of the promotion;

(b) The position number and job classification from which the employee is promoting;

(c) The position number and job classification to which the employee is promoting;

(d) The pay grade, salary, and work week for the position to which the employee will be promoted; and

(e) A statement that the employee waives the right to appeal the promotion.

(3) The agency shall forward a copy of the form to the Personnel Cabinet Secretary.

MARK A. SIPEK, Executive Director, Personnel Board

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, 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 November 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements governing promotion of a classified employee.

(b) The necessity of this administrative regulation: This regulation is necessary to adopt the proper procedures relating to promotions of state employees.

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

KRS 18A.075 and KRS 18A.0751 requires the Board to adopt regulations that direct the proper procedures governing promotions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration by adopting proper procedures for promotions.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds Section 2 Promotion Documentation guidelines and incorporates the Voluntary Transfer/Demotion/Promotion Employee Agreement Form by reference by the Personnel Cabinet in 101 KAR 2:034.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated information regarding proper promotion procedures.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.075 and KRS 18A.0751 requires the Board to establish proper procedures regarding promotions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and guidance on promotions for classified employees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administration: This regulation affects all state government agencies, Personnel Cabinet, and classified 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: The entities will have to utilize the Voluntary Transfer/Demotion/Promotion Employee Agreement Form when processing a promotion.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any costs by complying with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will assure the entities are correctly processing promotions.

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

(a) Initially: There will be no cost to implement this amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or a necessity in funding to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities 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? All state government agencies and classified employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, 18A.0751, 18A.005 to 18A.200.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are no estimated costs to administer the amendments to this regulation.

(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. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

#### PERSONNEL CABINET Office of the Secretary (Amendment)

#### 101 KAR 2:210. 2022 [2024] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2022 [2024] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2022 [2024] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance,

and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2022 [2024] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2022 [2024] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's website on the Docs, Forms and Legal Notices page at: <https://personnel.ky.gov/Pages/healthinsurance.aspx>.

GERINA D. WETHERS, Secretary

APPROVED BY AGENCY: September 3, 2021

FILED WITH LRC: September 15, 2021 at 8:23 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021 at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on November 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: Chris Chamness, Staff Attorney, Office of Legal Services, Personnel Cabinet, 501 High Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-6815, fax (502) 564-7603, email [Chris.Chamness@ky.gov](mailto:Chris.Chamness@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Chamness

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2022 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2022.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2022 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute that establishes the self-insured plan and mandates the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2022 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is



the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(2) If 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 an amendment. The existing administrative regulation incorporates by reference the 2021 plan year handbook, which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2021. The amendment adds and incorporates by reference the 2022 plan year handbook, which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2022.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2022. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2022 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2022 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 177,897 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 292,732 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2022 plan year handbook. The 2022 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2022 plan year.

(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 provides employer and employee premium contribution information for health plans

available under the Public Employee Health Insurance Program for plan year 2022. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2022 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2022, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2022, employee contributions to health coverage premiums increased 3% across all plans combined, as compared to 2021 premiums. Employer premium contribution amounts increased 3% across all plans combined, as compared to 2021 premiums.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance 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: This is an amendment. This administrative regulation will not require an increase in funding or fees.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance Program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, school boards 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, school boards or school districts) for the first year? The administrative regulation 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? The administrative regulation will not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years.

(d) How much will it cost to administer this program for subsequent years? The 2022 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2021 open enrollment season and throughout the 2022 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could continue to recognize cost savings 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:

## BOARDS AND COMMISSIONS

### Board of Pharmacy (Amendment)

#### 201 KAR 2:030. License transfer.

RELATES TO: KRS 315.191(1)(c), (d), 315.210

STATUTORY AUTHORITY: KRS 218A.205(7), 315.191(1)(a), (c), (d), 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 authorizes the board to establish conditions for licensure by reciprocity. KRS 218A.205(7) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity.

Section 1. Definitions. (1) "Board" is defined by KRS 315.010(3).

(2) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

(3) "NABP" means the National Association of Boards of Pharmacy.

Section 2. An applicant licensed in another jurisdiction shall be eligible for license transfer, if the:

(1) Requirements for the jurisdiction that granted his or her license met or exceeded Kentucky requirements for licensure when the license in the other jurisdiction was granted;

(2) Applicant holds in good standing, an active license to practice pharmacy;

(3) Applicant has:

(a) Completed and certified the NABP Preliminary Application for Transfer of Pharmacist License form; and

(b) Received an NABP Official Application for Transfer of Pharmacist License;

(4) Applicant is currently in good standing in the jurisdiction from which he or she has applied;

(5) Applicant has successfully completed an examination in jurisprudence;

(6) Applicant has submitted to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; and

(7) Applicant has submitted to a query to the National Practitioner Data Bank of the United States Department of Health

and Human Services.

Section 3. Required Information. An applicant shall provide the information required by the NABP Preliminary Application for Transfer of Pharmacist License form, including:

(1) Name, maiden, and other names used currently or previously;

(2) Address, telephone number;

(3) Date [and place] of birth[, and current age];

(4) Social Security number;

(5) Citizenship;

(6) Sex [Gender];

(7) State of original license by examination, including:

(a) License number;

(b) Original date of issue;

(c) Current status of original licensure; and

(d) State for which license transfer is requested;

(8) Pharmacy education, including:

(a) Name and location of pharmacy school;

(b) Name of pharmacy degree;

(c) Date degree was received; and

(d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;

(9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;

(10) Total hours of practical experience as an intern prior to licensure as a pharmacist[, including the State Board of Pharmacy with which the hours are filed];

(11) States, dates, and results of pharmacist licensure examinations;

(12) Pharmacist licenses currently held, including issue date, expiration date, status and any board action taken against the license; [obtained by:

(a) Score transfer; and

(b) Licensure transfer;]

(13) Practice and employment, including nonpharmacist employment, from the past three years [initial licensure to the date of filing the application; and]

(14) Record of charges, or convictions of any felony or misdemeanor offense, other than traffic offenses, and whether or not a sentence was imposed or suspended[, and fines imposed, or certification that the applicant has not been convicted, fined, or disciplined, or had a license revoked].;]

(15) Record of any surrender of a pharmacist license or registration issued by the federal government or any state controlled substance authority;

(16) Record of any pharmacist license revocation, suspension, restriction, termination or other disciplinary action by any Board of Pharmacy or other state authority;

(17) Record of whether the pharmacist is currently under investigation or subject to disciplinary action by the licensing jurisdiction, federal Food and Drug Administration, federal Drug Enforcement Administration or any state drug enforcement authority for the violation of any state or federal pharmacy, liquor or drug laws;

(18) Record of any condition or impairment including, but not limited to, substance or alcohol abuse or dependency that in any way affects the pharmacist's ability to practice pharmacy in a safe and competent manner; and

(19) Record of any application for initial licensure, renewal licensure or licensure by transfer that was denied by any licensing authority, whether in pharmacy or any other profession.

Section 4. The board shall accept [a] license transfer applications from [a jurisdiction] jurisdictions that:

(1) Are [Is] an active member of the NABP; and

(2) Grant[Grants] license transfers[transfer] to [a] pharmacists[pharmacist] pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant shall take and pass the Multistate

Pharmacy Jurisprudence Examination administered by the NABP.

Section 6. Fee. An applicant shall include the fees[fee] specified by 201 KAR 2:050, Section 1(2)[,] and (19) [(20)].

Section 7. (1) "NABP Preliminary Application for Transfer of Pharmacist License", [3/06] April 2018, is incorporated by reference.

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

LARRY HADLEY, Executive Director

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 14, 2021 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2021 at 9:00 a.m. Eastern Time via telephonic videoconference with a physical location of 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 November 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](mailto: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 criteria for transferring a pharmacy license from another state into Kentucky.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations. Moreover, KRS 315.210 authorizes the Board of Pharmacy to promulgate regulations setting forth the criteria for license transfer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the detailed criteria and process for those seeking pharmacist license transfer from another state into the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the criteria that the statute requests be provided in regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the application criteria to ensure congruence with the National Association of Boards of Pharmacy license transfer application.

(b) The necessity of the amendment to this administrative regulation: The National Association of Boards of Pharmacy license transfer process had been amended, and this regulatory amendment is to reflect those changes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates licensees will be minimally affected. This amendment simply sets forth changes in criteria for license transfer.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies of these changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment amends the criteria for license transfer, making it possible to transfer one's pharmacist license from one state into another.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding for the implementation of the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists that desire license transfer into the Commonwealth of Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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 315.210, KRS 315.191(1)(a).

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

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

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

years? This administrative regulation will not generate revenue for the Board in subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

## BOARDS AND COMMISSIONS

### Board of Pharmacy (Amendment)

#### **201 KAR 2:074. Pharmacy services in hospitals [or other organized healthcare facilities].**

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121

STATUTORY AUTHORITY: 315.002, 315.005, KRS 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to ensure the safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in hospitals[ or other organized health care facilities].

Section 1. Definitions. (1) "Automated pharmacy system" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information and shall be either:

(a) A decentralized automated pharmacy system that is located outside the pharmacy department, but within the same institution, and under the supervision of a pharmacist; or

(b) A centralized automated pharmacy system from which medications are prepared for final distribution that require the approval of a pharmacist.

(2) "Institutional pharmacy" means:

(a) A pharmacy in an acute care hospital licensed pursuant to 902 KAR 20:016; or

(b) A pharmacy serving another organized health care facility; or

(c) An onsite pharmacy serving an infusion center where medication is administered.

(3) "Investigational drug" means a drug that has not been approved for use in the United States, but for which an investigational drug application has been approved by the FDA.

(4) ["Other organized health care facility" means a facility:

(a) ~~With a primary purpose to provide medical care and treatment to inpatients; and~~

(b) That is:

1. An intermediate care facility;

2. A skilled nursing facility;

3. ~~A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;~~

4. A licensed personal care home;

5. A licensed family care home;

6. A nursing home;

7. A nursing facility;

8. ~~An intermediate care facility for mental retardation; or~~

9. An Alzheimer's nursing home.

(5) "Unit dose distribution" means a system in which drug therapy profiles are maintained in the pharmacy and doses are scheduled, prepared, and delivered in a ready-to-administer form

to the patient care area as the doses are needed.

(5) "Within the same institution" means a location that is not separated from the primary hospital facility by other commercial or residential property.

Section 2. Pharmacy Administration. (1) General.

(a) The pharmacy, organized as a separate department or service, shall be directed by a pharmacist, who shall be thoroughly knowledgeable about institutional pharmacy practice and management.

(b) The director of pharmacy services shall be responsible for departmental management and the development and implementation of goals and objectives to meet the needs of the institution and shall be responsible to the chief executive officer of the institution or the chief executive officer's designee.

(c) If the director of pharmacy services is not employed full time, the institution shall establish an ongoing arrangement in writing with a pharmacist to provide services required by this administrative regulation and KRS 315.020(1).

(d) If a hospital pharmacy is decentralized, each decentralized section or separate organizational element shall be under the immediate supervision of a pharmacist responsible to the director of pharmacy services.

(2) Pharmacy personnel.

(a) The institutional pharmacy shall maintain additional pharmacists in cooperation with the institution's administration, either full time or part time, as required to operate safely and effectively to meet the needs of the patients.

(b) If nonpharmacist personnel are employed, nonpharmacist personnel shall perform all duties under the supervision of a pharmacist and shall not be assigned and shall not perform duties that are to be performed only by a pharmacist.

(3) Responsibilities.

(a)1. Lines of authority and areas of responsibility within the pharmacy shall be clearly defined.

2. Written job descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.

(b)1. There shall be policies and procedures to provide for selection of drugs as well as a distribution system to serve the needs of the patient.

2. Provision for procurement of drugs in an emergency situation shall be provided for.

(4) Supportive personnel.

(a) Sufficient supportive personnel (technical, clerical, and other) shall be available in order to optimize the participation of pharmacists in activities requiring professional judgment.

(b) The training and supervision of supportive personnel shall be the responsibility of the pharmacist.

(5) Availability.

(a) The services of a pharmacist shall be available continuously. If around-the-clock operation of the pharmacy is not feasible, the pharmacist shall be available on an on-call basis, and an adequate night drug cabinet shall be established. The pharmacy itself shall not be designated as the night drug cabinet.

(b) A hospital not having a full-time pharmacist, but in which drugs are prepackaged or relabeled or transferred from one (1) container to another, shall obtain a pharmacy permit and have at least a part-time pharmacist designated to perform those functions or to provide personal supervision of those functions.

Section 3. Physical Facility. (1) The institutional pharmacy shall have adequate space, equipment, and supplies sufficient to provide for safe and efficient drug storage, preparation, and distribution, patient education and consultation, drug information services, and proper management of the department.

(2) Legal requirements. The physical facility shall meet state and federal regulations and shall be accessible by authorized pharmacy personnel only.

(3)(a) A currently licensed hospital shall be exempt from the provisions of subsection (2) of this section if it:

1. Is authorized by the Department for Health and Human Services to provide pharmacy services; and

2. Does not currently possess a pharmacy permit.

(b) A currently licensed hospital exempt from the provisions of subsection (2) of this section shall permit access by authorized personnel only.

(4) Location. Locked storage or locked medication carts shall be provided for use in each nursing unit or service area.

(5) Reference materials. The pharmacy shall have current pharmaceutical reference materials in accordance with 201 KAR 2:090. References related to the following subjects shall also be available:

- (a) Drug identification;
- (b) Toxicology;
- (c) Drug interactions;
- (d) Parenteral drug compatibility; and
- (e) Microbiology.

Section 4. Drug Distribution and Control. (1) General. The institutional pharmacy shall be responsible for the procurement, distribution, and control of all drugs and parenteral solutions used within the institution. Policies and procedures governing these functions shall be developed by the pharmacist with input from other involved hospital, or infusion center, ~~[or other organized health care facility]~~ staff (for example, nurses) and committees (for example, pharmacy and therapeutics committee and patient care committee).

(2) Dispensing. The pharmacist shall dispense medications only on the order of a licensed medical practitioner.

(3) Prescriber's order. The pharmacist shall review the medication order.

(4) Recordkeeping. The pharmacist shall maintain appropriate records of each medication order. The records shall be retained for the time and in the manner prescribed by state and federal law.

(5) Patient medication profile. A medication profile shall be maintained for all inpatients and for those ambulatory patients routinely receiving care at the institution. The pharmacist shall utilize this profile to properly review, schedule, prepare, and distribute medications except in an emergency situation.

(6) Labeling and packaging.

(a) Each licensee shall comply with U.S.P. Standards established pursuant to federal law and all state and federal laws and regulations regarding labeling and packaging.

(b) Labeling and packaging of medications used for outpatients shall meet the requirements of state and federal law.

(7) Dispensing. The pharmacist shall dispense medications by the unit dose distribution system if feasible. If the unit dose distribution system is not utilized, adequate safeguards shall be in place to protect patients.

(8) Stop orders. There shall be established written stop order policies or other methods of assuring that drug orders are not continued inappropriately in accordance with the status of the patient.

(9) Administration.

(a) Drugs shall be administered only upon order of a licensed medical practitioner.

(b) The institutional pharmacy shall participate in the establishment of policies and procedures regarding the administration of medications. Specific procedures shall be developed in cooperation with appropriate hospital, infusion center, or other health care facility personnel and shall include personnel authorized to schedule, prepare, and administer medications.

(10)(a) Unused medication. The institutional pharmacy shall establish policies and procedures for the disposition of patients' unused medications.

(b) Medication in unit dose form may be reissued if package integrity has been maintained and the product has not expired.

(11) Hospital floor stocks.

(a) Floor stocks of drugs shall be kept as small as possible. The pharmacist in charge shall be responsible for authenticating the need for floor stock.

(b) A pharmacist shall review all orders distributed through floor stock.

(c) The pharmacist in charge shall be responsible for defining those areas of the hospital requiring floor stock (for example, emergency room, surgery, critical care, or medical or surgical

wards).

(d) All drug storage areas within the hospital shall be routinely inspected by pharmacy personnel at least monthly, and documentation shall be maintained to ensure that:

- 1. Unusable items shall not be present; and
- 2. All stock items shall be properly labeled and stored.

(e) ~~[This subsection shall not apply to other organized health care facilities.~~

(f) This subsection shall apply to infusion centers where medications are administered with an onsite pharmacy.

(12) Drug recall. There shall be a system for removing from use a drug that has been recalled.

(13) Sample medications. The institutional pharmacy shall establish policies and procedures regarding medical representatives and the obtaining, storage, and dispensing of complimentary packages of medications.

(14) Emergency drugs.

(a) The institutional pharmacy shall establish policies and procedures for supplying emergency drugs.

(b) For expediency and efficiency, emergency drugs shall be limited in number to include only those whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of sudden and unforeseen patient emergencies.

(c) Emergency stocks shall be routinely inspected by pharmacy personnel on a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(15) Investigational drugs.

(a) Policies and procedures controlling the use of investigational drugs (if used in the institution) shall be developed and followed.

(b) The pharmacy shall be responsible for storing, packaging, labeling, distributing, maintaining inventory records (including lot numbers and expiration date), and providing information about investigational drugs (including proper disposal).

(16) Controlled substances. All permit holders shall comply with state and federal laws regarding controlled substances.

(17) Compounding. Compounding at a location that is not within the same institution shall require a separate pharmacy permit.

Section 5. Assuring Rational Drug Therapy. (1) Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice activities.

(2) The pharmacist shall be a member of the pharmacy and therapeutics committee and any other committees where input concerning the use of drugs is required.

(3) The pharmacist shall provide a means to ensure that patients receive adequate information about the drugs they receive. Patient education activities shall be in coordination with the nursing and medical staffs and patient education department, if any.

Section 6. Responsibility. The pharmacist-in-charge of a pharmacy utilizing an automated pharmacy system shall be responsible for:

(1) An initial validation of system accuracy prior to use for distribution to patients;

(2) Ensuring the system:

- (a) Is properly maintained;
- (b) Is in good working order;
- (c) Accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and
- (d) Complies with the recordkeeping, access, and security safeguards pursuant to all applicable state and federal laws;

(3) Assuring medications are reviewed prior to loading into an automated pharmacy system and distribution;

(4) Implementing an ongoing quality assurance program that monitors performance of the pharmacy compounding robotics, which is evidenced by written policies and procedures and requires a continued documented validation of doses distributed on a routine basis and annual review of the quality assurance program;

(5) Establishing policies and procedures if there is a system failure of an automated pharmacy system;

(6) Providing the board with prior written notice of installation or removal of an automated pharmacy system. This notification shall include the:

- (a) Name and address of the pharmacy; and
- (b) Initial location of the automated pharmacy system;

(7) Oversight for assigning, discontinuing, or changing personnel access to the system, including establishment of written policies and procedures for security and control;

(8) Reviewing personnel access on at least an annual basis;

(9) Assuring that the decentralized automated pharmacy system stock is checked at least monthly in accordance with established policies and procedures, including checking for:

- (a) Accuracy;
- (b) Integrity of packaging; and
- (c) Expiration dates;

(10) Maintaining in the pharmacy the following documentation relating to an automated pharmacy system:

(a) The name and address of the pharmacy or inpatient health care facility where the system is being used;

(b) The automated pharmacy system manufacturer's name, model, serial number, and software version;

(c) A description of how the system is used;

(d) Written quality assurance procedures and accompanying documentation of use to determine continued appropriate use of the system as established in subsections (7) and (8) of this section; and

(e) Written policies and procedures for system operation, safety, security, accuracy, emergency medication access, access, and malfunction which includes clearly defined down time and procedures; and

(11) Maintaining adequate security systems and procedures, evidenced by written policies and procedures to:

- (a) Prevent unauthorized access;
- (b) Maintain patient confidentiality;
- (c) Allow user access modification; and
- (d) Comply with federal and state laws.

(12) Maintaining in the pharmacy a current list of all locations where automated pharmacy systems are located and providing the list to the board upon request.

Section 7. Standards. (1)(a) All events involving the contents of the automated pharmacy system shall be recorded electronically.

(b) Records shall be maintained by the pharmacy and be available to the board and shall include the following:

- 1. The date, time, and location of the system accessed;
- 2. Identification of the individual accessing the system;
- 3. Type of transaction;

4. Name, strength, dosage form, and quantity of drug accessed; and

5. Name of the patient for whom the drug was ordered, if applicable.

(2) All medications to be stocked into the centralized automated pharmacy system shall have been previously validated by a machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance and safety [for bar code accuracy] and utilized by a pharmacist, pharmacist intern, or certified pharmacy technician. Integrity and accuracy shall be validated by a pharmacist.

(3) The stocking of medications in a decentralized automated pharmacy system utilizing a machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance and safety [bar code technology] shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician.

(4) The stocking of medications in a decentralized automated pharmacy system without a machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance, and safety [bar code technology] shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician. Integrity and accuracy shall be validated by a pharmacist.

(5) If a hospital licensed pursuant to 902 KAR 20:016 utilizes technology that validates appropriate drug, dose, dosage form, route of administration, time of administration, and patient at the exact time of medication administration, the stocking of the decentralized automated pharmacy system shall be done by a pharmacist, pharmacist intern, or certified pharmacy technician.

(6) A record of medications stocked in an automated pharmacy system shall be maintained for at least five (5) years and shall include:

- (a) The name of the person repackaging the medications; and
- (b) Documentation of the pharmacist checking the medications.

(7) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws.

(8) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, in accordance with federal and state laws.

(9) All medications initially received in the pharmacy for use in an automated pharmacy system shall be quarantined until validation by a machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance, safety, [of bar code and] accuracy and existence of the item in the database powering automated pharmacy system by a certified pharmacy technician, pharmacist intern, or pharmacist.

(10) If a medication needs to be repackaged:

(a) A pharmacist, pharmacist intern, or certified pharmacy technician shall:

1. Perform the repackaging and validate the presence of an accurate machine readable identifier that meets established industry standards as approved by the board to ensure quality, performance and safety [bar code] on the unit dose packaging; and

2. Document the repackaging process including:

- a. Manufacturer;
- b. Date and time of repackaging;
- c. The person repackaging;
- d. The lot number or batch number;
- e. The expiration date; and
- f. The quantity repackaged; and

(b) A pharmacist shall:

1. Validate for accuracy and integrity prior to the addition to the automated pharmacy system; and

2. Document the validation including:

- a. The date and time of the validation;
- b. The name of the pharmacist validating;
- c. The lot number or batch number;
- d. The expiration date; and
- e. The quantity validated.

(11) A medication returned to the pharmacy from a patient care area shall follow the processes established pursuant to Section 4(10) of this administrative regulation.

(12) A medication distributed by the centralized automated pharmacy system shall be distributed in the delivery device utilized by that system.

(13) A medication distributed by an automated pharmacy system shall be accessed and administered by a professional licensed to administer medications.

(14) A medication distributed by an automated pharmacy system shall not be dispensed.

(15) Board inspectors are authorized to inspect and investigate complaints regarding an automated pharmacy system on all premises owned by the hospital where an automated pharmacy system is located and supplied with medications purchased under the hospital's pharmacy permit.

(16) All transfers of medications to automated pharmacy systems shall be in accordance with federal and state laws.

LARRY HADLEY, Executive Director

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 14, 2021 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2021 at 9:00 a.m. Eastern Time via telephonic

videoconference with a physical location of 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 November 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

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for hospital pharmacies.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the standards established for hospital pharmacies per KRS 315.191(1)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the criteria that the statute requests be provided in regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the type of equipment that can be utilized to track and trace medication to that of machine-readable identifier instead of bar code. Moreover, this amendment removes "other healthcare facilities" from the scope of authority for this regulation, as those facilities are regulated by 201 KAR 2: 370. Lastly, this amendment confirms the scope of authority of a board inspector within a hospital setting.

(b) The necessity of the amendment to this administrative regulation: Requests were made from several hospital pharmacies to amend the language to include machine-readable identifier. Moreover, utilizing a broader term ensures larger compliance with the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates hospital pharmacies and pharmacists will be minimally impacted by the amendments proposed here.

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

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

regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies of these changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment assists hospitals in the expansion of the bar code technology language. Moreover, by removing "other healthcare facilities" the regulation clarifies who is the target of this regulation.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding for the implementation of the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists that desire license transfer into the Commonwealth of Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

**BOARDS AND COMMISSIONS**  
**Board of Licensure for Massage Therapy**  
**(Amendment)**

**201 KAR 42:010. Goals for massage therapy sessions.**

RELATES TO: KRS 309.350(7), 309.355(3)  
STATUTORY AUTHORITY: KRS 309.355(3)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations setting standards of practice. This administrative regulation establishes the goals of massage therapy and possible means of achieving these goals.

Section 1. (1) Goals for massage therapy may[shall] include:  
(a) Maintaining health;  
(b) Providing relaxation;  
(c) Preserving or increasing functional capacity;  
(d) Diminishing soft-tissue pain arising from stress, anxiety, adhesions, and overuses; and  
(e) Providing treatment that is professionally appropriate for the client.  
(2) In order to reach these objectives, the massage therapist shall:  
(a) Provide consultation with a client or a referring professional on soft-tissue issues;  
(b) Evaluate clients for the appropriate approaches for each session;  
(c) Plan sessions;  
(d) Provide direct treatment; and  
(e) Provide draping and treatment in a way that ensures the safety, comfort, and privacy of the client. [  
(3) ~~With client permission, the massage therapist may interact with the client's physician or other healthcare providers if the client is under direct medical care.~~

~~Section 2. Client Management. (1) The massage therapist shall:~~  
~~(a) Evaluate each client through:~~  
~~1. Intake interviews;~~  
~~2. Observation;~~  
~~3. Palpation; and~~  
~~4. Relevant records provided by the client;~~  
~~(b) Plan and implement a treatment session or program individualized for the client; and~~  
~~(c) Refer to a licensed healthcare provider any client whose condition is determined by the massage therapist to be beyond the therapist's scope of practice.~~  
~~(2) If the basis for a massage appointment is a referral from a healthcare provider, the massage therapist may confer with the referring healthcare provider after obtaining the client's permission.~~  
~~(3) If the client is self-referred and under the care of a doctor, the massage therapist may seek permission to:~~  
~~(a) Advise the doctor that the patient is seeking massage treatment;~~  
~~(b) Provide to the doctor the massage therapist's evaluation results;~~  
~~(c) Advise the doctor of the noted treatment plan; and~~  
~~(d) Provide a follow-up report upon completion of the massage treatment plan to enhance communication between the multidisciplinary care-giving team.]~~

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJVQT09>

Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:  
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709

Password: 270127

SIP: 85834511709@zoomcnc.com

Password: 270127

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 (November 18), 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. EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the goals of a massage therapy session.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the goals of a massage therapy session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation clarifies the goals of a massage therapy session.

(2) If this is an amendment to an existing administrative



regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the goals of a massage therapy session and deletes language regarding cooperation with other health care professionals. This language regarding cooperation with other health care professionals was added as a requirement to the Code of Ethics, 201 KAR 42:060.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It only simplifies and clarifies the requirements of a massage therapy session.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. It only simplifies and clarifies the requirements of a massage therapy session.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist licensees and prospective licensees in understanding the goals of a massage therapy session.

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

(a) Initially: None. It only simplifies and clarifies the goals of a massage therapy session.

(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: There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1); KRS 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected

to be generated by the provisions of this administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### BOARDS AND COMMISSIONS Board of Licensure for Massage Therapy (Amendment)

##### 201 KAR 42:020. Fees.

RELATES TO: KRS 309.357[~~309.362(2), (3)~~]

STATUTORY AUTHORITY: KRS 309.355(3), 309.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357 requires the board to establish reasonable fees for the licensure of massage therapists. KRS ~~309.357~~[~~309.362~~](2) and (3) authorize the issuance of an inactive license and reinstatement. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:

(a) Made payable as required by KRS 309.356 to the Kentucky State Treasurer[~~State Treasury~~]; and

(b) Paid by:

1. Cashier's check;

2. Certified check;

3. Money order;

4. Personal check; or

5. Online payment by credit card, debit card, or electronic check.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

(3) The application fee and the initial licensure fee established in Section 2(1) of this administrative regulation shall be nonrefundable.

(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be ~~\$200~~[~~125~~].

(2)(a) The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be ~~\$200~~[~~100~~].

(b) If the license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late renewal shall be ~~\$225~~[~~150~~].

(c) If the license is renewed sixty-one (61) to ninety-one (91)[~~90~~] days after the expiration of the license, the late renewal fee shall be ~~\$250~~[~~250~~].

(d) If a license has been expired for [If a license is not renewed within ninety (90) days or more of expiration of the license], the licensee shall apply for reinstatement. [the applicant shall comply with KRS 309.357(6)-.]

(3) The licensee may apply to reinstate the license by paying the late renewal fee of \$250 and the following reinstatement fee:

(a) For applications for reinstatement submitted after ninety (90) days but before one (1) year after the license expired, \$100;

(b) For applications for reinstatement submitted after one (1) year but before two (2) years after the license expired, \$150;

(c) For applications for reinstatement submitted after two (2) years but before three (3) years after the license expired, \$200;

(d) For applications for reinstatement submitted after three (3) years but before four (4) years after the license expired, \$250; or

(e) For applications for reinstatement submitted after four (4) years but before five (5) years after the license expired, \$300.

(f) A license shall not be reinstated under Section 2 (2)(d) if more than five (5) years have passed since the license expired. A person may apply for and obtain a new license by meeting the current requirements for licensure.

(3) A licensee shall be in good standing with the board at the time the licensee elects inactive status.

(4)(a) The annual renewal date for an inactive license shall remain the original issue date of the license.

(b) The fee for the issuance of an inactive license shall be fifty (50) dollars.

(c) The annual renewal fee for an inactive license shall be fifty (50) [thirty-five (35)] dollars.

(5) If the inactive license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late inactive renewal shall be seventy (70) dollars[\$52.50].

(6) If the inactive license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be eighty-five (85) [seventy (70)] dollars.

(7) The application fee for restoring[~~moving~~] a license from inactive to active status shall be fifty (50) dollars and shall not be prorated.

(8) A licensee who elects inactive status or an inactive licensee electing to activate his or her license shall complete and submit an Application for Inactive or Return to Active Status in addition to the fee referenced in subsection (7) of this section. An applicant shall affix a two (2) inch by two (2) inch or larger passport quality color photograph of the applicant to the Application for Inactive or Return to Active Status.

(9) A licensee who elects to give notice of the licensee's retirement and voluntarily surrender his or her massage therapy license shall complete and submit a notarized Voluntary Retirement Non-Renewal form.

(10) The fee for an initial Certificate of Good Standing for a program of massage therapy instruction in accordance with 201 KAR 42:080, Section 2, shall be \$125.

(11) The annual fee for renewal of a Certificate of Good Standing for a program of massage therapy instruction in accordance with 201 KAR 42:080, Section 3, shall be seventy-five (75) dollars.

(12) The fee for a one (1) time Certificate of Good Standing shall be fifty (50) dollars. This is only applicable to: out-of-state schools who have a graduate applying to the board for licensure as a massage therapist and therefore complete the Certificate of Good Standing application for the period of time in which the graduate was in attendance.

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

(a)] "Application for Inactive Status, Renewal of Inactive Status, or Return to Active Status", June 2021 is incorporated by reference.]October 2016; and

(b) "Voluntary Retirement Non-Renewal", October 2016.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street[~~Division of Occupations and Professions, 911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in

effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJvQT09>

Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709

Password: 270127

SIP: 85834511709@zoomcrc.com

Password: 270127

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 (November 18), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the fees associated with licensure for massage therapy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update the fee structure for massage therapy. The fee structure was originally set in 2003. The current revenues of the Board of Licensure for Massage Therapy do not cover their expenditures and they have several significant unpaid bills. In the last legislative session, the legislature recognized this problem and removed the fee cap.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy. KRS 309.357 requires the Board to set reasonable fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets the fees for licensure, renewal, reinstatement, inactive status, and Certificates of Good Standing.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation increases the fees. The Board was operating at a deficient and needed an increase in fees to be financially stable. The statute was amended in the last session to increase the fee cap, so that fees could be raised.

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

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board, the 27 holders of a Certificate of Good Standing, anyone interested in obtaining a license or a Certificate of Good Standing from the Board, and the Board of Licensure for Massage Therapy.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pay the increased fee on application or renewal.

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

Application Fee	\$ 200.00
Renewals	\$ 200.00
Late Renewals 0-60 days	\$ 225.00
Late Renewals 61 - 90 days	\$ 250.00
Inactive Renewal	\$ 50.00
Inactive 0-60 days	\$ 70.00
Inactive 61-90 days	\$ 85.00
Inactive to Active	\$ 50.00
Certificate of Good Standing	\$ 125.00
One-time Certificate of Good Standing	\$ 50.00
Certificate of Good Standing	\$ 75.00
Reinstate 90 days to 1 year	\$ 350.00
Reinstate 1 year to 2 years	\$ 400.00
Reinstate 2 years to 3 years	\$ 450.00
Reinstate 3 years to 4 years	\$ 500.00
Reinstate 4 years to 5 years	\$ 550.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board will receive enough review to become financially stable. The individuals and businesses, which are licensed and those seeking licensure can become licensed upon paying the increased fee.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is funded through license fees in a restricted fund. However, there is no cost to 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: This regulation increases the fees charged licensees and prospective licensees.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? \$140,000

(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? \$140,000

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-): +\$140,000

Expenditures (+/-):

Other Explanation:

### BOARDS AND COMMISSIONS

#### Board of Licensure for Massage Therapy (Amendment)

**201 KAR 42:030. Licensee's change of name, home address, or place of business.**

RELATES TO: KRS 309.355(4)

STATUTORY AUTHORITY: KRS 309.355(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(4) requires the board to keep a register of all persons licensed as massage therapists. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 through 309.364. This administrative regulation establishes the mechanism for a massage therapist to change the name, home address, or place of business under which the therapist is originally licensed.

Section 1. A massage therapist licensed pursuant to KRS Chapter 309 shall notify the board electronically or in writing of any change in the person's name, home address, or place of business within thirty (30) days after the change has taken place. Any request for a [

Section 2.-A]name change shall be made only after submission of a legal document that authorizes the change.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in

effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJVQT09>

Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:  
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709

Password: 270127

SIP: [85834511709@zoommrc.com](mailto:85834511709@zoommrc.com)

Password: 270127

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 (November 18), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires licensees to notify the Board of any change in name, home address, and place of business.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that the Board has current information about its licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations

regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Board will have current contact information for its licensees.

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

(a) How the amendment will change this existing administrative regulation: This amendment only clarifies that a name change will not be made under documentation of that change is received.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. The notification can take place via US mail or email.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board will have current contact information for its licensees.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**BOARDS AND COMMISSIONS**  
**Board of Licensure for Massage Therapy**  
**(Amendment)**

**201 KAR 42:035. Application process, exam, and curriculum requirements.**

RELATES TO: KRS 309.358, 309.359, 309.362, 309.363

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364 and to evaluate the qualifications of applicants for licensure. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364, including educational program curriculum. The board may issue a license to an applicant meeting the standards established in KRS 309.358 or 309.359. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:

(1) File a completed, signed, and dated Application for Licensure as a Massage Therapist, and the required documentation with the board, meeting the requirements established in KRS 309.358;

(2) Pay the application fee as established in 201 KAR 42:020; and

(3) Affix a two (2) inch by two (2) inch or larger passport quality color head shot photograph of only the applicant to the application form. The photograph submitted with the application shall be taken within the previous six (6) months to reflect the current appearance of the applicant.

Section 2. (1) To comply with KRS 309.358(1)(f)(4), an applicant shall submit to the board, upon application, an official transcript or certificate that:

(a) Shows the completion of at least 600 classroom hours earned at a board approved massage therapy program; and

(b) Itemizes compliance with the clock hour requirements established in KRS 309.363(1)(b).

(2) Board approved massage therapy programs include only those programs holding a certificate of good standing issued pursuant to KRS 309.363, KRS 309.3631, and 201 KAR 42:080.

(3) A massage therapy school which has registered and obtained a school code assignment with the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) shall maintain good standing with the NCBTMB during the entire period the applicant attended the school. Suspension or revocation of the NCBTMB school code at any time during that period shall constitute grounds for:

(a) Denial of an application for licensure by graduates of that school; and

(b) Revocation of a Certificate of Good Standing held by the massage therapy school.

(4) A school's non-renewal of an NCBTMB code while in good standing shall not preclude an applicant from obtaining licensure.

Section 3. Examinations. (1) An applicant shall successfully pass an examination:

(a) Listed in KRS 309.358(1)(g)(5); or

(b) Approved by the board pursuant to KRS 309.358(1)(g)(5) and listed in subsection (4) of this section.

(2) An examination shall be approved by the board as meeting the standard established in KRS 309.358(1)(g)(5) if the board finds that the examination:

(a) Has been scientifically constructed to be valid and objective;

(b) Reflects the curriculum content established in KRS 309.363(1);

(c) Has security procedures to protect the exam content; and

(d) Has clear application, reporting, and appeal procedures.

(3) Approval of exams shall be noted in the board minutes and on the board Web site at <http://bmt.ky.gov>.

(4) The following examinations have been approved by the board pursuant to KRS 309.358(1)(g)(5):

(a) The Massage and Bodywork Licensing Examination (MBLEx) or other exam administered by the Federation of State Massage Therapy Boards (FSMTB);

(b) An entry level examination administered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB);

(c) Any examination of a certifying agency approved by National Commission on Certifying Agencies (NCCA);

(d) An entry level massage therapy examination administered by the National Board Certification Agency (NBCA);

(e) The State of Ohio Massage Therapy Licensing Exam; and  
(f)(e) The State of New York Massage Therapy Licensing Exam; or

(d) The National Board Certification Agency (NBCA) Massage Therapy Certification Exam, Level One.]

Section 4. (1) An applicant with a criminal history, excluding minor traffic violations, may be required to[shall] participate in an in-person interview with[be interviewed by] the board's Application Committee prior to licensure. The purpose of this interview[with the board's application committee] shall be to find if the applicant meets[complies with] the requirement for good moral character established in KRS 309.358(1)(c),(3) and 335B.040, and the[ The interview shall be conducted pursuant to the board's authority under KRS 309.355(2),[KRS] 309.362(1)(b), and 309.362(2) and in accordance with KRS 335B.010 to 335B.070.

(2) All applicants shall submit a recent fingerprint-supported background check performed by the Kentucky State Police and the Federal Bureau of Investigation. The required background check shall be applied for within the ninety (90) days preceding the date of submission of the application for licensure to the board.

Section 5. Appeals. (1) [Upon initial review, the board shall make a preliminary determination with respect to an application. Preliminary determinations shall be non-final determinations until:

(a) A final decision is rendered subsequent to an administrative hearing conducted pursuant to KRS Chapter 13B;

(b) Settlement of the matter by informal proceedings is accomplished; or

(c) The time for appeal under subsection (2) of this section has expired.

(2) An applicant may appeal the denial of[a preliminary determination denying] his or her licensure application by requesting a hearing in accordance with KRS 309.362(2)(4). In order to request a hearing, the applicant shall file a notice of appeal in writing[by certified mail that is received by the board] within thirty (30) days of the date of the letter informing the applicant of the [preliminary determination of] denial.

Section 6. Incorporation by Reference. (1) The "Application for Licensure as a Massage Therapist", June 2021[September 2015], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky

~~40601~~ [Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601], Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's web site address is: <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJVQT09>

Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:  
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709

Password: 270127

SIP: 85834511709@zoomcrc.com

Password: 270127

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 (November 18), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensure and the procedure to obtain a license in massage therapy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify potential licensees of the requirements for licensure and the process for application.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies the requirements for licensure and the procedure to obtain a license. The proposed regulation also updates references to the authorizing statute as amended by HB 79 (2021).

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

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board and anyone interested in obtaining a license from the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It only simplifies and clarifies the requirements for licensure and the procedure to obtain a license in massage therapy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. It only simplifies and clarifies the requirements for licensure and the procedure to obtain a license in massage therapy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist licensees and prospective licensees in understanding the process to obtain a license.

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

(a) Initially: None. It only simplifies and clarifies the requirements for licensure and the procedure to obtain a license in massage therapy.

(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: There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by

it.

# FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## BOARDS AND COMMISSIONS

### Board of Licensure for Massage Therapy (Amendment)

#### 201 KAR 42:040. Renewal and reinstatement.

RELATES TO: KRS 309.357(1)(a)(3), (4), (5), (6)], 309.361, 309.362

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364 and authorizes licensure renewal. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(1)(a) requires the board to establish a schedule of fees for the renewal of licenses, the reinstatement of licenses, and establishes requirements for placing licenses in inactive status and for restoring licensing to active status. (3) requires all licenses to be renewed. KRS 309.361(1) designates a two (2) year renewal period. This administrative regulation establishes the requirements for renewal of licenses and the reinstatement of expired licenses that have been expired for less than five (5) years' time.

Section 1. (1) A license to practice massage therapy shall be renewed upon:

(a) Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2), on or before the anniversary date of issue of license;

(b) Submission to the board of a completed [the] Application for Renewal form and the following written information:

1. Current complete home address, email address [to receive communications from the board], and telephone number, to receive communications from the board;

2. Current complete name, address, and telephone number of each location in which massage therapy service is provided by the licensee;

3. A list indicating completion of the continuing education hours [units taken during the licensure renewal period] as required by 201 KAR 42:110. The list shall:

a. Itemize the number of clock hours credited for each course; and

b. Designate the courses that fulfill the three (3) required hours of ethics training; and

4. Confirmation that, since the license was issued or renewed, the licensee has not:

a. Been convicted of a felony; or

b. Had his or her license disciplined and is not currently under disciplinary review in another state; or

c. ~~Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) pursuant to KRS 164.772;~~ and

(c) Submission of a two (2) inch by two (2) inch or larger passport quality color head shot photograph of only the applicant to the board affixed to the Application for Renewal form. The photograph submitted with the application shall be taken within the previous six (6) months to reflect the current appearance of the applicant.

(2)(a) A licensee who has been convicted of a crime or who has been disciplined or is currently under disciplinary investigation or review by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal may be required to [shall] participate in an in-person interview with the board's Application Committee prior to renewal of the license. The purpose of this interview [with the board's application committee] shall be to find if the licensee [met] meets the requirement of good moral character established in KRS 309.358(1)(c) [(3) and 335B.040]. The interview shall be conducted pursuant to the board's authority under KRS 309.355(2) [(3)], 309.362(1)(b), and 309.362(2) [(4)], and in accordance with KRS 335B.010 to 335B.070.

(b) Each applicant for renewal who has been convicted of a crime or who has been disciplined by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal shall submit a recent fingerprint supported background check performed by the Kentucky State Police and the Federal Bureau of Investigation. The required background check shall be applied for within the ninety (90) days preceding the date the Application for Renewal is submitted.

(3) If [upon a preliminary review,] the board [determines that] denies an Application for Renewal [shall be denied], notice [of the preliminary decision] shall be sent to the licensee and the licensee shall have thirty (30) days from the date of the notice [letter] to request an Administrative Hearing in accordance with KRS Chapter 13B by filing a written request for an appeal [a hearing in writing by certified mail] with the board. [If a written [a] request for an appeal [hearing] by the licensee is not received by the board within thirty (30) days of the notice of the board's preliminary decision [letter], the licensee shall be found to have voluntarily withdrawn his or her Application for Renewal.]

(4) A revoked license shall not be renewed.

Section 2. A licensee convicted of a felony or disciplined by the board of another jurisdiction [in the interim period between issuance and renewal of the license, or between renewal periods], shall submit notice of the conviction or discipline to the board within sixty (60) days of the discipline or conviction.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of the issuance of the license, the license shall expire and the person shall not practice nor represent himself or herself as a massage therapist in Kentucky.

Section 4. (1) An expired license shall be renewed within ninety (90) days of expiration if the applicant submits:

(a) A completed Application for Renewal form;

(b) Documentation of successful completion of twelve (12) [twenty-four (24)] hours of continuing professional education,

which:

1. Includes studies in ethics, business practices, science, and techniques related to massage therapy;
2. Have been credited within two (2) years prior to the renewal deadline; and

3. Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and

(c) The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2), (5), or (6).

(2) If ninety-one (91) days or more, but less than five (5) years, have elapsed since the license expiration, the licensee shall file an Application for Reinstatement. (a) A written request for an extension of time to file a completed Application for Renewal form shall be submitted to the board no later than ninety (90) days after the expiration of the license.

(b) An applicant submitting an Application for Renewal form later than ninety (90) days after the expiration date shall attach a written explanation for the late filing to the form. An Application for Renewal submitted later than ninety (90) days without a written explanation for the late filing shall be considered incomplete.

(c) The board shall permit late renewal beyond ninety (90) days after the expiration of the license for an applicant submitting documented proof of a medical disability or illness, or active military service that precluded the timely submission of an Application for Renewal form.

(d) The board shall not waive the late renewal fee required by KRS 309.357(6)(a)-[

Section 5. (1) [Upon initial licensing,] A licensee shall at all times display a copy of the licensee's current license[be furnished a wall] certificate [which shall be displayed at all times] at the primary massage therapy service location. A digital copy of the licensee's certificate shall be provided to the licensee upon initial licensing and renewal and available for download by the licensee.

(2) A licensee shall provide verification of current licensure upon request if he or she is currently engaged in the practice of massage therapy, intends to engage within a reasonable time in the practice of massage therapy, or has engaged in the practice of massage therapy immediately prior to the request.

(3) Official verification of licensure status shall be available on the board's Web site at <http://bmt.ky.gov>.

Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee [requesting to return]seeking restoration to active status shall:

1. Provide proof to the board of completion of[continuing education required by KRS 309.362(3)] one (1) hour of continuing professional education for every six (6) months the license has been in an inactive state, not to exceed five (5) years, in accordance with 309.357(3). If an applicant obtained inactive status within ninety (90) days of a biennial renewal date, the applicant shall also provide proof of the twelve (12) required CE hours for renewal and pay the renewal fee[-At least three (3) of the continuing education hours submitted shall be focused on the area of ethics];

2. Complete the Application for Inactive Status, Renewal of Inactive Status, or Return to Active Status, as required by 201 KAR 42:020, Section 2(8); and

3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be counted toward continuing education requirements[used] for the next regular renewal period.

(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply as required by KRS 309.357(1)(d)[362(3)].

Section 7. (1) A former licensee whose license has been expired for less than five (5) years shall apply for reinstatement of the license by:

(a) Submitting a completed "Application for Reinstatement";

(b) Submitting proof of completion of a total of credit hours of

continuing professional education determined at the rate of one-half (1/2) credit hour for each month having passed since the license expired; and

(c) Paying the applicable fee set forth in 201 KAR 42:020 Section 2(3).

(2) Continuing professional education credit hours completed by an applicant for reinstatement:

(a) May have been obtained by the applicant at any time after the license expired, but must have been obtained prior to submitting the Application for Reinstatement; and

(b) Must meet the requirements for board-approved continuing education courses set forth at 201 KAR 42:110 Section 3.

(3) A license shall not be reinstated if more than five (5) years have passed since the license expired pursuant to Section 3. A person may apply for and obtain a new license by meeting the current requirements for licensure.

(4)(a) Each applicant for reinstatement who has been convicted of a crime since the license expired shall submit a fingerprint supported background check performed by the Kentucky State Police and the Federal Bureau of Investigation. The background check shall be applied for within the ninety (90) days preceding the date the Application for Reinstatement is submitted.

(b) If an applicant for reinstatement has been convicted of a crime or has been disciplined or is currently under disciplinary investigation or review by the board of another jurisdiction, the applicant shall include a written explanation of the charges and proof of dispositions with the application, and the board may require the applicant to participate in an in-person interview with the board's Application Committee prior to reinstatement of the license. The purpose of this interview shall be to find if the licensee meets the requirement of good moral character established in KRS 309.358(1)(c). The interview shall be conducted pursuant to the board's authority under KRS 309.355(2), 309.362(1)(b), and 309.362(2), and in accordance with KRS 335B.010 to 335B.070.

(5) If the board denies an Application for Reinstatement, notice of the decision shall be sent to the applicant for reinstatement and the applicant shall have thirty (30) days from the date of the notice to request an Administrative Hearing in accordance with KRS Chapter 13B by filing a written request for an appeal with the board.

(6) A revoked license shall not be reinstated.

Section 8.[Section 7.] Incorporation by Reference.(1) The following forms are incorporated by reference:

(a) "Application for Renewal", June 2021; and

(b) "Application for Reinstatement", June 2021[October 2016, is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky 40601[Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602], Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's web site address is: <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjVQT09>

Password: 270127

Or Telephone:

Dial:



USA 713 353 0212  
USA 8888227517 (US Toll Free)  
Conference code: 511232

Find local AT&T Numbers:  
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:  
162.255.37.11 (US West)  
162.255.36.11 (US East)  
115.114.131.7 (India Mumbai)  
115.114.115.7 (India Hyderabad)  
213.19.144.110 (Amsterdam Netherlands)  
213.244.140.110 (Germany)  
103.122.166.55 (Australia Sydney)  
103.122.167.55 (Australia Melbourne)  
149.137.40.110 (Singapore)  
64.211.144.160 (Brazil)  
149.137.68.253 (Mexico)  
69.174.57.160 (Canada Toronto)  
65.39.152.160 (Canada Vancouver)  
207.226.132.110 (Japan Tokyo)  
149.137.24.110 (Japan Osaka)  
Meeting ID: 858 3451 1709  
Password: 270127  
SIP: 85834511709@zoomcrc.com  
Password: 270127

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 (November 18), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensure renewal and reinstatement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify potential licensees of the requirements for licensure renewal and reinstatement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies the requirements for licensure renewal and reinstatement.

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

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative

regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board and anyone interested in reinstating their license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It only simplifies and clarifies the requirements for licensure renewal and reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. It only simplifies and clarifies the requirements for licensure renewal and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist licensees and prospective licensees in understanding the process to renew and reinstatement a license.

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

(a) Initially: None. It only simplifies and clarifies the requirements for licensure renewal and reinstatement.

(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: There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

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

(d) How much will it cost to administer this program for

subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**BOARDS AND COMMISSIONS**  
**Board of Licensure for Massage Therapy**  
**(Amendment)**

**201 KAR 42:050. Complaint procedure and disciplinary action.**

RELATES TO: KRS 309.351, 309.355(1), (2), (6), 309.362

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to regulate the practice of massage therapy. KRS 309.355(2) requires the board to investigate every alleged violation and take appropriate action. This administrative regulation establishes the procedure for filing a complaint and the action to be taken by the board on a complaint and disciplinary action of a licensee or applicant in violation of KRS 309.351 or 309.362.

Section 1. Definitions. (1) "Complaint committee" means a committee of the board that:

(a) Reviews an initiating complaint; and

(b) 1. Recommends dismissal or further investigation of the complaint; or

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

(2) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a licensee or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(3) "Initiating complaint" means a written complaint alleging a violation of KRS 309.350 through 309.364.

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

Section 2. Initiating Complaint. (1) A complaint may be initiated by:

(a) An individual;

(b) A state or government agency;

(c) Another member of the massage therapy profession; or

(d) The board.

(2) An initiating complaint shall be made in writing to the board and received in the board office.

(3) The board may conduct an investigation on its own initiative, without receipt of a complaint, if the board has reason to believe that there may be a violation of KRS 309.350 through 309.364, or 201 KAR Chapter 42.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid reason for an initiating complaint. ~~[The complaint shall be submitted on a Form to File a Complaint or Unlicensed Activity Report.]~~

(5) Any complaint shall be in writing, identify the complainant, including name and contact information, and contain specific details regarding the complaint. Complaints without the required information will not be processed.

Section 3. Procedure Upon Receipt of Initiating Complaint. (1) Upon receipt of the initiating complaint, the board office shall send a copy of the initiating complaint to the respondent at the respondent's last address of record with the board.

(2) The respondent shall file a response to the initiating complaint with the board within twenty (20) days after the board mails the initiating complaint to the respondent.

(3) The allegations in an initiating complaint shall be considered true if the respondent fails to respond to the initiating

complaint in a timely fashion.].

~~(4) The board shall use the procedures established in this subsection to redact an initiating complaint.~~

~~(a) A copy of an initiating complaint may be redacted of personal names, personal identification numbers, and personal contact information upon recommendation of the complaint committee and consent by majority vote of the full board. The board shall keep the original initiating complaint free of redactions and store the document in the complaint case file.~~

~~(b) The board may send a redacted copy of an initiating complaint to the respondent to meet the requirements of subsection (1) of this section. The original initiating complaint that is free of redactions may be viewed by the respondent upon written request submitted to the board. The original copy of the initiating complaint that is free of redactions shall not be released to the respondent or the public until final disposition of the matter.]~~

Section 4. (1) The complaint committee shall:

(a) Review the initiating complaint and the response filed by the respondent at its next meeting; and

(b) Recommend one (1) of the following options to the board at the board's next meeting:

1. Dismissal;

2. Further investigation;

3. Issuance of a formal complaint; or

4. Referral to another government agency.

(2) A complaint committee member having any known conflict of interest shall be recused from the matter and disclose the existence of the conflict in a regular board meeting.

Section 5. Board Action upon Recommendation of Complaint Committee. At the board's next meeting following review by the complaint committee, the board shall review the committee's recommendations and shall accept or reject the recommendations in whole or in part.

Section 6. Dismissals. The complainant and respondent shall be notified if a case is dismissed.

Section 7. Investigations. (1) If investigation is warranted, the board shall appoint one (1) of its members or an agent or representative of the board to conduct an investigation of the complaint.

(2) In its investigation, the board may be assisted by:

(a) Board staff;

(b) A board agent; or

(c) The Office of the Attorney General.

Section 8. Formal complaints. If the board finds that sufficient evidence exists to file a formal complaint, the board shall:

(1) Resolve the case informally by agreed order; or

(2) File a formal complaint, in accordance with KRS Chapter 13B.

Section 9. Settlement by Informal Proceedings. (1) The board, through counsel, may enter into informal discussions or negotiations with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through informal proceedings shall be approved by the board and signed by the chair of the board, the respondent, and the respondent's attorney. A copy shall be placed in the licensee's file and a copy shall be mailed to the complainant.

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

Section 10. Procedures for Disciplinary Hearings. (1) All procedures for disciplinary hearings shall conform to KRS Chapter 13B.

(2) Testimony to be considered by the board, hearing panel, or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

the hearing, upon a showing of inability to attend and a showing that other parties shall have an opportunity to cross-examine at the deposition. The presiding officer or hearing officer, if any, shall rule upon motions to allow testimony to be considered by deposition, subject to review and approval by the board.

(3) The presiding officer or hearing officer, if any, may order that at least five (5) days prior to the hearing, each party shall file a summary of each witness' expected testimony.

(4) The board may request recovery of administrative costs and fees incurred by the board in processing, investigating, or administering a complaint to be paid by a respondent. The request shall be submitted by motion to an administrative hearing officer assigned under KRS 13B.080 to preside over a KRS Chapter 13B hearing of the complaint. The request may also be made to a circuit court judge presiding over an action for injunction filed by the board pursuant to KRS 309.355(6).

Section 11. Final Disposition. Upon reaching a decision, the board shall notify the respondent in writing, by certified mail or personal service, of its final disposition of the matter and the complainant shall be notified by regular mail.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Form to File a Complaint", June 2021[January 2011]; and
- (b) "Unlicensed Activity Report", June 2021[January 2011].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky 40601, [Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8:00 a.m. to 4:30 p.m.] The board's Web site address is: <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJvQT09>

Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:  
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709

Password: 270127

SIP: 85834511709@zoomcrc.com

Password: 270127

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 (November 18), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedure for filing a complaint or unlicensed activity report, how the complaint will be handled, and how discipline will be imposed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify how to file a complaint or an unlicensed activity report, and how they will be processed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies how to file a complaint or unlicensed activity report and they will be processed.

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

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board and those individuals who are practicing without a license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It only simplifies and clarifies the process for filing a complaint or unlicensed activity report, how they will be handled, and how discipline will be imposed.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): None. It only simplifies and clarifies the process for filing a complaint or unlicensed activity report, how they will be handled, and how discipline will be imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist the general public and other entities in filing complaints and unlicensed activity reports against licensees.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### BOARDS AND COMMISSIONS Board of Licensure for Massage Therapy (Amendment)

#### 201 KAR 42:060. Code of ethics and standards of practice for massage therapists.

RELATES TO: KRS 309.355(1), (3), 309.362

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the Board of Licensure for Massage Therapy to administer and enforce the provisions of KRS 309.350 to 309.364. KRS 309.355(3) requires the board to establish by administrative regulation a code of ethics and standards of practice for massage therapists. This administrative regulation establishes those standards, which, if violated, are a basis for disciplinary action under KRS 309.362.

Section 1. Code of Ethical Standards for the Massage Therapist. A massage therapist shall:

(1) Maintain the confidentiality of all client information, unless law or court order mandates disclosure;

(2) Keep the client well informed of procedures and methods that will be employed during the session;

(3) Report to the board if the massage therapist has first-hand knowledge or evidence indicating any unethical, incompetent, or illegal act has been committed by another licensee;

(4) Take precautions to do no harm to the physical, mental, and emotional well being of clients or associates;

(5) Make every reasonable effort to report unlicensed practice of massage therapy to the board;

(6) Represent his or her educational and professional qualifications honestly;

(7) Inform clients of the limitations of the licensee's practice;

(8) Consistently take measures to improve professional knowledge and competence by a regular assessment of personal and professional strengths and weaknesses through continuing education training;

(9) Respect the client's right to treatment with informed and voluntary consent, either verbal or written, and to refuse, modify, or terminate treatment regardless of prior consent;

(10) Not ~~initiate or~~ engage in sexual conduct or activities with a client;

(11) Not engage in an interest, activity, or influence that conflicts with the practitioner's obligation to act in the best interest of the client;

(12) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and reasonable expectations of professional behavior;

(13) Refuse to accept gifts or benefits, which are intended to influence a referral or treatment that are purely for personal gain and not for the good of the client;

(14) Conduct all business and professional activities with honesty and integrity;

(15) Respect the inherent worth of all clients;

(16) Provide only those services that the licensee is qualified to perform; and

(17) Respect the client's autonomy.

Section 2. Standards of Practice for the Massage Therapist. (1) In the practice of massage therapy, a massage therapist shall:

(a) Perform a written or verbal intake interview with the client to evaluate if any contraindications to massage therapy exist and if modifications including pressure, technique, and duration of treatment are applicable;

(b) Evaluate each client through observation, palpation, and any relevant records provided by the client;

(c) [(b)] Acknowledge the limitations of, and contraindications for, massage;

(d) Plan and implement a treatment session or program individualized for the client;

(e) [(e)] Refer the client to other professionals or services if the treatment or service is beyond the massage therapist's scope of

practice;

(f)(4) Maintain for a minimum period of five (5) years accurate, timely, and organized records of every client;

(g)(e) Provide massage therapy services that meet or exceed the generally accepted practice of the profession;

(h)(f) If a plan of care or treatment is applicable, explain the plan to the client, to others designated by the client, and to professionals with client permission;

(i)(g) Unless prohibited by law, be allowed to pool or apportion fees received with other members of a business entity in accordance with any business agreement;

(j)(h) Practice massage therapy in sanitary and safe conditions; ~~and~~

(k) Use proper draping technique:

1. Before beginning a massage, the therapist must explain to the client the draping techniques that will be used; and

2. Provide the client a clean drape large enough for the purpose of draping the buttocks, genitalia, and chest. Such body parts must remain covered except during therapeutic treatment of those specific areas, with the exception of the genitalia, which shall always remain covered; and

(l)(i) Have the right to refuse to treat any person or part of the body at the licensee's discretion.

(2) In the practice of massage therapy, a massage therapist shall not:

(a) Provide treatment to the anus or anal canal, including, but not limited to, colonic irrigations and enemas; or

(b) Provide treatment to the genitals, including, but not limited to, erectile dysfunction or pelvic floor issues.

(3) Interacting with other medical professionals. With written permission from the client, the massage therapist may interact with the client's physician or other healthcare providers if the client is under direct medical care.

(4) If the client is self-referred and under the care of a health care professional, the massage therapist may, with written permission from the client:

(a) Advise the health care professional that the patient is seeking massage treatment;

(b) Provide to the health care professional the massage therapist's evaluation results;

(c) Advise the health care professional of the noted treatment plan; and

(d) Provide a follow-up report upon completion of the massage treatment plan to enhance communication between the multidisciplinary care-giving team.

(5) Breast massage. A licensee performing massage of the tissue of the breast shall:

(a) Obtain the client's informed written consent prior to providing the service;

(b) Maintain proof documenting specialized training in breast massage which addresses breast anatomy, breast pathology, and breast massage technique and which was provided by an approved massage therapy program or board approved continuing education provider;

(c) Inform the client prior to the commencement of the service that this service may be performed through a draping sheet if the client so desires and the licensee shall provide the service through a draping sheet if the client so prefers;

(d) Inform the client prior to the commencement of the service that the client may discontinue the service at any time and the licensee shall honor that election by discontinuing the provision of the service if that request is made;

(e) Keep detailed Subjective Objective Analysis Plan notes for the service such as notes related to all emotional factors that the client reports to the licensee which might impact the client's suitability for the service and the precautions that the licensee has taken to ensure that the service is provided in a manner accounting for those emotional factors; and

(f) Refrain from an act or statement which the client may construe as being sexual in nature.

Section 3. Standards for Documentation. The massage therapist and client shall agree upon the purpose of the massage

session.

(1) Documentation shall not be required if the massage session is for general relaxation, a sports event massage, or public demonstration as in chair massage.

(2) If a written plan of treatment is requested or required, the client file shall include the following documentation:

(a) The initial evaluation, which shall include:

1. The client's name, age, and gender;

2. Date of the session; and

3. Pertinent medical history, including:

a. Client sensitivities and allergies;

b. Medical diagnoses, if available, and the source of the diagnosis;

c. Contraindications; and

d. Medications as disclosed by the client;

(b) Progress notes signed by the massage therapist rendering the massage therapy, which shall include:

1. Subjective information including the area of complaint as stated by the client and the date of onset;

2. Objective information including any observations and objective testing, if applicable;

3. Ongoing assessments, if applicable;

4. Actions taken by the massage therapist; and

5. The client response to massage therapy treatment; and

(c) A plan of treatment, if applicable, consisting of:

1. Modalities to be rendered;

2. Frequency and duration of treatment;

3. Referral to other professionals, if indicated;

4. Client self-help education and instruction; and

5. The goals or desired outcome of the treatment.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJVQT09>

Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:  
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709



Password: 270127  
SIP: 85834511709@zoomcrc.com  
Password: 270127

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 (November 18), 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. EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the Code of Ethics that licensed massage therapists are required to follow.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the requirements for practicing massage therapy in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies the requirements for the practice of massage therapy in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to educate themselves on the new requirements and conform their conduct accordingly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. The licensees only have to conform their conduct to the updated Code of Ethics.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will continue to be licensed as massage therapists and will have no discipline imposed on their license.

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

administrative body to implement this administrative regulation:

(a) Initially: None. It only updates and clarifies the requirements to maintain a massage therapy license in Kentucky. No additional complaints or violations are anticipated.

(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: There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### BOARDS AND COMMISSIONS

##### Board of Licensure for Massage Therapy (Amendment)

#### 201 KAR 42:070. Endorsement.

RELATES TO: KRS [309.358-]309.359

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.359 authorizes the board to issue a license to a person holding a credential in another state of the United States. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 through 309.364. This administrative regulation establishes the application process for issuance of a license to a person holding a credential in another state of the United States.

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

~~Section 1. [An applicant Meeting Equal or Higher Standards.]~~ An applicant holding a license issued by another state with licensure standards equal to or higher than the requirements of KRS 309.358 shall submit:

~~(1) A completed Application for Licensure as a Massage Therapist, which is incorporated by reference in 201 KAR 42:035;~~

~~(2) A verifiable statement that the individual is in good standing as a massage therapist from the credentialing authority of the jurisdiction in which the applicant holds a license or credential including duration of the license or credential; and~~

~~(3) The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1).~~

~~Section 2. An Applicant Meeting Lesser Standards.]~~ An applicant who is credentialed as a massage therapist in another state [with less stringent requirements than KRS 309.358] shall submit:

~~(1) A completed "Application for Licensure Through Endorsement as a Massage Therapist" [which is incorporated by reference in 201 KAR 42:035];~~

~~(2) A recent fingerprint-supported background check performed by the Kentucky State Police and the Federal Bureau of Investigation. The required background check shall be applied for within the ninety (90) days preceding the date of submission of the application for licensure to the board.~~

~~(3) A two (2) inch by two (2) inch or larger passport quality color head shot photograph of only the applicant, which is attached to the application form. The photograph submitted with the application shall be taken within the previous six (6) months to reflect the current appearance of the applicant.~~

~~(4) A certified statement from the credentialing authority of the jurisdiction in which the applicant currently holds a license or credential that the individual has been licensed in that jurisdiction for one (1) year prior to the filing of the application in Kentucky and has been [is] in good standing as a massage therapist [from the credentialing authority of the jurisdiction in which the applicant holds a license or credential] for the [including] duration of the license or credential;~~

~~(5)[(3)] The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1); and~~

~~(6)[(4)] Documents evidencing the applicant's combined initial training, professional experience, continuing education, or other credentials constituting equivalency to KRS 309.358. Acceptable documentation may include:~~

~~(a) Passage of an entry level examination administered by the National Certification Board of Therapeutic Massage and Bodywork (NCETMB), which includes the NCE, NCETM, and the NCETMB [is] National Certification Exam (NCE)] or an examination that has been approved by the board pursuant to 201 KAR 42:035;~~

~~(b) Certified school transcripts received directly from the massage school, which qualified for a Certificate of Good Standing from the Commonwealth of Kentucky for the duration of the applicant's attendance;~~

~~(c) Copies of continuing education certificates from studies completed after or not included as part of the initial training;~~

~~(d) Certified transcript of health care related academic course work;~~

~~(e) Proof of teaching massage therapy relevant curriculum as stated in KRS 309.363;~~

~~(f) Other credentials that may constitute equivalence to the standards in KRS 309.358, which may also include research, clinical internships, publications, and massage therapy leadership positions; or~~

~~(g) Current proof of hands-on therapeutic massage or bodywork sessions with supporting documentation for the hours or years of massage therapy work for six (6) months of the one (1) year preceding the application for endorsement.~~

~~1. The supporting documentation shall include:~~

~~a. Appointment books, employer verification, [and] log books, and contact information for the employer; or~~

~~b. If self-employed, appointment books, and verification of self-employment.~~

~~2. If proof of hands on therapeutic massage or bodywork~~

~~sessions [this] is the only documentation provided to establish equivalency, a minimum of four (4) years' experience shall be required.~~

~~Section 2. Reciprocity for Spouses and Dependents of Active Armed Forces Members. (1) The spouse or a dependent of an active-duty member of the Armed Forces of the United States may apply for licensure by endorsement by submitting:~~

~~(1) A completed "Application for Licensure Through Endorsement as a Massage Therapist," June 2021;~~

~~(2) A recent fingerprint-supported background check performed by the Kentucky State Police and the Federal Bureau of Investigation. The required background check shall be applied for within the ninety (90) days preceding the date of submission of the application for licensure to the board;~~

~~(3) A two (2) inch by two (2) inch or larger passport quality color head shot photograph of only the applicant, which is attached to the application form. The photograph submitted with the application shall be taken within the previous six (6) months to reflect the current appearance of the applicant;~~

~~(4) The appropriate fee for licensure as required by 201 KAR 42:020, Section 2(1);~~

~~(5) Proof that the applicant holds a valid license or certificate for the profession issued by another state, the District of Columbia, or any possession or territory of the United States;~~

~~(6) Proof they are married to or a dependent of an active-duty member of the Armed Forces of the United States; and~~

~~(7) Proof that the applicant's spouse or family member is assigned to a duty station in this Commonwealth pursuant to the official active-duty orders.~~

~~Section 3. Criminal History. (1) An applicant with a criminal history, excluding minor traffic violations, may be required to be interviewed by the board's Application Committee prior to licensure to find if the applicant complies with the requirement for good moral character established in KRS 309.358(1)(c), and the interview shall be conducted pursuant to the board's authority under KRS 309.355(2) and KRS 309.362(1)(b), and in accordance with KRS 335B.010 to 335B.070.~~

~~Section 4. Appeals. (1) An applicant may appeal the denial of his or her licensure application by requesting a hearing in accordance with KRS 309.362(2). In order to request a hearing, the applicant shall file a notice of appeal in writing within thirty (30) days of the date of the letter informing the applicant of the denial.~~

~~Section 5. Incorporation by Reference. (1) The "Application for Licensure Through Endorsement as a Massage Therapist", June 2021, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://bmt.ky.gov/>.~~

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 a.m. EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJVQT09>

Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709

Password: 270127

SIP: 85834511709@zoomcsrc.com

Password: 270127

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 (November 18), 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. EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedure to apply for licensure by endorsement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the requirements to obtain licensure by endorsement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies the requirements to obtain licensure by endorsement.

(2) If 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 deletes the differentiation between states with equal standards and states with lesser standards than Kentucky, and makes the requirements same for everyone, regardless of the other

state. It also adds a process for military spouses and dependents, updates which examinations are acceptable, clarifies how long a prospective applicant has to practice in the initial licensing state before endorsement will be considered, clarifies that the school must qualify for a Certificate of Good Standing from Kentucky, clarifies what documentation of employment is acceptable, and updates the regulation to conform to the statutory amendment regarding criminal histories.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect individuals interested in obtaining licensure by endorsement from the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It only updates and clarifies the requirements to obtain licensure by endorsement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist prospective licensees in understanding the process to obtain licensure by endorsement.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

(b) How much revenue will this administrative regulation



generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**BOARDS AND COMMISSIONS**  
**Board of Licensure for Massage Therapy**  
**(Amendment)**

**201 KAR 42:110. Continuing education requirements.**

RELATES TO: KRS 309.351, 309.355, 309.361

STATUTORY AUTHORITY: KRS 309.355(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. KRS 309.361 identifies the requirements for continuing education and prescribes the types of courses required during the renewal period. This administrative regulation establishes the procedures and standards for submitting documentation to meet the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "ABMP" means the Associated Bodywork and Massage Professionals.

(2) "AMTA" means the American Massage Therapy Association.

(3) "AOBTA" means the American Organization for Bodywork Therapies of Asia.

(4) "Board" is defined by KRS 309.350(1).

(5) "CE hour" means continuing education hours consisting of fifty (50) minutes of an organized learning activity that is either didactic or clinical experience and shall exclude meals, breaks, and registration.

(6) "Competency" means the study, development, and demonstration of knowledge and skills in meeting professional expectations as a massage therapist.

(7) "Continuing education" means participation in an approved program or learning experience that is designed to facilitate continued competency including ethical and legal practice in the therapeutic massage and bodywork profession through participation in a learning process that enhances the licensee's current knowledge, skills, and abilities in the profession.

(8) "FSMTB" means the Federation of State Massage Therapy Boards.

(9) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(10) "NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine.

(11) "Provider" means an organization, entity, or individual that has met the requirements of the board to provide educational courses that are designed to ensure continued competence in the practice of massage therapy.

(12) "Self-paced learning" means a course designated for an individual to learn at his or her own pace and is often referred to as correspondence or home study with testing or an evaluation process.

Section 2. Accrual of CE Hours; Computation of Accrual. (1) A licensee shall accrue a minimum of twelve (12) CE~~[twenty-four (24) continuing education]~~ hours during a two (2) year licensure period for renewal of a license, beginning on the date of license issue.

(2) A minimum of three (3) of the twelve (12)~~[twenty-four (24)]~~ hours required by subsection (1) of this section shall be accrued in

the field of professional ethics.

(3) All CE hours shall be in or related to the practice of massage therapy.

(4) Coursework related to therapeutic techniques conducted on animals shall not be approved for continuing education credit.

Section 3. Acquisition of CE Hours. (1) CE hours applicable to the renewal of a license shall be directly related to the professional growth and development of massage therapy practitioners. CE hours may be earned by completing any of the educational activities described in this subsection.

(a) Courses Not Requiring Board Review and Approval. Courses from the following sources shall be relevant to the practice of massage therapy and shall be approved if the course is in or relates to massage therapy and does not violate any of the prohibitions contained in this administrative regulation:

1. Courses and Learning Opportunities approved by the NCBTMB;

2. Courses offered by the AMTA and its state affiliates;

3. Courses approved by the NCCAOM;

4. Courses offered by the AOBTA and its state affiliates;

5. Courses offered by the ABMP;

6. Kentucky board approved massage therapy programs of instruction or massage therapy programs duly licensed to operate in other states;

7. Relevant academic courses completed in a degree-granting college or university accredited by an agency that is approved by the Council on Higher Education Accreditation (CHEA); or

8. Courses offered by the FSMTB.

(b) Programs Requiring Board Review and Approval. All other programs, including self-paced learning courses and in-service training provided by organizations, educational institutions, or other service providers not listed in paragraph (a) of this subsection, and programs or academic courses presented by the licensee shall require approval by the board.

(c) Required Training for pulsed electromagnetic field (PEMF) or microcurrent devices. Massage therapists who use PEMF therapy or microcurrent devices shall be able to prove training in the use of the device they employ. Such training may be provided by entities described in Section 3(1)(a) and (b), or by the manufacturer of the device if the Applications Committee reviews the training and finds that it provides clear guidelines for proper application, indications and contraindications. Manufacturer training will not be considered for CE credit unless the training has been approved by the board as described in Section 3(1)(b).

(2) Presenters of relevant programs or academic courses may earn double continuing education credit for the length of presentation time, not to exceed six (6) CE~~[twelve (12)]~~ hours per renewal cycle.

(3) Credit shall not be issued for repeated instruction of the same course.

(4) A licensee shall not receive credit for completing the same CE course within the two (2) year renewal period.

Section 4. Documentation of CE Hours. (1) A licensee shall furnish the following information regarding completion of the appropriate number of CE hours for the current renewal period:

(a) Name of course, date, and the author or instructor;

(b) Name of providing organization and the location of the course;

(c) The number of hours attended;

(d) Provider number;

(e) Provider name and telephone number for board verification;

(f) Official transcripts with a raised seal showing academic credits and grades awarded if courses are received from a university, college, or vocational technical adult education facility; and

(g) Documentation of completion, if requested by the board.

(2) A licensee who supplies false information to the board in order to comply with the CE requirements of this administrative regulation shall be subject to disciplinary action that may include suspension or revocation of license.

Section 5. Procedures for Preapproval of Continuing Education Courses. (1) An entity seeking to obtain approval of a continuing education course prior to its offering shall complete a Continuing Education Program Application and submit it to the board at least sixty (60) days in advance of the commencement of the course, stating the:

- (a) Type of learning activity;
- (b) Subject matter;
- (c) Names and qualifications of the instructors;
- (d) Number of ~~CE[continuing education]~~ hours offered; and
- (e) Statement of how the CE course relates to massage therapy.

(2) A CE activity shall be preapproved if the activity being presented:

- (a) Is an organized course of learning;
- (b) Pertains to subject matters that integrally relate to the practice of massage therapy;
- (c) Contributes to the professional competency of the licensee; and
- (d) Is conducted by an individual with approved educational training or experience.

(3) The board shall review preapproval requests meeting the board's deadline at the board meeting immediately following the submittal and receipt of all required materials. An entity shall submit a preapproval request, and all required materials shall be received by the board at least one (1) business day before the board meeting. The board may defer a preapproval request to the next board meeting if the request did not meet the deadline established in this subsection.

Section 6. Responsibilities and Reporting Requirements of Licensees. A licensee shall:

- (1) Identify the licensee's own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills, and attitudes;
- (2) Select approved activities by which to earn CE hours;
- (3) Maintain records of CE hours, for a period of two (2) years from the date of renewal; and
- (4) Document attendance and participation in a CE activity by providing official transcripts, copies of certificates, or verification of completion, if requested.

Section 7. Carry-over of CE Hours. (1) A maximum of ~~six (6)~~~~twelve (12)~~ CE hours may be carried over into the next renewal period.

(2) A licensee shall maintain records related to carry-over ~~CE[continuing education]~~ hours and submit those ~~CE[continuing education]~~ hours to the board if the licensee elects to utilize those hours for the fulfillment of the continuing education requirement for the current renewal period.

(3) A continuing education course shall only be used for the fulfillment of the continuing education requirement for a single renewal period and shall not be subdivided for utilization in multiple renewal periods.

Section 8. Appeal Procedure If Approval for CE Hours is Denied. If an application for approval of CE hours is disapproved, the licensee may request reconsideration by the board. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of the CE hours.

Section 9. Audit of CE Activities. The board may audit the documentation of a licensee's CE hours for the current renewal period. If notified by the board, the licensee shall respond to the audit within thirty (30) days of the date of the request.

Section 10. Waiver or Extension of Continuing Education. (1) The board shall, in individual cases involving medical disability, illness, undue hardship, active military service, or other similar extenuating circumstance that precludes the individual's completion of the requirements, waive CE requirements or grant an

extension of time within which to fulfill the requirements if the board receives:

- (a) A written request for waiver or extension of time; and
  - (b) 1. Verifying documentation signed by a licensed physician or proper military personnel, if applicable; or
  - 2. Documentation to support the waiver.
- (2) A waiver of the minimum CE requirements or an extension of time within which to fulfill the CE requirements may be granted by the board for a period not to exceed one (1) calendar year. If the circumstance extends beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 11. Incorporation by Reference. (1) "Continuing Education Program Application", ~~June 2021~~~~[August–2014]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky 40601~~[Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601]~~, 8:00 a.m. to 4:30 p.m. The board's web site address is: <https://bmt.ky.gov/>.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 8:00 AM EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

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

<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJVQT09>

Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709

Password: 270127

SIP: 85834511709@zoomcrc.com

Password: 270127

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 (November 18), the hearing may be canceled. This hearing is open to the public. Any person who

wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel, Department of Professional Licensing, 500 Mero Street 237 CW, phone (office) (502) 782-0562, phone (cell) (502) 352-8095, fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the continuing education requirements for massage therapists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the continuing education requirements for massage therapy and to comply with KRS Chapter 309 as amended by HB 79 (2021).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation clarifies the continuing education requirements of massage therapy.

(2) If 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 reduces the continuing education requirements to be consistent with the statutory changes passed in the last legislative session.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It reduces the continuing education requirements for massage therapists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. It reduces the continuing education requirements for massage therapists.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will not have to complete as many continuing education hours.

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

(a) Initially: None. It reduces the continuing education requirements for massage therapists.

(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:

There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of State Police (Amendment)

##### 502 KAR 10:010. Definitions.

RELATES TO: KRS 332.015 [332.040]

STATUTORY AUTHORITY: KRS 15A.160, 332.216 [332.400] NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216 [332.400] provide that the [Secretary of the Justice Cabinet in cooperation with] the Commissioner of the department[, Department of State Police,] may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the definitions to be utilized in the driver training schools and instructors administrative regulations.

Section 1. As employed in the driver training and instructors administrative regulations, unless the context requires otherwise the following words and phrases have the following meanings:

(1) "Commissioner" means the Commissioner[, Department] of State Police.

(2) "Driver training instructor" means any person who gives driver training or offers a course of driver training for which a fee or

tuition is charged.

(3) "Place of business" means a designated location at which the business of the driver training school is [being] conducted.

(4) "Branch office" means an approved location where the business of the driver's school is conducted, other than the principal place of business.

(5) "High school education or the equivalent in experience" means any high school diploma or the ability to pass a General Educational Development Test.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes the definitions to be utilized in the driver training schools and instructors administrative regulations.

(b) The necessity of this administrative regulation: This regulation is necessary in order to effectuate the provisions of KRS Chapter 332.

(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 Chapter 332.

(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 clarifies the definition of the commissioner of KSP, and amends the statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS Chapter 332.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the existing language and statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school 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: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 332

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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  
Department of State Police  
(Amendment)

**502 KAR 10:020. Department facilities; facility inspection; conflict of interest.**

RELATES TO: KRS ~~332.216~~[332.400]

STATUTORY AUTHORITY: KRS 15A.160, ~~332.216~~[332.400]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and ~~332.216~~[332.400] provide that the [~~Secretary of the Justice Cabinet in cooperation with the~~] Commissioner of the department[~~Department of State Police,~~] may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This [administrative] regulation establishes the department's policy regarding department premises, facility inspection, and conflict of interest.

Section 1. General Prohibitions on Premises. (1) No driver training school instructor, employee, or agent will be permitted to loiter in or on premises rented, leased, owned, or used by the department.

(2) No driver training school instructor, employee or agent shall be permitted to personally solicit any individual on premises rented, leased, owned, or used by the department for the purpose of enrolling them in any driver training school.

(3) Practice driving is prohibited on testing areas used by the department while driving tests are in progress.

Section 2. Inspections. (1) A driver training school shall permit any authorized representative of the department to inspect the school at any time.

(2) The driver training school shall make available to the department full information relating to data contained in its application forms and shall permit the department's representative to make [photostat] copies of school records required by the department.

Section 3. No person whose duties relate in any way to the issuance of motor vehicle operator's license nor any employee of the department, nor any member of his immediate family, shall be connected in any capacity whatsoever with a driver training school.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes the department's policy regarding department premises, facility inspections, and conflict of interest.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 15A.160 and KRS 332.216.

(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 15A.160 and KRS 332.216.

(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 clarifying the statutory authority.

(2) If 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 accurately reflects the statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160 and KRS 332.216.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school 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: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of

Kentucky State Police; driver training schools; driver training school instructors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.160 and KRS 332.216.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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  
Department of State Police  
(Amendment)**

**502 KAR 10:030. Instructor's license.**

RELATES TO: KRS ~~332.204~~[332.030]

STATUTORY AUTHORITY: KRS 15A.160, 332.204, 332.216 [332.100]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.100 provide that the department [~~Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police,~~] may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding the licensing of driver training instructor.

Section 1. Each person desiring to be licensed as a driver training instructor shall submit an application on the department's Web site. Additional materials may also be submitted online, including the supporting documentation and the fingerprint background check [must make application on forms furnished by the department. The forms shall consist of sections dealing with the personal history of the applicant and include a physical examination report signed by an examining physician].

Section 2. The driver training instructor license application shall [must] indicate the name and address of the driver training school employing the applicant and shall [must] be signed by an agent or representative of the driver training school. The application shall [must] be verified under oath and signed by the applicant.

Section 3. The driver training instructor license applicant may be licensed as an instructor upon [Upon] receipt by the department of the following:

(1) A [a] duly completed driver training instructor application,

(2) A refundable fifty (50) [together with a nonrefundable twenty (20)] dollar fee in the form of a certified check or money order made payable to the Kentucky State Treasurer,

(3) A refundable twenty (20) dollar background check fee in the form of a certified check or money order made payable to the

Kentucky State Treasurer:

(4) Three (3) one (1) set of fingerprints of each digit on right and left hands, three (3) one [one (1)] and one-half (1 1/2) inch by one and one-half (1 1/2) inch identical photographs which show a full face view of his or her neck and uncovered head,

(5) A physical examination report, including the results of an eye examination showing the visual acuity of the applicant to be at least 20/20 in one (1) eye and 20/40 in the other, or 20/30 in each eye separately with or without corrective lenses, and showing that the applicant is not lacking one (1) functional eye, hand, or foot,[and]

(6) Proof [proof] of age, [and]

(7) Proof of education, and

(8) The [the] results of the department's examination, if the applicant has obtained a passing score [favorable, the applicant may then be licensed as an instructor].

Section 4. The driver training instructor examination shall consist of:

(1) A written theoretical examination prepared and administered by the department and embracing subject matter pertinent to the care, operation, and use of a motor vehicle on the highways, and to general safety principles and practices, both for the purpose of testing an applicant's competency and fitness in the operation of a motor vehicle and in providing classroom instruction.

(2) The department may also test the applicant for depth perception, peripheral vision, and reaction time.

Section 5. All applicants who pass the instructor's examination and who are otherwise qualified will be issued a driver training instructor license certifying the instructor for both classroom and practical instruction and containing the instructor's photograph, the name and address of the licensee, and the name and address of the driver training school by whom he is employed.

Section 6. If [Should] a license is [be] lost, mutilated, or destroyed, a duplicate license will be issued upon proof of the date the license was lost or destroyed and the circumstances involving the [such] loss, mutilation, or destruction. If a license is mutilated, it shall be surrendered to the department. [In the case of a mutilated license, the surrender of such license is necessary.] A five (5) dollar replacement charge will be made for a duplicate license [all duplicates].

Section 7. All expired, revoked, or suspended licenses shall [must] be surrendered to the department at the time of expiration, revocation, or suspension.

Section 8. Any applicant who has previously been licensed as a driver training instructor but has not been so employed within two (2) years preceding application shall apply [will be treated] as an original applicant.

Section 9. Any instructor who has had his or her license suspended or revoked or any applicant denied a license will be eligible to make application again six (6) months following the suspension, revocation, or denial.

Section 10. The department will not issue a driver training instructor license to any applicant who has been convicted of two (2) or more moving hazardous traffic violations within the two (2) year period immediately preceding the date of application.

Section 11. A driver training school is required to notify the department, in writing, of the termination of employment of an instructor or agent, or if there is any change in the address of any owner, partner, officer, or driving instructor.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on

November 22, 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 November 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: 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 administrative regulation establishes the department's policy regarding the licensing of driver training instructors.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 15A.160, 332.204, and 332.216.

(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 15A.160, 332.204, and 332.216.

(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 clarifying the statutory authority and the procedures required to be a driver training instructor.

(2) If 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 accurately reflects the statutory authority and clarifies the required procedures to become an instructor under this Chapter.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160, 332.204, and 332.216.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school 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: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.160, 332.204, and 332.216.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

##### 502 KAR 10:035. Commercial driver's license skill testing.

RELATES TO: KRS 165A.310, 281A.160, [332.040], 49 C.F.R. 383.75, 49 C.F.R. 383.131

STATUTORY AUTHORITY: KRS 165A.310, 281A.150(2), (3), 281A.160, [332.040]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160 authorizes third parties to administer the skills test for commercial driver's licenses. This administrative regulation establishes procedures for authorization and testing.

Section 1. Application for Authorization. Persons desiring to administer the skills test for commercial driver's licenses shall make a written request to the Kentucky State Police Driver Testing Branch [Driver Testing Section of the Department of State Police]. The request shall be accompanied by a copy of a current driver's training school or instructor's license, and proof of satisfactory completion of a CDL examiner's training course approved by the U.S. Department of Transportation, Federal Highway Administration (FHWA).

Section 2. Issuance of Authorization. Upon receipt of a written request from a qualified person the Driver Testing Branch [Section] of the Department of State Police shall issue a letter of authorization to conduct the CDL skills test. The letter of authorization shall be considered an endorsement to the drivers training school or instructor's license and shall be subject to the same terms and conditions as school or instructor's license.

Section 3. Skills Test Requirements. Persons authorized to administer the CDL skills test shall be subject to the following additional requirements:

(1) Administration of skills tests shall comply with 49 C.F.R. 383.75, Subparts G and H.

(2) Persons administering the skills tests shall, without deviation, administer the test in accordance with the AAMVA's 2005 CDL Test System Model CDL Examiner's Manual [Kentucky State Police Driver Testing Section CDL Examiner's Manual. The manual is hereby incorporated by reference. Copies of the manual may be obtained from the Driver Testing Section of the Department of State Police, 919 Versailles Road, Frankfort, Kentucky 40601.]

(3) Persons administering the skills tests shall, following the road test, immediately call the Kentucky State Police Driver Testing Branch [Driver Testing Section of the Department of State Police and report the score given to the person tested].

Section 4. Processing Fee. A processing fee of twenty-five (25) dollars shall accompany the written request to administer the skills test.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes procedures for driver's license skill testing, including authorization and testing.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 165A.310 and the applicable federal statute.

(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 165A.310 and the applicable federal statute.

(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 clarifying the

statutory authority and updating the procedures currently utilized by the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment accurately reflects the statutory authority and the procedures utilized by the department.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 165A.310 and the applicable federal statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school 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: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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

Contact person: Katherine George

(1) What 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 Kentucky State Police; driver training schools; driver training school instructors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 165A.310 and the applicable federal statute.

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

(4) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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  
Department of State Police  
(Amendment)**

**502 KAR 10:040. Training school facilities.**

RELATES TO: KRS ~~332.204~~[332.030]

STATUTORY AUTHORITY: KRS 15A.160, 332.095, 332.204, 332.216 [332.400]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216 [332.400] authorize the department to establish [provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such] administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding standards for driver training school facilities.

Section 1. The following standards shall apply to driver training school office facilities:

(1) The driver training school shall have and maintain an established place of business in the Commonwealth of Kentucky.

(2) The established place of business of each driver training school shall be owned or leased by the driver training school and regularly occupied and primarily used by that driver training school for the business of giving driving instructions for hire, and the business of preparing members of the public for examination given by the department for a motor vehicle operator's license.

(3) The established place of business of each driver training school shall be located in a district [which is] zoned for business or commercial purposes. The driver training school office shall have a permanent sign displaying the school name in letters at least six (6) inches in height and visible from the street or road on which the school is located. If the classroom is at a different address, the classroom [it too] shall have a permanent sign meeting the same criteria. The hours during which the driver training is conducted shall also be displayed. If these requirements do not comply with local zoning laws, the department shall permit a sign of a type which does comply.

(4) The established place of business or advertised address of any 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. The residence requirement of this rule shall not apply to compel the discontinuance of a driver training school which was already established and operational on or before June 16, 1966.

(5) The place of business 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 cabinet during this time.

(6) The place of business shall have a business telephone used exclusively for the operation of the driving school.

(7) A driver training school shall not transfer its license nor change its place of business without the prior approval of the department. There will be a \$200 fee for transfer of ownership, which will be treated as an original application for license.

Section 2. The following standards shall apply to driver training school branch offices: (1) A driver training school desiring to open a branch office shall make application on a form prescribed by the department. Upon approval [If application is approved], the department will issue a copy of the license of the principal place of business, appropriately endorsed, for use at the branch office. This copy shall be conspicuously displayed in such branch office at all times.

(2) A branch office or its equipment may not be moved to a new location without the prior approval of the department.

(3) If [Should] a branch office is [be] discontinued, the branch office copy of the license shall be surrendered immediately to the department.

(4) The branch office shall meet all of the requirements of the licensed principal place of business.

(5) There will be a fee of \$100 for licensure of each branch office.

Section 3. The following standards shall apply to driver training school classroom facilities:

(1) The classroom facility of each 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 and equipment to carry on the business of giving classroom instruction for students enrolled in the driver training school, and preparing students for examination for a 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 providing writing surfaces for not less than eight (8) students;

(b) Adequate blackboards or whiteboards that [which] are visible from all seating areas;

(c) Adequate charts and diagrams or pictures relating to the operation of motor vehicles and traffic laws;

(d) Audio visual equipment consistent with modern technology [One (1) of the following:

1. ~~A sixteen (16) millimeter sound movie projector and screen for showing driver training and sound films; 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 being operated in conjunction with a video tape for showing driver training instruction]; and~~

(e) A copy of these rules and administrative regulations displayed so as to be accessible to 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 [Such other] devices that [as] may help to acquaint students with traffic laws and prepare them to safely operate motor vehicles.

(6) A minimum of four (4) [five (5)] hours of classroom instruction shall be available to each student receiving driving training from a driver training school.

Section 4. Driver training schools shall make available the following [both] theoretical and practical instruction [as follows]:

(1) Practical instruction in driver training shall include the demonstration of, and actual instruction in, starting, stopping, shifting, turning, backing, parking, and steering in a training vehicle which meets the regulatory requirements set forth herein.

(2) Theoretical instruction in driver training shall include subject matter that meets the requirements set forth in 601 KAR 13:110, Section 4(a)-(d) [relating to rules of the road, safe driving practices, pedestrian safety, mechanics of motor vehicles, driver responsibility, the Kentucky point system, types of automobile insurance, and use of automobile safety devices].

Section 5. Each school shall publish a schedule of fees or charges for behind-the-wheel lessons, classroom lessons, and all other fees or charges made by the school. A copy of this schedule shall be filed with the department.

Section 6. Each school shall inform each student, prior to the time instruction commences, of the character and amount of any ~~[and all]~~ fees or charges made for enrollment ~~[or]~~ registration, tuition, and use of any other service, ~~[or]~~ equipment or materials provided by the school.

Section 7. Prior to the relocation of a ~~[Before any]~~ driver training school office or branch office, or any equipment thereof, ~~[is moved to another location,]~~ the department shall be notified and the new location shall be inspected and approved.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes the department's policy regarding the standards for driver training school facilities.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 15A.160,332.095, 332.204, and 332.216.

(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 15A.160,332.095, 332.204, and 332.216.

(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 clarifying the statutory authority and the standards for 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 accurately reflects the statutory authority and clarifies the standards for driver training school facilities.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160,332.095, 332.204, and 332.216.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school 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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.160,332.095, 332.204, and 332.216.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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)**

**502 KAR 10:050. Contracts and agreements.**

RELATES TO: KRS 332.216 ~~[332.100]~~

STATUTORY AUTHORITY: KRS 15A.160, 332.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216 ~~[332.100]~~ provide that the department ~~[Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police,]~~ may adopt [such] administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding contracts and agreements involving driver training schools.

Section 1. Each school shall file and maintain ~~[with the department]~~ a list of [those] persons authorized ~~[or empowered]~~ to execute contracts on behalf of the driver's school with the department. A complete signature record form shall be filed with the department for each person authorized to sign contracts for the school.

Section 2. Each school which uses contracts or agreements shall furnish the department with blank copies of each form used.

Section 3. Any student who signs a contract or agreement with a ~~[any]~~ driver training school shall receive a ~~[carbon]~~ copy of the contract and the original retained and filed by the school. These contracts shall be made available to any authorized representative of the department upon request.

Section 4. All contracts used by a commercial driver training school shall contain the following:

(1) 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 agreement shall contain the name of the individual owner, or the ~~[such of]~~ names of the officers of the corporation, association, or members of the partnership as the department may require.

(2) All contracts shall contain the following statement. "This constitutes the entire agreement between the school and the student and no verbal statements or promises will be recognized."

(3) The fee charged for each lesson, or [and/or] the fee for the entire series of lessons agreed upon.

(4) A statement indicating that these administrative regulations of the driver training schools are available on the school premises for the examination by the student.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 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 November 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: 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](mailto: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 administrative regulation establishes the department's policy regarding contracts and agreements involving driver training schools.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 15A.160 and 332.216.

(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 15A.160 and 332.216.

(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 clarifying the statutory authority and updating the procedures currently utilized by the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment accurately reflects the statutory authority and the procedures utilized by the department.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160 and 332.216.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school 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: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Explain why or why not. 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

502 KAR 10:050

Contact person: Katherine George, Phone: (859) 622-3801, Email: katie.george@ky.gov

(1) What 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 Kentucky State Police; driver training schools; driver training school instructors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.160 and 332.216.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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**  
**Department of State Police**  
**(Amendment)**

**502 KAR 10:060. School advertising.**

RELATES TO: KRS 332.216[332.100]

STATUTORY AUTHORITY: KRS 15A.160, 332.216[332.100]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160

and 332.216 authorize the department to establish [332.100 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such] administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding advertising by driver training schools.

Section 1. No person shall advertise a driver training school or driver training of any type in this state unless licensed by the department.

Section 2. A school shall not use any name other than its licensed name, nor shall a school advertise or imply that it is "supervised," "recommended," "endorsed," "accredited," or "approved" by the Kentucky State Police or the Commonwealth of Kentucky. ~~No [Neither shall any] reference shall be made to past or present association with any police agency by any person [person(s)] now an officer or employee of the school. Driver~~

training schools which are licensed by the department may ~~advertise[, however, indicate on their advertising-]that they are "inspected and licensed by the Kentucky State Police."~~

Section 3. A driver training school ~~shall not [may not]~~ make any false or misleading claim in any of its advertising ~~and it shall not[, nor shall it]use a name that is like or deceptively similar to a name used by another driver training school, nor shall it advertise or imply that free lessons will be given to students who fail a motor vehicle operator's license examination.~~

Section 4. Each telephone directory listing or telephone advertisement of a driving school shall include the address or addresses of the driving school's established place or places of business. Addresses of telephone answering services which are not established places of business shall not be shown in any media of advertisement or telephone directory listing.

Section 5. A driver training school shall not claim nor imply that it will guarantee employment upon completion of a course of instruction or guarantee the securing of a license to drive a motor vehicle.

Section 6. A copy of each telephone directory or similar directory advertisement of a driver training school shall be submitted to the department by the school at the same time it is placed for publication.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 2021 at 8:00 a.m. 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 November 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: 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 administrative regulation establishes the department's policy regarding advertising by driver training schools.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 15A.160 and 332.216.

(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 15A.160 and 332.216.

(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 clarifying the statutory authority and updating the procedures currently utilized by the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment accurately reflects the statutory authority and the procedures utilized by the department.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160 and 332.216.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school 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: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.160 and 332.216.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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)

##### 502 KAR 10:070. Training vehicle, annual inspection.

RELATES TO: KRS 165A.460 [332.030]

STATUTORY AUTHORITY: KRS 15A.160, 165A.460, 332.216 [332.100]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.100 authorizes the department to promulgate ~~[provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such]~~ administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding the annual inspection of driver training vehicles utilized by driver training schools.

Section 1. Driver training motor vehicles shall be presented to any authorized representative of the Kentucky State Police Driver Testing Branch ~~[Section for inspection]~~ at least once a year for inspection.

Section 2. All motor vehicles used to give driver training instruction shall have a current safety inspection certificate issued by the department which shall be kept in the vehicle ~~[glove compartment]~~.

Section 3. In order to be approved the motor vehicle shall be:

(1) In a safe operating condition, not more than ten (10) ~~[five (5)]~~ years old, except that truck/tractors shall not be more than ten (10) ~~years old for on-the-road instruction and~~ fifteen (15) years old for off-the-road instruction;

(2) Insured as required in KRS 165A.475 [332.030];

(3) Registered with the department in the name of a driver training school;

(4) Equipped with dual controls on the foot brake, and on the clutch, if any, which will enable the instructor to bring the car under control in case of emergency. Dual controls are not required on a truck/tractor. In addition, it is suggested that the driver training school offer instruction in both manual gear shift and automatic transmission vehicles; and

(5) Equipped with seat belts that shall ~~[which should]~~ be used by both student and instructor.

(6) Emergency ignition-kill toggle switch on instructor's side, except for tractor/trailers.

(7) Equipped with outside mirror on both driver's side and instructor's side.

(8) Owned or leased by the school.

Section 4. The full name of the driver training school shall be prominently displayed on both front and rear of such vehicle in letters at least two (2) inches high and in colors vividly contrasting with the color of the vehicle.

Section 5. ~~(1)~~ It shall be the responsibility of the driver training school and the duty of the driver training instructor to insure that all vehicle are ~~[the vehicle is]~~ inspected annually.

(2) If any items in Section 3 are found to be missing, or insufficient, the vehicle may be determined uncertifiable, and the

driver training school may be directed to:

(a) Correct any condition that renders a vehicle unsafe for operation.

(b) Have mechanical or equipment deficiencies corrected by a certified mechanic, or

(c) Obtain insurance, registration, or ownership of the vehicle in compliance with Section

(3) Any vehicle that is determined to be uncertifiable shall be reinspected and have all corrections verified by the Driver Testing Branch prior to being approved for operation by the driver training school.

Section 6. It shall be the responsibility of the school to furnish written notice any time a vehicle is added to or deleted from the school's motor vehicle fleet.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 2021 at 8:00 a.m. 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 November 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: 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 administrative regulation establishes the department's policy regarding the annual inspection of driver training vehicles utilized by driver training schools.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 165A.160 and 332.100.

(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 165A.160 and 332.100.

(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 clarifying the statutory authority and the standards for the inspection of driver training vehicles.

(2) If 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 accurately reflects the statutory authority and clarifies the standards for driver training vehicles.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 165A.160 and 332.100.

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

statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school 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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 165A.160 and 332.100.

(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. 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)**

**502 KAR 10:080. License suspension, revocation, denial.**

RELATES TO: KRS 332.216 ~~[332.060]~~

STATUTORY AUTHORITY: KRS 15A.160, 165A.475, 332.216 ~~[332.100]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216 ~~authorize the department to [332.100 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may]~~ adopt ~~[such]~~ administrative regulations necessary to carry out the provisions of KRS Chapter 165A and ~~[Chapter]~~ 332. This administrative regulation establishes the department's policy regarding license suspensions, revocations or denials.

Section 1. In addition to the provisions of KRS 332.216 ~~[332.060]~~, the ~~commissioner of the department~~ secretary shall upon receipt of satisfactory evidence, suspend, revoke, refuse to issue or refuse to renew the license of a driver training school or a driver training instructor if:

(1) The licensee fails or refuses to comply with the provisions of KRS Chapter 165A and 332 or any rule or administrative regulation adopted thereunder.

(2) The licensee has made a false material statement or has concealed a material fact in connection with his or her application.

(3) The licensee or any officer, director, partner, or other person directly interested in the driver training school held a license issued under KRS 165A.475 ~~[332.030]~~ which was revoked or suspended and not reinstated.

(4) The licensee has been guilty of a fraudulent practice in attempting to obtain for himself, herself, or another a license to operate a motor vehicle.

(5) Written notice of the cancellation of insurance required by KRS 165A or 332.204 ~~[332.030]~~ is received by the commissioner and the licensee does not present satisfactory evidence of insurance to the commissioner prior to the effective date of the cancellation.

(6) The licensee has failed to maintain adequate standards of instructions or safe and necessary equipment which is needed to give proper driver training instruction.

(7) The licensee is employing instructors or agents who have not been licensed by the department.

(8) The licensee has been convicted of a felony, or any crime involving violence, dishonesty, deceit, indecency, immoral conduct, or sexual abuse.

(9) The licensee or any officer, director, partner or other person directly interested in the driver training school or any instructor licensed under the name of the school shall have in their possession a copy of the department's driver licensing examination questions or their equivalent, or attempts to obtain a copy of these test questions for the purpose of making them available to their students or any other person.

(10) The licensee has failed to provide or maintain premises, equipment, or conditions which are adequate, safe, and sanitary in accordance with these administrative regulations.

(11) The licensee or any officer, director, partner, instructor, agent, or other person actively involved in the driver training school is addicted to the use of alcohol, morphine, cocaine, or other mood-altering drug.

(12) The licensee or any officer, director, partner, instructor, agent, or other person actively involved in the driver training school has been legally adjudged mentally incompetent.

Section 2. ~~If [Whenever]~~ a driver training instructor is convicted of driving an automobile while under the influence or of leaving the scene of an accident, reckless homicide, two (2) moving hazardous violations within a two (2) year period, or driving when addicted to

or while under the influence of narcotic drugs, his license shall be revoked.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 2021 at 8:00 a.m. 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 November 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: 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](mailto: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 administrative regulation establishes the department's policy regarding license suspensions, revocations or denials.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 15A.160 and 332.216.

(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 15A.160 and 332.216.

(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 clarifying the statutory authority and the procedures for licenses suspension, revocations, and denials.

(2) If 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 accurately reflects the statutory authority and clarifies the department's policies currently in place.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160 and 332.216.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; licensees.

(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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; licensees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.160 and 332.216.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 10:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

RELATES TO: KRS 165A.460 [332.030]

STATUTORY AUTHORITY: KRS 15A.160, 332.216 [332.100]

FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216 authorize the department to establish [332.100 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such] administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation outlines the administrative adjudication procedures of the department [cabinet]

in license denial, suspension, nonrenewal and revocation hearings.

Section 1. Scope and Definitions. (1) These administrative regulations govern the procedure for the department [Justice Cabinet] in all proceedings under this chapter in which the legal rights, duties or privileges of any person licensed by the department [cabinet] is required by statutes or by these rules to be determined after an opportunity for a hearing. These rules shall be construed to secure a fair and impartial determination of every proceeding.

(2) For purposes of administrative adjudicatory procedure unless the context otherwise requires:

(a) "Party" means any person or agency named or admitted as a party to any proceedings conducted pursuant to these administrative regulations and shall include only persons who have a real interest in the matter before the commissioner of the department [secretary].

(b) "Person" means any individual, sole proprietorship, partnership, corporation, association or public or private organization of any character.

(c) "Order" means the whole or any part of a final disposition of an adjudication.

(d) "Contested case" means an adjudicatory proceeding before the department [secretary] in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the department, [cabinet] or by some other person. [

(e) "Cabinet" means the Justice Cabinet.

(f) "Secretary" means the Secretary of the Justice Cabinet.]

(g) "Department" means the Department of State Police.

(h) "Commissioner" means the Commissioner of the Department of State Police.

Section 2. Complaints and Investigations. (1) Complaints. A complaint may be made by any person against the holder of a license by the filing of written charges with the commissioner [secretary]. The written complaint shall contain the name and address of any person making charges as well as the name and address of the person or persons against whom charges are being made and a clear and concise statement of the facts giving rise to the complaint. Any complaint or charge filed with the department [secretary] shall be forwarded to the licensee involved and the licensee shall be given thirty (30) days to resolve the problem or make a full satisfactory reply [thereto]. Any defamatory matter in a formal written complaint shall be exercised by the commissioner [secretary] prior to the complaint being forwarded to the licensee.

(2) Investigations. Upon the receipt of a complaint and following the expiration of the thirty (30) days provided for in subsection (1) of this section, the commissioner [secretary] may cause an investigation to be made [by the Department of State Police or by any agent or representative appointed by the secretary]. Upon the completion of any investigation, the person or persons making such investigation shall submit a full written report to the person designated by the commissioner [secretary] to prosecute the matter in an adjudicatory proceeding.

Section 3. Commencement of Adjudicatory Proceedings. Upon the request of the prosecutor or after the expiration of the thirty (30) day period referred to in Section 2(1) of this administrative regulation where an investigation is not made, the commissioner [secretary] may begin formal adjudicatory proceedings in accordance with the following procedure:

(1) If it is determined that the facts alleged in the complaint and/or investigative report may constitute grounds for the suspension, probation or revocation of a license, a hearing shall be scheduled before the commissioner [secretary], or his or her designated hearing officer, on those allegations. In any case in which an application for license or renewal of license has been denied, a hearing shall only be scheduled upon receipt by the commissioner [secretary] of a written request submitted by or on behalf of the person whose application for license was denied or not renewed. Any required hearing shall be held within three (3)



months, or as soon thereafter as practicable, after the receipt by the commissioner [secretary] of a written request for a hearing. In any contested case, whether it be instituted by the department [cabinet] or by some other person, all the parties to the proceeding shall be given reasonable notice and an opportunity to be heard.

(2) Notice. The notice provided for shall be issued in the name of the department [cabinet] by the commissioner [secretary] or designated hearing officer and shall state:

- (a) The time, date, place, and nature of the hearing;
- (b) The legal authority and jurisdiction under which the hearing is to be held;
- (c) The alleged statutory or regulatory violations; and
- (d) A short and plain statement of the complaint or charges which are being preferred and the remedy which is being sought. The notice shall be personally served or mailed to the last known address of the party or parties not less than twenty (20) days before the date of the hearing.

(3) Appearance and service. In any contested case, the parties to the proceeding shall have the right to appear personally at the hearing, and by counsel, and shall have the right to cross-examine witnesses appearing against them and to produce witnesses on their [own] behalf. When a party has appeared by an attorney, or otherwise designated an attorney as his representative, all communications, notices, orders or other correspondence shall be served on such attorney; service on the attorney shall be considered as service on the party and the hearing officer shall be notified of any change in such attorney.

(4) The commissioner [secretary] or his or her designated hearing officer shall preside over the hearing proceedings; if the commissioner [secretary] presides, he or she may have assistance of counsel to rule on evidentiary matters.

(5) Authority to administer oaths. In hearings before the commissioner [secretary] or hearing officer, any oath or affirmation required may be administered by any person authorized to administer oaths by the laws of the Commonwealth of Kentucky.

(6) Presentation of evidence. The evidence against the licensee or other person concerning the pending complaint or charge shall be presented by the designated prosecutor. Additionally, any witness or other evidence may be questioned or introduced by the presiding officer.

Section 4. Conduct of Hearings; Witnesses; Burden of Proof; Evidence. (1) The presiding officer may hear testimony of any person present at the hearing who has information to offer bearing on the subject matter of such hearings. The presiding officer may ask any witness questions as may be required for a full and true disclosure of the facts. The presiding officer shall have only one (1) witness before him at any one (1) time and other witnesses may be excluded from the hearing room while any one (1) witness is being questioned.

(2) The hearing in a contested case involving a suspension, probation, or revocation of a license shall proceed in the following order, unless the presiding officer, for special reasons otherwise directs:

(a) The party filing the complaint or preferring the charges or the persons appointed or designated to present the evidence against the licensee shall briefly state the substance of the charges and the evidence by which he or she expects to sustain them.

(b) The party against whom a complaint has been filed or charges otherwise preferred may briefly state the substance of his or her defense and the evidence which he or she expects to offer in support of it.

(c) The party filing the complaint or otherwise preferring the charges or the designated prosecutor shall have the burden of proof in the whole action; therefore, he or she shall produce his or her evidence first; the party against whom a complaint has been filed or charges preferred may then produce his or her evidence. The presiding officer, however, may regulate the order of proof in any proceeding to expedite the hearing and to enable the presiding officer to obtain a clear view of the whole evidence.

(d) The parties shall then be confined to rebuttal evidence, unless the presiding officer, in his or her discretion, permits them to offer additional evidence in chief.

(e) The parties may then submit the matter to the presiding officer for consideration, or present arguments on the issues involved. In the arguments, the party filing the complaint or otherwise preferring the charges or the designated prosecutor shall have the conclusion and the party against whom the complaint was filed or charges otherwise preferred shall have the opening.

(3) In a hearing requested in writing by a person whose application for a license has been denied or not renewed, the burden of proof and order of proceedings delineated in subsection (2) of this section shall be reversed.

(4) In any contested case, the presiding officer shall as far as practical adhere to the following rules of evidence:

(a) Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky, and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky, shall be admitted in hearings before the presiding officer; however, the presiding officer may admit evidence that would be inadmissible in the courts if the evidence is of the type commonly relied upon by a reasonable, prudent person [men] in the conduct of his or her [their] affairs.

(b) Every party shall have the right to present such oral or documentary evidence, exhibits and rebuttal evidence and conduct such cross-examination as may be required for a full and true disclosure of the facts. Documentary evidence may be introduced in the form of copies or receipts if the original is not readily available provided that upon request the parties or the presiding officer shall be given an opportunity to compare the copy with the original.

(c) If [When] a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, all or part of the evidence may be received in written form by affidavit or prepared statement. Prepared statements shall not be read or made a part of the record until the party against whom the statement is offered has been given a reasonable time for review and objection.

(d) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded and the presiding officer shall give effect to the rule of privilege recognized by the laws of the Commonwealth of Kentucky.

(e) The presiding officer may take notice of judicially cognizable facts.

(f) Objections to evidentiary offers may be made and shall be noted in the record.

(5) The parties to any hearing may agree to waive any one (1) or more of the procedural steps which would otherwise precede the reaching of a final decision by the commissioner [secretary], but such waiver shall not be binding on the commissioner [secretary].

Section 5. Deliberations; Records; Final Order. (1) Deliberations. During any hearing and after the case has been submitted to the commissioner [secretary] or hearing officer for decision, deliberations shall be governed by the following principles:

(a) Ex parte investigations. Neither the commissioner [secretary] nor any hearing officer or any other person who shall make findings of fact and conclusions of law in a contested case shall, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law except upon notice and opportunity for all parties to participate provided, however, that the commissioner [secretary] or hearing officer may have the aid and advice of one (1) or more personal assistants including the assistance of counsel.

(b) Separation of functions. No officer, employee, or agent of the department [cabinet] who is engaged in the performance of investigative or prosecuting functions in a contested case shall, in that or a factually related case, participate or advise in the decision except as a witness or counsel in the public hearing.

(c) Examination of evidence. The commissioner [secretary] or hearing officer shall personally consider the whole record or such portions thereof as may be cited by the parties before a decision is reached.

(d) The presiding officer at his or her discretion may recess a hearing for the taking of additional discovery and evidence as

required.

(2) Record. The record shall include all pleadings, motions, exhibits, documentary and testimonial evidence received or considered, a statement of matters officially noticed and questions and offers of proof and rulings therein. If [Should] any party requests [desire] a written transcript of the proceedings, the party shall be required to [it shall be necessary that they] pay for the [said]-transcript.

(3) Recommended order. In the event the commissioner [secretary] designates a hearing officer as presiding officer of a hearing in a contested case, the hearing officer shall, as soon as practical after the conclusion of the hearing but in no event later than thirty (30) days thereafter, prepare findings of fact, conclusions of law, and a recommended order and cause copies of same to be served on all parties. The parties shall have ten (10) days following entry of the recommended order to file objections and comments thereto with the commissioner [secretary]. The commissioner [secretary], after considering the record and hearing officer's report consisting of a synopsis of procedural matters, findings of fact, conclusions of law, and the recommended order and also any objections or comments filed by the parties, shall render a final order.

(4) Final order. The final decision in any case in which a hearing is required or requested shall be in writing and shall be made a part of the official [office]-record. It shall include a concise and explicit statement of the findings of fact and conclusions of law, separately stated, and shall be signed by the commissioner [secretary]. One (1) copy of the order shall forthwith be served on each party to the proceeding. Motions to correct clerical errors may be filed within ten (10) days after entry of the final order. Any modifying order subsequent thereto shall be served on all parties.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 2021 at 8:00 a.m. 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 November 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: 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 administrative regulation outlines the administrative adjudication procedures of the cabinet in license denial, suspension, nonrenewal and revocation hearings.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 15A.160 and 332.216.

(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 15A.160 and 332.216.

(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 clarifying the statutory authority and the department's procedures for license denial, suspension, nonrenewal and revocation 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: The amendment accurately reflects the statutory authority and clarifies the standards for driver training vehicles.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160 and 332.216.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; licensees.

(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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; licensees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.160 and 332.216.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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  
Department of State Police  
(Amendment)**

**502 KAR 10:110. Third-party CDL skills test examiner standards.**

RELATES TO: KRS 281A.160(4), 49 C.F.R. 383.75, 49 C.F.R. 383.131

STATUTORY AUTHORITY: KRS 281A.160(5), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160(5) and (8) require the Kentucky State Police to promulgate administrative regulations for third-party CDL skills test examiners. This administrative regulation establishes the minimum qualifications, mandatory training requirements, and prohibited conflicts of interest for third-party CDL skills test examiners.

Section 1. Definitions. (1) "AAMVA" means the American Association of Motor Vehicle Administrators.

(2) "CDL" means a commercial driver license.

(3) "DOE" means the Kentucky Department of Education.

(4) "Family member" means the current and, if any, former spouse of a third-party skills test examiner, or a person within the third degree of relationship to any of them, or the spouse of that person.

(5) "FMCSA" means the Federal Motor Carrier Safety Administration.

(6) "KSP" means the Kentucky State Police.

(7) "MOA" means memorandum of agreement.

(8) "Third-party CDL skills test examiner" means an employee of the DOE or a local board of education who, pursuant to a MOA entered into between KSP and their employer, administers CDL skills tests to other DOE or local board of education employees seeking a CDL to operate publicly-owned school buses, and persons retained by KSP under contractual agreement to administer CDL skills test to CDL applicants.

Section 2. Third-Party CDL Skills Test Examiner Minimum Qualifications. DOE employees or persons seeking to enter a contractual agreement with KSP to act as a third-party CDL skills test examiner shall satisfy the following minimum qualifications for initial appointment and retention:

(1) Shall not have accrued more than six (6) demerit points on their driving record;

(2) Shall possess a high school diploma or GED;

(3) Shall, if a DOE employee, possess a Class A or B CDL with passenger and school bus endorsements;

(4) Shall, if a third-party contract examiner, possess:

(a) A Class A CDL with all available endorsements; and

(b) Previous experience as a CDL skills test examiner or two (2) years' experience within the past five (5) years as a licensed Class A or B CDL operator in good standing;

(5) Shall maintain their CDL license with all endorsements required by subsections (3) and (4) of this section;

(6) Shall pass one (1) complete battery of forms A, B, or C of the CDL knowledge tests administered by KSP. These tests shall be retaken every four (4) years;

(7) Shall pass the CDL skills test administered by KSP in the type of commercial vehicle in which they will test CDL applicants. This CDL skills test shall be retaken every four (4) years at the direction of KSP; and

(8) Shall give written consent to KSP to conduct a Kentucky criminal history records check, and further give written consent to an updated Kentucky criminal history records check being performed every four (4) years. Persons who are determined to have felony or misdemeanor convictions involving violence, dishonesty, or moral turpitude may be rejected for appointment, or have their appointment as a third-party CDL skills test examiner revoked, based upon a case-by-case discretionary consideration of the facts and circumstances surrounding the conviction.

Section 3. Third-Party CDL Skills Test Examiner Mandatory Training Requirements. (1)(a) Except as provided in paragraph (b) of this subsection, persons appointed as a third-party CDL skills test examiner shall successfully complete the initial forty (40) hours of CDL skills test examiner training conducted by KSP and pass all exams associated with the training. This training shall be approved by AAMVA and FMCSA. Certificates of completion shall be issued by KSP upon successful completion of this training;

(b) Persons who have previously administered CDL skills tests for KSP and who have completed this training within the past two (2) years shall be waived from this training requirement.

(2) Third-party skills test examiners shall attend and successfully complete an annual ten (10) hour in-service training conducted by KSP.

(3) Third-party skills test examiners shall participate in the certification process for CDL examiners administered through AAMVA. This certification shall be sought and maintained through KSP. It shall be the responsibility of the third-party skills test examiner to pay all fees charged by AAMVA to obtain and maintain this certification. Failure to obtain this certification within two (2) years from the date of appointment as a third-party CDL skills test examiner shall be grounds for revocation of appointment.

(4) Third-party CDL skills test examiners shall be issued identification cards and a unique examiner identification number that identifies them as a CDL examiner. The identification card shall be carried and produced upon request of KSP. The examiner identification number shall be recorded by the third-party CDL skills test examiner on all CDL examination reports and related documents required by KSP to be completed by the examiner in the course of their duties.

(5) Third-party CDL skills test examiners shall conduct CDL skills tests in a uniform approved by KSP. KSP shall not be responsible for the purchase or maintenance costs for this uniform.

Section 4. Additional CDL Skills Test Requirements. (1) Third-party skills tests examiners shall comply with 49 C.F.R. 383.75, Subparts G and H.

(2) Third-party CDL skills test examiners shall, without deviation, administer the CDL skills test in accordance with the AAMVA's 2005 CDL Test System Model CDL Examiner's Manual (July 2010 version or newer) [KSP Driver Testing Branch CDL Examiners Manual].

(3) Third-party CDL skills test examiners shall record the CDL applicant's skills test scores.

(4) Third-party CDL skills test examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by KSP or any other state or federal entity performing an audit of these records.

(5) Third-party skills test examiners shall be subject annually to at least one (1) check ride every two (2) years [two (2)] check rides performed by an official observer who, at the direction of KSP, shall ride with the examiner and observe the CDL skills test as it is given to ensure the examiner is administering the test in full compliance with all federal and state laws and administrative regulations.

(6) Third-party CDL skills test examiners shall be subject to "select tests" conducted by KSP. These tests shall consist of the CDL applicant being retested not later than two (2) days following the original test administered by the third-party CDL skills test examiner, utilizing commercial vehicle equipment provided by or on the behalf of the CDL skills test applicant at no cost to KSP. The retest results shall then be compared to verify that there are no deficiencies with the original test given by the third-party CDL skills test examiner. If the two (2) test scores differ, making a difference as to whether the CDL applicant passed or failed, the score given by KSP on its retest shall be entered into the official record as the actual score of the CDL applicant.

(7) Third-party CDL skills test examiners shall be subject to random inspection testing by KSP or FMCSA. These tests may consist of the third-party CDL skills test examiner administering a CDL skills test to a CDL applicant who is an agent of KSP or FMCSA without the examiner's knowledge of the individual's true identity.

(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by KSP or FMCSA to ensure compliance with all federal and state laws and administrative regulations.

Section 5. Prohibited Conflicts of Interest. (1) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant who is a family member or who has received commercial truck driving instruction training at a commercial truck driving school that is owned or operated by a family member.

(2) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant with whom the examiner is involved in a dating, romantic, or other type of intimate personal relationship, regardless of whether the examiner and applicant share a residence.

(3)(a) Except as provided in paragraph (b) of this subsection, a third-party CDL skills test examiner who administers CDL skills tests under a contractual agreement with KSP and who is a present or former commercial truck driving school employee, shall not administer thirdparty CDL skills test exams to any CDL applicant who has attended a commercial truck driving school as a student of the examiner's present or former employer;

(b) Once a third-party CDL skills test examiner has ceased employment with a commercial truck driving school for at least one (1) year, the examiner may be authorized to administer CDL skills test exams to CDL applicants who are commercial truck driving students of their former employer, if KSP, in its sole discretion, determines that the examiner can administer the exam in a fair, unbiased, and legal manner as prescribed by the FMCSA, 49 C.F.R. Parts 383 and 384.

Section 6. Revocation of Appointment. Failure to comply with the requirements of this administrative regulation shall be grounds for revocation of appointment as a third-party CDL skills test examiner by KSP and shall further constitute good cause for termination of KSP's contractual obligations with examiners who administer CDL skills test pursuant to contract.

Section 7. Third-Party CDL Skills Test Examiner Records. All records pertaining to selection and appointment of third-party CDL skills test examiners shall be maintained by KSP. These records shall be reviewed prior to renewing CDL third-party CDL skills test examiner appointment, whether by Memorandum of Agreement with DOE or contractual agreement with other third-party CDL skills test examiners. Third-party CDL skills test examiner records shall contain the following information:

- (1) Copy of qualification questionnaire containing photo of individual;
- (2) Copy of DOE Memorandum of Agreement (if applicable);
- (3) Copy of criminal history and driving record;
- (4) All other documents related to the qualification and requirements of the examiner; and
- (5) Any investigations, select testing and covert testing, or monitoring conducted by KSP concerning the third-party CDL skills test examiner.[]

~~Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:~~

- ~~(a) "KSP Driver Testing Branch CDL Examiners Manual", Version 2.0. The manual is produced by AAMVA; and~~
- ~~(b) CDL Skills Test Reporting Form, July 2001.~~
- ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Custodian of Records, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes the minimum qualifications, mandatory training requirements, and prohibited conflicts of interest for third-party CDL skills test examiners.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 281A.160 and the applicable federal statutes.

(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 281A.160 and the applicable federal statutes.

(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 clarifying the statutory authority and the qualifications for third-party CDL skills test examiners.

(2) If 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 accurately reflects the statutory authority and clarifies the standards for third-party CDL skills test examiners.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.160 and the applicable federal statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority and the procedures utilized by the department.

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

administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; third-party CDL skills test examiners.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; third-party CDL skills test examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 281A.160 and the applicable federal statutes.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS Chapter 281A. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining or renewing a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions. (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.

(2) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.15(d)(1).

(3) "DOT" means the federal Department of Transportation.

(4) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4).

(5) "Fingerprint centers" means the department's regional offices ~~[of Kentucky State Police's Division of Driver's Testing]~~ established to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2).

(8) "KSP" means the Kentucky State Police.

(9) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.

(10) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME. (1) An applicant applying for a hazardous materials endorsement shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. A [In order to receive the security threat assessment, the applicant shall complete a] "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 shall be submitted by the applicant. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, ~~[their DOT medical card,]~~ a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652[0027], and a certified check of \$115 for the fingerprint fee.

(4) An applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the

biographical information sheet to the TSA.

(5) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet that he or she is eligible [and may proceed to the circuit clerk's office] to take the knowledge test required to qualify for the HME.

(6) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the applicant shall not be issued a HME. The applicant may appeal the TSA's determination in accordance with 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(7) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME. (1) The Transportation Cabinet shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to the appointment proper identification, [the applicant's DOT medical card,] a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(5) A renewal applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(6) If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(7) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet that he or she is eligible [and may proceed to the circuit clerk's office] to take the knowledge test required to qualify for the HME.

(8) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the renewal applicant shall not be issued a HME. The renewal applicant may appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the renewal applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(9) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(10) An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous endorsement shall drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME. (1) In accordance with 49 C.F.R. 1572.13(e), an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

Section 5. Regional Fingerprint Centers. KSP shall provide fingerprinting centers, regionally situated to provide efficient coverage of the state. Locations of the regional fingerprinting centers shall be published on the department's website [have eight (8) regional fingerprinting centers in the Commonwealth. These centers shall be located in the following cities:

(1) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;

(2) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;

(3) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;

(4) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;

(5) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;

(6) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;

(7) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and

(8) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240].

Section 6. Incorporation by Reference. (1) "Transportation Security Administration Application for a Hazardous Materials Endorsement" OMB No. 1652-0027, Exp. 1/31/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the

location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 281A.040 and the applicable federal statutes.

(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 281A.040 and the applicable federal statutes.

(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 clarifying the statutory authority and the initial application and renewal procedures for HME.

(2) If 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 accurately reflects the statutory authority and clarifies the initial application and renewal procedures for HME.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.040 and the applicable federal statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority and the procedures utilized by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; applicants for a HME.

(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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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: They will benefit from having the correct statutory authority cited.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; applicants for a HME.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 281A.040 and the applicable federal statutes.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 11:010. Application for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 237.110(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(7) requires the department [Department of Kentucky State Police] to establish the application form for a license to carry a concealed deadly weapon. This administrative regulation establishes the application form and procedures.

Section 1. Definitions. (1) "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."

(2) "Department" means the Department of [Kentucky] State Police.

Section 2. (1) Application forms shall not be stored in an area accessible to the public.

(2) Except as permitted by Section 10 of this administrative regulation, an application form shall not be removed from the office of the sheriff.

Section 3. An application form shall be identified by a unique number that shall be:

(1) Expressed on the application form as a bar code that contains the application number;

(2) Used as the identifying number for the applicant; and

(3) Machine and human readable.

Section 4. Applicants shall submit an application and documents as required by KRS 237.110 to the department either:

(a) Electronically, using the portal provided and according to the procedures as described on the department's website, or

(b) As prescribed in Sections 5 – 11 of this administrative regulation.

Section 5. A sheriff shall issue an application form to an applicant and accept an application fee if:

(1) An applicant meets the requirements established by KRS 237.110 (4)(b), (c), and (i);

(2) Unless exempted by KRS 237.110(6) and (7), an applicant has submitted the material required by KRS 237.110(7);

(3) Verification that an applicant is a resident is made by:

(a) Submission of a valid Kentucky operator's license or personal identification card issued by the Transportation Cabinet [a

circuit court clerk] pursuant to KRS 186.412;

- (b) Personal knowledge of the sheriff; or
- (c) Confirmation by another governmental agency;
- (4) Verification of an applicant's Social Security number is made by the submission of:
  - (a) The applicant's Social Security card; or
  - (b) A governmental agency document that contains an applicant's name and Social Security number;
  - (5) Verification of an applicant's age is made by submission of:
    - (a) An item specified by subsection (3) of this section; or
    - (b) A birth certificate or other evidence of birth issued by a governmental agency; and
    - (6) Verification of an applicant's U.S. immigration status is made by submission of a completed CCDW License Citizenship/Immigration Status Affidavit (KSP 131) if the applicant has indicated on the application form that the applicant is not a U.S. citizen.

Section 6.~~[Section 5.]~~ An applicant who is exempt from the training requirement established by KRS 237.110(4)(i) shall submit documentation establishing that he or she:

- (1)(a) Was a peace officer on the date of his or her retirement; and
- (b) Is a member of a retirement system specified by KRS 237.110(6)(a);
- (2) Is currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404; or
- (3) Is a current or retired peace officer of one (1) of the federal agencies listed in KRS 237.110(6)(b).

Section 7.~~[Section 6.]~~ Completion of Application Form. An applicant shall:

- (1) Complete an application at a sheriff's office;
- (2) Sign the application in the applicant signature block of the application form in ink in the presence of a sheriff;
- (3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form;
- (4) Not fold or tear the form;
- (5) Use a black ink pen to complete the form;
- (6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;
- (7) Fill each bubble completely;
- (8) Fill in or enter information, as appropriate, within a column block or bubble;
- (9) Write within the constrained areas; and
- (10) Use upper case (capital) letters.

Section 8.~~[Section 7.]~~ The sheriff shall complete the lower right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:

- (1) Completing the ORI Number;
- (2) Filling in the date of application;
- (3) Indicating if the applicant is an active or retired peace officer or a judicial officer in accordance with KRS 527.020(5)(a)1. to 7. [4-]; and
- (4) Signing in the portion labeled "Authorizing Official Signature."

Section 9.~~[Section 8.]~~ If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

- (1) Destroy the improperly completed application; and
- (2) Require the applicant to complete a new application form.

Section 10.~~[Section 9.]~~ The sheriff shall place the following material in a single applicant packet:

- (1) The applicant's completed application form;
- (2) A photograph of the applicant complying with the provisions of 502 KAR 11:020;
- (3) The CCDW License Citizenship/Immigration Status Affidavit (KSP 131) if the applicant has indicated on the application form that the applicant is not a U.S. citizen;
- (4)(a) A photocopy of the certificate of completion, ~~[or notarized affidavit of completion,]~~ of the training or safety course or class

required by KRS 237.110(4)(i); or

(b) Material provided by an applicant to the sheriff establishing that the applicant is exempt from the training requirement on the grounds that he or she is:

- 1. Currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404;
- 2. A current or retired peace officer of one of the federal agencies listed in KRS 237.110(6)(b) and successfully completed the basic law enforcement training course required by that agency; or
- 3. A retired peace officer and is a member of a retirement system specified in KRS 237.110(6)(a), (c), and (d); and
- (5) Material provided by an applicant to the sheriff establishing that the applicant is exempt from payment of the application fee pursuant to KRS 237.110(7).

Section 11.~~[Section 10.]~~ (1) The sheriff shall mail single applicant packets to the department in a bulk mailer;

- (a) In a bulk mailer; and
- (b) On dates established by the "CCDW – LEOSA Application Mailing Schedule for Sheriffs."
- (2) The sheriff shall pay the cost of mailing a bulk mailer.

Section 12.~~[Section 11.]~~ (1) If the department issues an original license pursuant to KRS 237.110(4), it shall:

- (a) Transmit the license to the sheriff; and
- (b) Send a notice ~~[an Issuance Notice]~~ to the applicant, informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff.
- (2) The sheriff shall issue the license to the applicant upon:
  - (a) Verification of the identity of the applicant by:
    - 1. Submission of a valid Kentucky operator's license or personal identification card issued by a circuit court clerk pursuant to KRS 186.412; or
    - 2. Personal knowledge of the sheriff; and
    - (b) Signature on the Issuance Notice by the applicant in the presence of the sheriff or the sheriff's designee.

Section 13.~~[Section 12.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) ~~["Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License", November 2009;~~
- (b) ~~"CCDW – LEOSA Application Mailing Schedule for Sheriffs", July 2006;~~
- (c) ~~KSP Form 131, "CCDW License Citizenship/Immigration Status Affidavit", [KSP 131, January] 2011 edition[-]; and~~
- (d) ~~"Issuance Notice," December 2008].~~
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Kentucky State Police, Criminal Identification and Records Branch, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 9:00 a.m. on November 22, 2021 at 9:00 a.m. 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 November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the



## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

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: Establishes the application form and procedures for acquiring a license to carry a concealed deadly weapon.

(b) The necessity of this administrative regulation: To promulgate the appropriate procedure and standards prior to the administration of a license to carry a concealed deadly weapon.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the method for issuance of a license to carry a concealed deadly weapon, including the requirements that must be met.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth clear, reasonable, and consistent requirements of the application procedure.

(2) If 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 the existing statute and conforms to the existing practices already in place.

(b) The necessity of the amendment to this administrative regulation: The previous language did not adequately encompass the criteria relating to an active or retired peace or judicial officer. The previous language also required procedural requirements that were unnecessary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows the Department to more effectively process applications.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarification to the previous language, and similarly defines the previous language more clearly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police; and all interested individuals who apply for a license to carry a concealed deadly weapon.

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

(a) List 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 little to no impact to the entities previously identified, as the practices currently in place comply with the revised language.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment allows the Department to adhere to the accepted requirements that are already in place.

(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: Not applicable.

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

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering not 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? The Department of the Kentucky State Police; and all interested individuals who apply for a license to carry a concealed deadly weapon.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.080, KRS 237.110(7)

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

(a) How much revenue will 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.

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

### JUSTICE AND PUBLIC SAFETY CABINET

#### Department of State Police

#### (Amendment)

### 502 KAR 11:060. License denial and reconsideration process.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(9) requires the department to deny an application for a license to carry a concealed deadly weapon if an applicant fails to meet the statutory requirements for licensure and to reconsider its denial of an application upon the applicant's submission of documentation relating to the application. This administrative regulation establishes the procedures for denial, notification of denial, and reconsideration.

Section 1. If the department determines that it will deny an application for a license because an applicant fails to meet criteria specified in KRS 237.110(3) or (4), the department shall notify the applicant ~~[on a Denial Notice]~~:

(1) Of the reason the license is denied; and

(2) That the applicant may request reconsideration by the department by signing the request for reconsideration section, as provided in the notice of denial ~~[completing the "Request for Reconsideration" Section of the Denial Notice]~~ in the presence of the sheriff within thirty (30) days of the date of the notice of denial of license ~~[Denial Notice]~~.

Section 2. If an applicant submits a request for reconsideration of the denial of a license ~~[completes the Request for Reconsideration Section of the Denial Notice]~~, the sheriff shall:

(1) Place the signed notice of denial ~~[completed Denial Notice]~~ and related material, if applicable, in a single applicant packet; and

(2) Transmit the completed single applicant packet to the department ~~[on the date established by the CCDW-LEOSA Application Mailing Schedule For Sheriffs]~~.

Section 3. The department may require the applicant to submit any of the following in support of his or her request for reconsideration:

- (1) Certified copies of records from a court clerk or law enforcement agency showing the disposition of criminal charges against the applicant;
- (2) A certificate or statement from a court clerk or law enforcement agency showing that the applicable records have been destroyed or are otherwise unavailable;
- (3) A certificate or statement from the appropriate department of the Armed Forces or other government agency showing the disposition of charges against the applicant;
- (4) A certificate or statement from the appropriate department of the Armed Forces showing the nature of the applicant's discharge or separation from the Armed Forces;
- (5) A notarized statement by the applicant setting forth the disposition of criminal charges against the applicant;
- (6) A notarized statement by the applicant setting forth the nature of the applicant's discharge or separation from the Armed Forces;
- (7) A notarized statement by the applicant setting forth the identity of the victim of the criminal offense, the nature of the applicant's relationship to the victim at the time of the offense, and whether or not the applicant and the victim shared a child in common at the time of the offense; or
- (8) Any other documentation relevant to evaluating the request for reconsideration.

Section 4. If the department determines that the request for reconsideration is valid and that the applicant is not disqualified from being issued a license, it shall issue a license as set forth in 502 KAR 11:010, Section 11.

Section 5. If the department determines that the request for reconsideration of the denial of the application should be denied, the department shall notify the applicant of the denial by mail.[]

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

- ~~(a) "Denial Notice", 1/9/07; and~~
- ~~(b) "CCDW-LEOSA Application Mailing Schedule For Sheriffs", July 2006.~~
- ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 9:00 a.m. on November 22, 2021 at 9:00 a.m. 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 November 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: 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 administrative regulation establishes the procedures for denial, notification of denial, and reconsideration.
  - (b) The necessity of this administrative regulation: To promulgate the appropriate procedure and standards for the denial, notification of denial, and reconsideration of a CCDW license.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes standards for the denial, notification of denial, and reconsideration of a CCDW license.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth clear, reasonable, and consistent procedures for the denial of a CCDW applicant.
- (2) If 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 the existing language and conforms to the existing practices already in place.
  - (b) The necessity of the amendment to this administrative regulation: The previous language required procedural requirements that were unnecessary.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment allows the Department to more effectively process denials, notifications of same, and reconsiderations.
  - (d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarification to the previous language, and similarly defines the previous language more clearly.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police; and all interested individuals who apply for a license to carry a concealed deadly weapon.
- (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 any regulated entity.
- (7) Provide an assessment of whether an 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? The Department of the Kentucky State Police; and all interested individuals who apply for a license to carry a concealed deadly weapon.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.080, 17.080, 237.110

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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**  
**Department of State Police.**  
**(Amendment)**

**502 KAR 11:070. License revocation and suspension notice and reinstatement process.**

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080, 17.080, 237.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(13)(a) requires the commissioner of the department to revoke a license to carry a concealed firearm or other deadly weapon if a [the] licensee becomes permanently ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. KRS 237.110(13)(b) requires the commissioner of the department to suspend a license to carry a concealed firearm or other deadly weapon if the licensee becomes temporarily ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. This administrative regulation establishes the procedures for the revocation or suspension of a license to carry a concealed deadly weapon and for reinstatement of a revoked or suspended license.

Section 1. If the department determines that it will revoke a license, the department shall notify the licensee ~~[on a Revocation Notice] of the following:~~

(1) ~~The [Of the]~~ reason for the revocation;

(2) That the licensee is required to surrender his or her license to the sheriff of his or her county of residence within two (2) business days of the receipt of the revocation notice;

(3) That failure of the licensee to surrender a revoked license is a Class A misdemeanor; and

(4) That the licensee may request reconsideration of the revocation by the department by signing the request for reconsideration section, as provided in the notice of revocation ~~[completing the Request for Reconsideration Section of the Revocation Notice]~~ in the presence of the sheriff within thirty (30) days of the date of the notice of revocation ~~[Revocation Notice]~~.

Section 2. If the department determines that it will suspend a license, the department shall notify the licensee ~~[on a Suspension Notice] of the following:~~

(1) ~~The [Of the]~~ reason for the suspension;

(2) That the licensee is required to surrender his or her license to the sheriff of his or her county of residence within two (2) business days of the receipt of the suspension notice;

(3) That failure of the licensee to surrender a suspended license is a Class A misdemeanor; and

(4) That the licensee may request reconsideration of the suspension by the department by signing the request for reconsideration section, as provided in the notice of suspension ~~[completing the Request for Reconsideration Section of the Suspension Notice]~~ in the presence of the sheriff within thirty (30) days of the notice of suspension ~~[date of the Suspension Notice]~~.

Section 3. If a licensee signs ~~[completes]~~ the request for reconsideration section ~~[Request for Reconsideration Section]~~ of the revocation notice ~~[Revocation Notice]~~ or the notice of suspension ~~[Suspension Notice]~~, the sheriff shall:

(1) Place the signed revocation notice or notice of suspension ~~[completed Revocation Notice or the Suspension Notice]~~ and related material, if applicable, in a single applicant packet; and

(2) Transmit the completed single applicant packet to the department ~~[on the date established by the CCDW-LEOSA Application Mailing Schedule For Sheriffs]~~.

Section 4. The department may require the licensee to submit any of the following in support of his or her request for reconsideration:

(1) Certified copies of records from a court clerk or law enforcement agency showing the disposition of criminal charges against the licensee;

(2) A certificate or statement from a court clerk or law enforcement agency showing that the applicable records have been destroyed or are otherwise unavailable;

(3) A certificate or statement from the appropriate department of the Armed Forces or other government agency showing the disposition of charges against the licensee;

(4) A certificate or statement from the appropriate department of the Armed Forces showing the nature of the licensee's discharge or separation from the Armed Forces;

(5) A notarized statement by the applicant setting forth the disposition of criminal charges against the licensee;

(6) A notarized statement by the licensee setting forth the nature of the licensee's discharge or separation from the Armed Forces;

(7) A notarized statement by the licensee setting forth the identity of the victim of the criminal offense, the nature of the licensee's relationship to the victim at the time of the offense, and whether or not the licensee and the victim shared a child in common at the time of the offense; or

(8) Any other documentation relevant to evaluating the request for reconsideration.

Section 5. If the request for reconsideration of the revocation or suspension is denied, the department shall:

(1) Notify the licensee by mail; and

(2) Inform the licensee of his or her right to petition the commissioner ~~[Commissioner]~~ of the Kentucky State Police for reinstatement by requesting an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the denial letter.

Section 6. License Expiration Date. If a license is revoked or suspended, the date of its expiration shall not be extended.

Section 7. Reinstatement. (1) A revoked or suspended license shall be reinstated by the department upon:

(a) Receipt of an order from the appropriate court to terminate the revocation or suspension;

(b) Determination by the department to reinstate the license after a request for reconsideration of the revocation or suspension;

or

(c) Receipt of an order from the appropriate KRS Chapter 13B hearing officer to return the license and abrogate the suspension or revocation.

(2) If a license is reinstated, the department shall notify the applicant.[]

~~Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Revocation Notice", 1/9/07;~~

~~(b) "Suspension Notice", 1/9/07; and~~

~~(c) "CCDW-LEOSA Application Mailing Schedule For Sheriffs," 07/06.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 9:00 a.m. on November 22, 2021 at 8:00 a.m. 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 November 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: 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: Establishes the revocation and reinstatement procedures applicable to a license to carry a concealed deadly weapon.

(b) The necessity of this administrative regulation: To promulgate the appropriate procedure and standards prior to the administration of a license to carry a concealed deadly weapon.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the method for revocation/reinstatement of a license to carry a concealed deadly weapon, including the requirements that must be met.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides clarification to the previous language, and similarly defines the previous language more clearly.

(2) If 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 the existing statute and conforms to the existing practices already in place.

(b) The necessity of the amendment to this administrative regulation: The previous language did not adequately encompass the criteria relating to revocation/reinstatement.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows the Department to more effectively process revocations/reinstatements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarification to the previous language, and similarly defines the previous language more clearly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police; and all interested individuals who apply for a license to carry a concealed deadly weapon.

(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.

(7) Provide an assessment of whether an 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? The Department of the Kentucky State Police; and all interested individuals who apply for a license to carry a concealed deadly weapon.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.080, KRS 237.110(7)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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  
Department of State Police  
(Amendment)**

**502 KAR 12:010. Sexual assault forensic-medical examination protocol.**

RELATES TO: KRS 15A.160, 16.132, Chapter 49, 72.020, 209.020(4), 209.030, 209A.020[(4)], 209A.030, 209A.100, 209A.110, 209A.130, 211.600, 216B.015(27), 216B.400, 216B.990(3), 314.011(14), 403.707, [Chapter 346,] 421.570, 510.010-510.140, 524.140, 529.010(2), 529.010(13), 529.100, 530.020, 530.064(1)(a), 531.310, 600.020, 620.030, 34 U.S.C. 10449[42 U.S.C. 3796gg-4], 45 C.F.R. 164.512

STATUTORY AUTHORITY: KRS 15A.160, 216B.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 216B.400[(2)] authorize the cabinet to promulgate administrative regulations developing a statewide medical protocol for sexual assault examinations. This administrative regulation establishes the procedures to be followed by medical staff before, during, and after the examination of a victim of a sexual assault.

Section 1. Definitions. (1) "Basic treatment" means basic medical care provided to victims of sexual offenses including a medical screening, an examination for medical injuries, treatment for sexually transmitted infections, and, if appropriate, delivery of postexposure HIV prophylaxis.

(2) "Designated storage facility" means an examination facility, local law enforcement agency, or other agency that has an agreement with an examination facility to provide secure storage for samples collected during sexual assault forensic-medical examinations that are not immediately reported to law enforcement.

(3) "Examination Facility" means a sexual assault examination facility as defined in KRS 216B.015(27)[(26)].

(4) "Qualified medical professional" means any physician's assistant or advanced practice registered nurse whose training and scope of practice include performance of speculum examinations.

(5) "Rape crisis center advocate" means a victim advocate who:

(a) Has met the requirements of KRS 421.570; and

(b) Works or volunteers for a rape crisis center regulated by the Cabinet for Health and Family Services, pursuant to KRS 211.600 and 922 KAR 8:010, [920-KAR 2:040.]

(6) "Victim" means a person who may have suffered direct, threatened, or attempted physical or emotional harm from the commission or attempted commission of:

(a) A sexual offense, pursuant to KRS 510.010 to 510.140;

(b) Incest, pursuant to KRS 530.020; or

(c) An offense relating to:

1. The use of a minor in a sexual performance, pursuant to KRS 531.310; or

2. An unlawful transaction with a minor, pursuant to KRS 530.064(1)(a); or[-]

3. Human trafficking for commercial sexual activity, pursuant to KRS 529.010(2), 529.010(13), and 529.100.

Section 2. Preforensic-Medical Examination Procedure. If a person seeking treatment as a victim arrives at an examination facility, the appropriate staff at the facility prior to conducting the forensic-medical examination shall comply with the following:

(1) Reporting to the Rape Crisis Center Advocate. (a) Contact the rape crisis center to inform the on call advocate that a victim has arrived at the examination facility for an examination; and

(b) Upon arrival of the advocate, ask if the victim wishes to have a rape crisis center advocate present for the examination or otherwise available for consultation;

(2) Limited Mandatory Reporting to the Cabinet for Health and

Family Services.

(a) If the victim is less than eighteen (18) years old:

1. Assess whether the victim may be an abused, neglected, or dependent child, as defined in KRS 600.020. In cases of suspected child abuse, neglect, or dependency, medical personnel shall immediately report the incident to the Cabinet for Health and Family Services; a local or state law enforcement agency; or the Commonwealth's attorney or county attorney in accordance with KRS 620.030; and

2. If a report is made, consult with the Cabinet for Health and Family Services or law enforcement to determine whether referral to a regional children's advocacy center or other specialized treatment facility is in the best interest of the child; and

(b) If the victim is eighteen (18) years old or older:

1. The examination facility shall not contact law enforcement or release any information to law enforcement without the victim's authorization;

2. ~~[Determine whether a mandatory reporting law addressing spouse abuse or abuse of a vulnerable adult applies:~~

a. ~~Assess whether the victim may be an adult as defined in KRS 209A.020(4); and~~

b. ~~Assess whether the victim may be an adult as defined in KRS 209.020(4); and~~

3. ~~If the victim may be an adult as defined in KRS 209.020(4) subparagraph 2.a [or 2.b] of this paragraph applies,~~ immediately report the incident to the Cabinet for Health and Family Services and notify the victim of the report;

(3) Optional Reporting to Law Enforcement.

(a) Ask if the victim ~~[whether she or he]~~ wants to report the incident to law enforcement;

(b) If the victim chooses to report the incident to law enforcement, obtain the victim's consent for treatment and authorization for release of information, and contact law enforcement; and

(c) If the victim chooses not to report to law enforcement, information or samples shall not be released to law enforcement, unless the victim has specifically authorized the release of information or samples;

(4) Mandatory Reporting to Law Enforcement. Any professional, as defined by KRS 209A.020, who learns of the death of a victim with whom he or she had a professional interaction, shall immediately notify law enforcement if the professional believes domestic or dating violence or abuse caused, contributed, or is related to the victim's death, in accordance with KRS 209A.110.

~~(5)[(4)]~~ Inform the victim that all statements made during the interview and the sample collection process to physicians, nurses, other hospital personnel, or law enforcement officers are not privileged and may be disclosed;

~~(6)[(5)]~~ Provide a detailed explanation of the forensic-medical examination, the reasons for conducting the forensic-medical examination and the effect on a criminal prosecution if a forensic examination is not performed or reported to law enforcement;

~~(7)[(6)]~~ Advise the victim that photographs and other documentation, if released to law enforcement, may be used as evidence and that the photographs may include the genitalia;

~~(8)[(7)]~~ Advise the victim that the forensic-medical examination, including basic treatment, shall be conducted free of charge, but costs related to additional medical treatment may be incurred;

~~(9)[(8)]~~ Inform the victim that consent for the forensic sample collection process may be withdrawn at any time during the examination;

~~(10)[(9)]~~ Inform the victim of the need for a physical examination due to the risk of sexually transmitted infections, including HIV, pregnancy, injury, or other medical problems whether or not the victim chooses to have the evidence collected;

~~(11)[(40)]~~ Obtain documented consent from the victim prior to conducting the forensic-medical examination; and

~~(12)[(44)]~~ Document that the procedures established in this section are completed.

Section 3. The Forensic-Medical Examination. (1) A physical examination may be conducted for basic treatment and to collect

samples in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination itself.

(2) If the reporting patient is a child, refer to the "Kentucky Medical Protocol for Child Sexual Assault/Abuse Evaluation" developed by the Sexual Assault Response Team Advisory Committee for guidance in conducting the forensic evidence exam.

(3)[(2)] If the sexual assault occurred within ninety-six (96) hours prior to the forensic-medical examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used. The examination facility shall enter the kit information into the sexual assault forensic evidence kit tracking portal, as prescribed by KRS 16.132. [This kit consists of:

- (a) Instructions;
- (b) Evidence envelope;
- (c) Comb; and
- (d) Swabs.]

(4)[(3)] Personnel in attendance during the forensic examination shall be limited to the following persons:

- (a) Examining physician, sexual assault nurse examiner, as defined in KRS 314.011(14), or qualified medical professional;
- (b) Attending nurse and additional nursing personnel;
- (c) Rape crisis center advocate; and
- (d) Other persons who are:
  1. Dictated by the health needs of the victim; or
  2. Requested by the victim.

(5)[(4)] Photographs, including photographs of the genitalia, may be taken if the appropriate equipment is available at the examination facility, precautions are taken to ensure confidential storage, and the victim has consented to having photographs taken.

(6)[(5)] The following types of samples may be collected during the examination:

- (a) Hairs from the head or pubic region;
- (b) Fingernail cuttings, swabs, or scrapings;
- (c) Clothing fibers, or other trace evidence;
- (d) Bodily fluids, including:
  1. Semen;
  2. Blood;
  3. Sweat; and
  4. Saliva;
- (e) Clothing; and
- (f) Other samples that may be presented as evidence at a trial.

(7)[(6)] Samples shall not be collected if the victim is unconscious unless the collection is consistent with appropriate and necessary medical treatment.

(8)[(7)] The collection of samples shall cease immediately if the victim dies during the process.

(9)[(8)] The coroner shall be contacted if the victim dies during the sexual assault medical-forensic examination and the samples process and the evidence collected up to that time shall be delivered to the coroner or the coroner's designee. Collection of samples may be completed by medical personnel if requested by the coroner.

(10)[(9)] The coroner shall be notified in accordance with KRS 72.020 and samples shall not be collected if the victim is deceased upon arrival at the examination facility.

Section 4. Postforensic Examination Procedures. At the conclusion of the forensic-medical examination the appropriate personnel at the examination facility shall provide the victim with:

(1) Information regarding follow-up procedures and appointments concerning:

- (a) Sexually transmitted infections, including HIV;
- (b) Pregnancy;
- (c) Urinary tract or other infections; and
- (d) Similar assault related health conditions;

(2) Information regarding the availability of follow-up counseling and support services available from a rape crisis center or other mental health agency;

(3) Information from the law enforcement officer regarding who to contact about the prosecution of the offense in cases reported to law enforcement;

(4) A garment or other appropriate clothing to wear in leaving the examination facility, or assistance in obtaining other personal clothing;

(5) Information about:

- (a) The Office of Claims and Appeals [Crime—Victim's Compensation Board], as established in KRS Chapter 49[346]; and
- (b) The following administrative regulations providing aid to a crime victim:

1. 802 KAR 3:010[407 KAR 1:005];
2. 802 KAR 3:020[407 KAR 1:040];
3. 107 KAR 1:045;
4. 107 KAR 1:025;
5. 107 KAR 1:040;] and

(6) The appropriate educational materials, as described in KRS 209A.130, if it has been determined that the patient may be a victim of dating or domestic violence and abuse, as defined in KRS 209A.020.

(7)[(6)] If the victim chooses not to report to law enforcement, information about:

- (a) Length of time samples will be stored;
- (b) Whom the victim may contact to file a report or authorize the release of samples; and
- (c) Whether the samples will be automatically destroyed or transferred for extended storage if the victim does not request release of samples to law enforcement within the specified period.

Section 5. Storage and Transfer of Samples. (1) Chain of custody documentation shall be maintained throughout all storage and transfer procedures.

(2) All samples shall be stored under circumstances that restrict access to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to the storage area shall be limited to the minimum number possible.

(3) The following information shall be maintained for each sample stored:

- (a) Patient identifier;
- (b) Date collected;
- (c) Description of sample;
- (d) Signature of the collecting medical professional;
- (e) Date and time entered into storage and signature of person receiving; and
- (f) Date and time removed from storage, signature of person removing, and purpose of removal.

(4) If the victim chooses to report the incident to law enforcement as a crime or has authorized the release of samples to local law enforcement for secure storage, the appropriate law enforcement agency shall be notified of the report within twenty-four (24) hours of the examination. The [the] examination facility shall transfer samples to local law enforcement officials within five (5) days, [as soon as possible.]

(5) Law enforcement officials shall comply with the storage requirements prescribed within KRS 524.140.

(6) [(5)] Law enforcement officials shall submit the kit for analysis to the Kentucky State Police Forensics Laboratories within thirty (30) days.

(7) [(6)] If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, the examination facility shall arrange for the samples to be stored securely for at least a period of one (1) year, [ninety (90) days] An agency that elects to maintain custody of an unreported kit shall continue to maintain custody of the kit for at least one (1) year from the collection date.

(8) [(7)] The examination facility may either store samples or transfer samples to a designated storage facility.

(9) [(8)] The examination facility shall maintain documentation regarding transfers of samples.

(10) [(9)] Facilities or agencies providing secure storage of samples under this section shall assure compliance with [subsections (5) and (6) of] this Section and ensure samples are stored within a locked or otherwise secure container in a limited-access location.

(11) [(10)] Storage agreements:

- (a) May be long-term or case specific; and

(b) Shall designate sending and receiving facilities and certify compliance with subsections (1) through (9) of this section.

(12) [(44)] If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, samples shall not be released to a law enforcement agency except if:

(a) The local law enforcement agency receiving samples has entered into an agreement to serve as a designated storage facility;

(b) The victim later chooses to file a delayed report; or

(c) Pursuant to court order.

Section 6. Removal of Samples from Secure Storage. Samples shall not be permanently removed from storage except if:

(1) The victim authorizes release of samples to a law enforcement agency or other entity;

(2) The time frame for storage has lapsed, as established by Section 5(6) [(5)] of this administrative regulation;

(3) The victim authorizes the destruction of the samples; or

(4) A court order has been issued for release or destruction.

Section 7. Destruction of Samples. (1) One (1) year [Ninety (90) days] after the sample was collected, the examination facility or designated storage facility may destroy the sample at any time in accordance with the facility's policy.

(2) Destruction shall be conducted using biohazard precautions.

(3) Destruction shall be documented by the examination facility or designated storage facility that stored the samples.

(4) Samples may be destroyed upon the request of a victim. The victim's request for destruction shall be documented by the examination facility and designated storage facility, if used.

Section 8. Incorporation by Reference. (1) Sexual Assault Response Advisory Committee Guidance "Kentucky Medical Protocol for Child Sexual Assault-Abuse Evaluation", 2021 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Association of Sexual Assault Programs, Inc., 83-C Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Children's Advocacy Centers of Kentucky Web site at <https://cackentucky.org/>.

PHILLIP BURNETT, Acting Commissioner

EILEEN A. RECKTENWALD, Executive Director

APPROVED BY AGENCY: August 17, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on November 22, 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 November 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: 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](mailto: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 necessary procedures to be followed by medical staff prior to, during, and after the examination of a sexual assault victim.

(b) The necessity of this administrative regulation: This regulation authorizes the cabinet to develop a statewide medical protocol for sexual assault examinations; this regulation is necessary to explain the processes of that protocol.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by developing the processes necessary for the development of the statewide medical protocol for sexual assault examinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedures to be followed by medical staff, and further assists in assuring compliance with the 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 amendments primarily reflect the changes made to Kentucky law, as it pertains to the storage of sexual assault kits.

(b) The necessity of the amendment to this administrative regulation: The amendments are required in order to reflect the changes made to Kentucky law, and to ensure compliance with the law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statute by establishing the procedure necessary for compliance with the law.

(d) How the amendment will assist in the effective administration of the statutes: The statewide medical protocol will be administered more effectively, and the regulation is now in compliance with the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police, state law enforcement agencies, designated storage facilities, sexual assault examination facilities, qualified medical professionals, rape crisis center advocates and victims of sexual assault.

(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 amendment requires state examination facilities to enter sexual assault kit information into the forensic evidence kit tracking portal, and includes additional reporting requirements.

(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 regulated agencies will have clearly defined guidance on their responsibilities under the law.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase fees, directly or indirectly.

(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 Department of the Kentucky State Police, state law enforcement agencies, designated storage facilities, sexual assault examination facilities, qualified medical professionals, rape crisis center advocates and victims of sexual assault.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 216B.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? 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)

**502 KAR 13:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.**

RELATES TO: KRS 15.383, 61.365, 186.412, 237.138-237.142, 446.010(29), 18 U.S.C. 926C[~~Pub.L. 108-277~~]

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and authorizes [requires] the department [Kentucky State Police] to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for certification.

Section 1. Definitions. (1) "Applicant" means an honorably retired peace officer who has applied to the Kentucky State Police to be certified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C.

(2) "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."

(3) "Honorably retired" means an elected or appointed peace

officer who:

(a) Separated in good standing from service with a public agency as a law enforcement officer;

(b) Before separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(c)1. Before separation, served as a law enforcement officer for an aggregate of ten (10) years or more; or

2. Separated from service with an agency, after completing any applicable probationary period of service, due to a service-connected disability, as determined by the agency;

(d)1. Has not been officially found by a qualified medical professional employed by the agency from which the applicant separated from service to be unqualified for reasons relating to mental health; or

2. Has not entered into an agreement with the agency from which the applicant separated from service in which the applicant acknowledged that he or she is not qualified under 18 U.S.C. 926C for reasons relating to mental health;

(e) During the most recent twelve (12) month period, has met, at the expense of the retired peace officer, Kentucky's standards for training and qualifications for active law enforcement officers to carry firearms, as set out in KRS 15.383;

(f) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(g) Is not prohibited by Federal law from receiving a firearm.

(4) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, as codified in 18 U.S.C. 926C.

(5)[(4)] "Peace Officer" is defined by KRS 446.010(31)[(29)] and 61.365.

Section 2. An application form shall be identified by a unique number that shall be:

(1) Expressed on the application form as a bar code that contains the application number;

(2) Used as the identifying number for the applicant; and

(3) Machine and human readable.

Section 3. Application forms shall:

(1) Not be stored in an area accessible to the public; and

(2) Not be removed from the office of the sheriff except as permitted by Section 6(4) of this administrative regulation.

Section 4. Applicants shall submit an application and documents required by KRS 237.138 to 237.142 to the department by:

(a) Electronically, via the department Web site and according to the procedures as described by the department; or

(b) By the procedures set forth in Section 5 - Section 7 of this regulation.

Section 5. A sheriff shall issue an application form to an applicant if:

(1) An applicant meets the requirements established by KRS 237.138 to 237.142;

(2) The sheriff has verified that an applicant is qualified for certification pursuant to KRS 237.138 to 237.142 and this administrative regulation;

(3) An applicant has submitted the material required by KRS 237.138 to 237.142 and this administrative regulation;

(4) Verification that an applicant is a Kentucky resident is made by:

(a) Submission of a valid Kentucky operator's license or personal identification card issued by the Transportation Cabinet [a circuit court clerk] pursuant to KRS 186.412;

(b) Personal knowledge of the sheriff; or

(c) Confirmation by another governmental agency; and

(5) Verification of an applicant's Social Security number is made by submission of:

(a) The applicant's Social Security card; or

(b) A governmental agency document that contains the



applicant's name and Social Security number.

Section 6. ~~[Section 5.]~~ Completion of Application Form. An applicant shall:

- (1) Complete an application;
- (2) Sign the application in the applicant signature block of the application form in ink;
- (3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form;
- (4) Not fold or tear the form;
- (5) Use a black ink pen to complete the form;
- (6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;
- (7) Fill each bubble completely;
- (8) Fill in or enter information, as appropriate, within a column block or bubble;
- (9) Write within the constrained areas;
- (10) Use upper case (capital) letters;
- (11) Provide a photograph of the applicant complying with the provisions of 502 KAR 13:070;
- (12) Submit the following completed forms to the sheriff to be attached to the application form:
  - (a) A KSP Form 123, Law Enforcement Officers Safety Act Licensee Peace Officer Range Qualification Certification [LEOSA (KSP 123)];
  - (b) A KSP Form 124A, LEOSA Applicant Certification [KSP 124A]; and
  - (c) A KSP Form 124B, LEOSA Law Enforcement Retirement Certification [KSP 124B]; and
- (13) Not be required to pay an application fee.

Section 7. ~~[Section 6.]~~ Sheriff's Duties. (1) If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

- (a) Destroy the improperly completed application; and
  - (b) Require the applicant to complete a new application form.
- (2) The sheriff shall complete in black ink the lower right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:
- (a) Completing the ORI Number;
  - (b) Filling in the date of application;
  - (c) Indicating the applicant is a retired peace officer;
  - (d) Indicating the applicant is seeking LEOSA certification; and
  - (e) Signing in the portion labeled "Authorizing Official Signature."
- (3) The sheriff shall place the following material in a single applicant packet:
- (a) The applicant's completed application form;
  - (b) A photograph of the applicant complying with the provisions of 502 KAR 13:070; and
  - (c) A completed KSP 123, 124A, and 124B.
- (4) The sheriff shall mail single applicant packets:
- (a) In a bulk mailer; and
  - (b) On dates established by the "CCDW-LEOSA Application Mailing Schedule For Sheriffs."

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) ~~"Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License", October 2009;~~
- (b) ~~"CCDW-LEOSA Application Mailing Schedule For Sheriffs", July 2006;~~
- (a) ~~[(e)] KSP Form 123, "Law Enforcement Officers Safety Act Licensee Peace Officer Range Qualification Certification," 2014 edition [LEOSA", KSP 123.07/05];~~
- (b) ~~[(d)] KSP Form 124A, "LEOSA Applicant Certification", [KSP 124A], [December] 2010 edition; and~~
- (c) ~~[(e)] KSP Form 124B, "LEOSA Law Enforcement Retirement Certification", 2014 edition. [KSP 124B, December 2010.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30

p.m. This material is also available on the department Web site at kentuckystatepolice.org, phone, (502) 227-8700.]

PHILLIP J. BURNETT, Jr., Acting Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes the requirements and procedures for CCDW certification for honorably retired, elected, or appointed peace officers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the requirements and standards that must be met for CCDW licensure.

(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 law enforcement desiring CCDW licensure.

(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 department and prior law enforcement officials.

(2) If 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 the existing language of the regulation, and removes outdated terms and requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation allows for the reporting procedures to be more effectively understood by the Department and reporting agencies; includes the definition of what a "license" is; states how applications are processed; and updates the materials incorporated by reference.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the existing language, procedures, and the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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 Department and criminal justice agencies will benefit from more clearly defined procedures, which will assist in the administration of the procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.140 and the applicable federal statutes.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

**502 KAR 13:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.**

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the department [~~Kentucky State Police~~] to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for range qualification for certification.

Section 1. Perform Live-firing Exercises. An applicant shall annually qualify for certification by performing a live-firing exercise in which the applicant is required to:

(1) Fire from a safe position;

(2) Perform without receiving any assistance in holding, aiming, or firing from the instructor or any other person; and

(3) Meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

Section 2. Supervision of Live-firing Exercise. The live-firing exercise shall be supervised as required by KRS 237.140(4)(b).

Section 3. Live-Firing Exercise Procedures and Grading. (1) If the live-firing exercise is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to an applicant for the purposes of Section 1(2) of this administrative regulation.

(2) An applicant shall provide a safe, functional handgun and factory-loaded ammunition.

(3) Prior to conducting range firing, the firearms instructor shall:

(a) Inspect each applicant's firearm; and

(b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

(4) A passing grade shall not be given on range work to an applicant who:

(a) Does not follow the orders of the firearms instructor;

(b) In the judgment of the firearms instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or

(c) Fails to meet the marksmanship qualification requirement for a retired peace officer as specified in KRS 237.140(4)(a).

(5) If the applicant successfully completes the live-firing exercise, the firearms instructor shall mail or hand deliver the completed KSP Form 123, "Law Enforcement Officer Safety Act Peace [Peace] Officer Range Qualification Certification[LEOSA," KSP Form Number 123], showing the applicant's successful completion of the live-firing exercise to the applicant within five (5) business days.

Section 4. Incorporation by Reference. (1) KSP Form 123, "Law Enforcement Officer Safety Act Peace [Peace] Officer Range Qualification Certification[LEOSA," KSP 123], 2014 edition, [07/05;] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. This material is also available on the department Web

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

site. [The phone number for the Criminal Identification and Records Branch is (502) 227-8700.]

COL. PHILLIP J. BURNETT, Jr., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes the requirements and procedures for range qualification for certification.

(b) The necessity of this administrative regulation: This regulation is necessary to establishes the requirements and procedures for range qualification for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by implementing the certification provisions.

(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 establishing the appropriate procedures for qualifications.

(2) If 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 serves to updates the forms currently in use by the department.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the revision up to date.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment assists in the administration of the statutes by establishing the appropriate procedures for qualifications.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the procedures currently in use by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(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.

(7) Provide an assessment of whether an 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? The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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

#### Department of State Police

#### (Amendment)

**502 KAR 13:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.**

RELATES TO: KRS 186.412, 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the department

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

[Kentucky State Police] to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for the issuance, expiration, and renewal of a LEOSA license.

Section 1.~~[Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.]~~

Section 2.~~[Issuance of License. (1) The department shall issue a LEOSA license if it confirms that the applicant is qualified to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C after the department has received the documentation required by 502 KAR 13:010.~~

(2) If the department issues a LEOSA license, it shall:

(a) Transmit the license to the sheriff; and

(b) Send ~~[an issuance]~~ notice to the applicant, informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff.

(3) The sheriff shall issue the license to the applicant upon:

(a) Verification of the identity of the applicant by:

1. Submission of a valid Kentucky operator's license or personal identification card issued by the Transportation Cabinet ~~[a circuit court clerk]~~ pursuant to KRS 186.412; or

2. Personal knowledge of the sheriff; and

(b) Signature of the issuance notice by the applicant in the presence of the sheriff or the sheriff's designee.

Section 2.~~[Section 3.]~~ Expiration. A LEOSA license shall expire one (1) year from the date of the range qualification listed on the KSP Form 123, "Law Enforcement Safety Act Licensee Peace Officer Range Qualification Certification" ~~["Peace Officer Range Qualification Certification"]~~ ~~["LEOSA," KSP 123]~~, submitted with the application.

Section 3.~~[Section 4.]~~ Renewal. Not less than ninety (90) ~~[one hundred twenty (120)]~~ days prior to the expiration date of the license, the department shall mail to each licensee a notice of expiration. ~~["Notice of Expiration - LEOSA."]~~ Any licensee wishing to renew the license shall apply and be approved in the manner described in 502 KAR 13:010 and this administrative regulation for first time applicants except that a licensee shall not have to submit a copy of the "LEOSA Law Enforcement Retirement Certification", KSP 124B, if the licensee previously submitted a retirement certification that was accepted by the department.

Section 4.~~[Section 5.]~~ Identification. A LEOSA license issued by the department to a successful applicant shall consist of a photographic identification card containing the following:

(1) The front of the photographic identification card shall include the following information for the certified retired peace officer:

(a) Name;

(b) Address;

(c) Date of birth;

(d) Law enforcement agency retired from;

(e) Expiration date of certification;

(f) LEOSA license number; and

(g) Photograph.

(2) The back of the photographic identification card shall state the following. ~~[be substantially in the following form:]~~ The Commonwealth of Kentucky hereby certifies that the licensee identified on the front of this card is a qualified retired law enforcement officer as defined in the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C, and has, within one (1) year prior to the expiration date shown on the front of this card, been tested or otherwise found by the Commonwealth of Kentucky to meet the marksmanship qualification requirement established by the Commonwealth for peace officers.

Section 5.~~[Section 6.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KSP Form 123, Law Enforcement Officer Safety Act

Licensee Peace ~~["Peace]~~ Officer Range Qualification Certification~~["LEOSA," KSP 123]~~, 2014 edition ~~[07/05:]~~;

(b) ~~["Notice of Issuance", 1/9/07;~~

(c) ~~["Notice of Expiration - LEOSA", 6/21/07:]~~ and

~~[(b)]~~ ~~[(d)]~~ KSP Form 124B, "LEOSA Law Enforcement Retirement Certification", ~~[KSP 124B,]~~ 2014 edition ~~[December 2010]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700. This material is also available on the department's Web site at kentuckystatepolice.org.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 22, 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 November 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: 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](mailto: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 administrative regulation establishes the requirements and procedures for CCDW certification for honorably retired, elected, or appointed peace officers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the requirements and standards that must be met for CCDW licensure.

(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 law enforcement desiring CCDW licensure.

(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 department and prior law enforcement officials.

(2) If 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 the existing language of the regulation, and removes outdated terms and requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation allows for the reporting procedures to be more effectively understood by the Department and reporting agencies; includes the definition of what a "license" is; states how applications are processed; and updates the materials incorporated by reference.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the existing language, procedures, and the statutory authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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 Department and criminal justice agencies will benefit from more clearly defined procedures, which will assist in the administration of the procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.140 and the applicable federal statutes.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

**502 KAR 13:050. Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.**

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the department [Kentucky State Police] to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the requirements and procedures for the replacement of LEOSA licenses that have been lost, destroyed, or stolen.

Section 1. ~~[Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.~~

~~Section 2.]~~ Lost, Destroyed, or Stolen LEOSA License (1) If a LEOSA license is lost, destroyed, or stolen, a licensee shall notify the department on a "Request For Duplicate LEOSA License," KSP 127.

(2) A licensee shall complete the "Request For Duplicate LEOSA License," KSP 127, in the presence of the sheriff.

(3) The completed "Request For Duplicate LEOSA License," KSP 127, shall be:

(a) Signed by the licensee in the presence of the sheriff, ~~and~~

(b) Notarized, ~~and~~

(c) Signed by the sheriff; ~~and~~

(d) Transmitted by the sheriff to the department in the manner set forth in 502 KAR 11:010(10).]

(4) ~~The completed "Request For Duplicate LEOSA License," KSP 127 shall be:~~

(a) ~~Signed by the sheriff; and~~

(b) ~~Transmitted by the sheriff to the department in the manner set forth in 502 KAR 11:010, Section 10.]~~

(4) ~~[(5)]~~ If the department approves the request for a duplicate license, the department shall:

(a) Issue a duplicate license that contains a license number that differs from the license number on the lost, destroyed, or stolen license;

(b) Send the duplicate license to the sheriff; ~~and~~

(c) Notify the licensee in writing that the duplicate license may be obtained by the licensee:

1. At the office of the sheriff; and

2. After verification of identity of the licensee as provided by 502 KAR 13:010, Section 4.

(5) ~~[(6)]~~ If the department denies the request for a duplicate license, it shall notify the licensee in writing.

Section 2. ~~[Section 3.]~~ Incorporation by Reference. (1) KSP Form 127, "Request For Duplicate LEOSA License," [KSP 127,] 2006 edition, [06/12/06,] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700. This material is also available on the department's Web site at kentuckystatepolice.org.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

**PUBLIC HEARING AND COMMENT PERIOD.** A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes the requirements and procedures for range qualification for certification.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the requirements and procedures for range qualification for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by implementing the certification provisions.

(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 establishing the appropriate procedures for qualifications.

(2) If 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 serves to update the forms currently in use by the department.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the revision up to date.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment assists in the administration of the statutes by establishing the appropriate procedures for qualifications.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the procedures currently in use by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(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.

(7) Provide an assessment of whether an 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? The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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

##### Department of State Police

##### (Amendment)

**502 KAR 13:060. Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.**

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the department [Kentucky State Police] to promulgate administrative regulations to implement the certification provisions. This administrative

regulation establishes the requirements and procedures for the change of personal information regarding LEOSA licensees.

~~Section 1.[Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.]~~

~~Section 2.] Change of Personal Information. (1) If the address or personal information of a licensee has changed, the licensee shall notify the department within thirty (30) days of the change of personal information on the "Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information," KSP 120.~~

~~(2) The "Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information," KSP 120, shall be:~~

~~(a) Completed and signed by the licensee in the presence of the sheriff; and~~

~~(b) Executed under oath.~~

~~(3) The sheriff shall verify the change of personal information as provided by 502 KAR 13:010, Section 4.~~

~~(4) The completed "Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information," KSP 120, shall be:~~

~~(a) Signed by the sheriff; and~~

~~(b) Transmitted by the sheriff to the department pursuant to 502 KAR 11:010, Section 10.~~

Section 2. [Section 3.] Incorporation by Reference. (1) KSP Form 120, "Law Enforcement Officers Safety Act Licensee Request for Change of Personal Information," [KSP-120,] 2006 edition [08/06], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700. This material is also available on the department's Web site at [kentuckystatepolice.org](http://kentuckystatepolice.org).

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 22, 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 November 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: 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](mailto: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 administrative regulation establishes the requirements and procedures for range qualification for certification.

(b) The necessity of this administrative regulation: This regulation is necessary to establishes the requirements and

procedures for range qualification for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by implementing the certification provisions.

(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 establishing the appropriate procedures for qualifications.

(2) If 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 serves to updates the forms currently in use by the department.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the revision up to date.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment assists in the administration of the statutes by establishing the appropriate procedures for qualifications.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the procedures currently in use by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(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.

(7) Provide an assessment of whether an 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? The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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  
Department of State Police.  
(Amendment)**

**502 KAR 13:080. Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.**

RELATES TO: KRS 237.110, 237.138, 237.140, 237.142, 18 U.S.C. 926C

STATUTORY AUTHORITY: KRS 237.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.140 provides for the certification of honorably retired elected or appointed peace officers to carry a concealed deadly weapon pursuant to 18 U.S.C. 926C and requires the department [Kentucky State Police] to promulgate administrative regulations to implement the certification provisions. This administrative regulation establishes the reasons an application form shall be deemed incomplete and the required procedures for the department.

~~Section 1. [Definition. (1) "License" means the document indicating the approved certification pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926C.~~

~~Section 2.] An application form shall not be considered complete if:~~

~~(1) It does not meet the requirements of 502 KAR 13:010;~~

~~(2) It contains erroneous information; or~~

~~(3) An item of the application form is illegible or incomprehensible.~~

~~Section 2.[Section 3.] If the department determines that an application form is incomplete pursuant to the Section 1 of this administrative regulation, the department shall notify the applicant [on a "Missing Information/Document"] of the:~~

~~(1) Reason the application form has been determined to be incomplete; and~~

~~(2) The action required to complete the application form.[]~~

~~Section 4. Incorporation by Reference. (1) "Missing Information/Document", 01/09/07, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Criminal Identification and Records Branch, Kentucky State Police, 1250 Louisville, Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. The phone number for the Criminal Identification and Records Branch is (502) 227-8700.]~~

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 22, 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 November 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: 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**

502 KAR 13:080

Contact person: Katherine George, Phone: (859) 622-3801, Email: katie.george@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for range qualification for certification.

(b) The necessity of this administrative regulation: This regulation is necessary to establishes the requirements and procedures for range qualification for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by implementing the certification provisions.

(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 establishing the appropriate procedures for qualifications.

(2) If 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 serves to updates the forms currently in use by the department.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the revision up to date.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment assists in the administration of the statutes by establishing the appropriate procedures for qualifications.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the procedures currently in use by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(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.

(7) Provide an assessment of whether an 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

502 KAR 13:080

Contact person: Katherine George, Phone: (859) 622-3801, Email: katie.george@ky.gov

(1) What 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 Kentucky State Police, and law enforcement officials desiring CCDW licensure.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 237.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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

##### Department of State Police

##### (Amendment)

**502 KAR 14:010. Provision and maintenance of automated fingerprint identification system equipment and programs in detention centers. Submission of fingerprints by jailers to the Kentucky State Police.**

RELATES TO: KRS 17.180, 441.046

STATUTORY AUTHORITY: KRS 17.180, 441.046

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.180 authorizes the Department of Kentucky State Police to promulgate administrative regulations concerning the automated fingerprint identification system equipment and programs to be required at

every detention center in the Commonwealth. KRS 441.046 requires jailers in the Commonwealth to submit fingerprints to the Department of Kentucky State Police in the manner and time required by the department through administrative regulation.

Section 1. Definitions. (1) "AFIS" means the Automated Fingerprint Identification System which is a computer- based array of systems maintained by the Kentucky State Police that is designed to capture, search, and store fingerprint images and arrest data.

(2) "Fingerprints" mean graphical representations of the friction ridge skin found on the fingers between the first joint and the fingertip.

(3) "Fingerprint card" means the ink and paper criminal fingerprint records on standard FBI fingerprint cards (FBI form FD-249) or the KSP-22 fingerprint card.

(4) "LiveScan fingerprint capture devices" means computer-based devices designed for the electronic capture and transmission of criminal arrest data and fingerprints of subjects taken into custody for criminal offenses.

(5) "Mug shot" means a photograph of an individual taken as part of the arrest and booking process.

(6) "Rolled fingerprints" means all friction ridge skin captured from the first joint of the finger to the end of each digit from fingernail to fingernail for all ten (10) fingers of the subject, containing as much of the geographical surface area of the area described above by rolling the finger from fingernail to fingernail.

(7) "Palm print" means the friction ridge skin found on the base of the fingers to the wrist, including the edge of the palm.

Section 2. (1) The Department of Kentucky State Police shall provide and maintain LiveScan fingerprint capture devices in every detention center in the Commonwealth.

(2) All communication equipment associated with LiveScan fingerprint capture devices (including routers, Channel Service Units, Data Service Units, and telecommunication lines) deemed necessary to transmit criminal arrest fingerprint records to the Department of Kentucky State Police repository shall be supplied by the department.

(3) Depending on factors such as cost, volume, and site environmental issues, the Department of Kentucky State Police may equip certain LiveScan fingerprint capture devices with laser printers, palm print scanners, digital mug shot cameras, and associated lighting and backdrops to ensure National Institute of Science and Technology (NIST) compliant mug shot packet collection during the booking process.

Section 3. (1) The following required data elements shall be entered into the LiveScan fingerprint capture devices during the booking process:

(a) First name;

(b) Last name;

(c) Date of birth;

(d) Sex;

(e) Race;

(f) Height;

(g) Weight;

(h) Place of birth;

(i) Skin tone;

(j) Arresting officer name;

(k) Arresting officer badge or unit number;

(l) Arresting agency Originating Agency Identifier (ORI);

(m) Fingerprinting agency Originating Agency Identifier (ORI);

(n) Date of arrest;

(o) Whether mug shot was taken;

(p) Whether DNA was taken;

(q) Whether palm prints were taken;

(r) Violation (UOR) code;

(s) KRS citation of offense;

(t) Citation number; and

(u) Date of offense.

(2) The fourteen (14) fingerprint images shall consist of:

(a) Rolled fingerprints;

(b) Simultaneous impressions of the left and right hand four fingers (index, middle, ring, and little) taken in a "straight down" or "flat" method; and

(c) Simultaneous impressions of the right and left thumbs taken in a "straight down" or "flat" method.

(3) Image specifications shall be in compliance with the Federal Bureau of Investigation's electronic fingerprint transmission specifications, "Electronic Biometric Transmission Specification (EBTS), Version 10.0.8[8-0]."

Section 4. Jailers shall electronically submit the fingerprints taken pursuant to KRS 441.046 to the Department of Kentucky State Police via a LiveScan fingerprint capture device. If the LiveScan fingerprint capture device is not functioning due to damage, power failure, or other circumstance beyond the control of the jailer, fingerprints shall be placed on a fingerprint card and sent, ~~[postage prepaid]~~, via U.S. mail, to: AFIS Section, Criminal Identification and Records Branch, Kentucky State Police, 1266[1250] Louisville Road, Frankfort, Kentucky 40601.

Section 5. Fingerprints and criminal arrest data shall be sent to the Department of Kentucky State Police as soon as feasible after the arrest. Fingerprints on a LiveScan fingerprint capture device shall be completed and submitted prior to the subject's release from incarceration. Fingerprints on fingerprint cards may be mailed to the Department of Kentucky State Police on a weekly or semiweekly basis, except the jailer shall not retain fingerprint cards more than thirty (30) days prior to mailing.

Section 6. LiveScan fingerprint capture devices shall be kept in a climate controlled area in a standard office environment that minimizes exposure to foreign substances such as dust, smoke, and dirt. Electrical circuits for LiveScan fingerprint capture devices shall not have any large ampere draw equipment such as air conditioners, refrigerators, copy machines, or laser printers on the same circuit. LiveScan fingerprint capture devices shall not be located in an area exposed to weather elements. Users of LiveScan fingerprint capture devices shall report system problems immediately to the Department of Kentucky State Police.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Federal Bureau of Investigation fingerprint card", FD-249, 5/11/99;

(b) KSP Form 22, "Kentucky State Police fingerprint card" [KSP-22-1/87]; and

(c) "Federal Bureau of Investigation Electronic Biometric Transmission Specification (EBTS)", Version 10.0.8[8-0], September 30 [24], 2017 [2007].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 1:00 p.m. on November 22, 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 November 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: 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](mailto: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 administrative regulation mandates the equipment and programs concerning fingerprint identification to be required at every detention center in the Commonwealth, while also listing technology that might be employed depending on factors such as cost, volume, and site environmental issues.

(b) The necessity of this administrative regulation: This regulation defines technologies and procedures employed throughout the Commonwealth concerning fingerprint identification and lists the required data elements that shall be entered by jailers during the booking process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides the procedure for jailers to follow, pursuant to KRS 441.046, in addition to clarifying the automated fingerprint identification system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedures to be followed by the detention center in regard to fingerprints and criminal arrest data, and explains the process to be implemented once the data is retrieved.

(2) If 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 includes palm print scanners to the list of optional equipment that might employed by the Department, depending on factors such as cost, volume, and site environmental issues.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to more fully define what equipment or technology might be employed by the Department in order to more efficiently comply with the authorizing statutes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies the acceptable technology used by the Department by including a newer measure, palm print scanners, to the list of optional technological devices.

(d) How the amendment will assist in the effective administration of the statutes: The amendment brings the regulation up-to-date as it now reflects current, optional equipment that might be used.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, detention centers throughout the Commonwealth who opt to use the referenced technology, individuals who must submit their fingerprints, or other criminal arrest data, to the Department of Kentucky State Police.

(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 amendment references technology that a detention center might opt to use; however, the technology is not mandated and dependent on other factors such as cost. Thus, no additional action is necessary on the part the Department or the detention centers.

(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 amended regulation now clearly defines what technology is available to the detention centers across the Commonwealth, in effort to remove any confusion.

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

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

administrative body to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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, nor does it directly or indirectly 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? The Department of Kentucky State Police, detention centers throughout the Commonwealth who opt to use the referenced technology, individuals who must submit their fingerprints, or other criminal arrest data, to the Department of Kentucky State Police.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.180, 441.046

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 15:010. Traffic collision [Accident] reports.

RELATES TO: KRS 189.635

STATUTORY AUTHORITY: KRS 15A.160, 189.635

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department of Public Advocacy. KRS 189.635 requires the Department of Kentucky State Police to establish a reporting system for vehicle collisions [accidents], including reporting procedures, collision report dissemination fee schedule and forms. This administrative regulation establishes the reporting system dissemination procedures, forms, and fee schedule.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 16.010(2).

(2) "Department" is defined by KRS 16.010(8).

(3) "Person" is defined by KRS 446.010(33).

Section 2. The "Uniform Police Traffic Collision Report" form provided [published] by the department [Department of Kentucky State Police] shall be the official vehicle accident report form for all law enforcement agencies in Kentucky.

Section 3.~~[Section 2.]~~ Interpretation and classification of traffic accidents in connection with completion of a Kentucky uniform police traffic collision [accident] report form shall follow instructions in the most recent version of the "Kentucky Uniform Police Traffic Accident Report Manual" provided [published] by the Justice and Public Safety Cabinet on the electronic collision reporting portal and instructions not in conflict with the Kentucky manual contained in the most recent version of the "Manual on Classification of Motor Vehicle Traffic Collision," published by the National Safety Council.

Section 4.~~[Section 3.]~~ A law enforcement agency whose officers make a traffic collision [accident] report shall be the originating agency with respect to the report and shall retain a copy of the report. Responsibility for providing copies of traffic collision [accident] reports to the parties authorized by KRS 189.635 shall remain with the originating agency.

Section 5.~~[Section 4.]~~ A law enforcement agency whose officers create a traffic collision report shall utilize the electronic submission application as provided by the department [receiving a vehicle accident report pursuant to KRS 189.635 shall forward the original copy of the report to the "CRASH Section, Criminal Identification and Records Branch" Department of Kentucky State Police, Justice and Public Safety Cabinet, Frankfort, Kentucky 40601, in envelopes provided by the cabinet within ten (10) days of receiving the report. The report shall be mailed flat and shall not be folded].

Section 6.~~[Section 5.]~~ Fees for Vehicle Collision [Accident] Reports. Vehicle Collision [Accident] Reports may be obtained by authorized parties pursuant to KRS 189.635 upon payment of the following fees:

(1) Paper copies: five (5) dollars; and

(2) Reports obtained via the Kentucky State Police Web site: ten (10) dollars.

Section 7.~~[Section 6.]~~ News-gathering organization. An organization requesting a vehicle collision report pursuant to KRS 189.635(8) shall complete and sign KSP Form 029, News-gathering organization certification and submit the form according to the procedures described on the department website.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KSP Form 74, "Kentucky Uniform Police Traffic Collision Report", ~~[Form KSP 74,] 2008 edition [Revised 1/2000];~~

(b) "Kentucky Uniform Police Traffic Collision Report Manual", 2008 edition [July 2000];

(c) "Manual on Classification of Motor Vehicle Traffic Accidents", ~~6th edition~~; and

(d) KSP Form 029, "News gathering organization certification", 2017 edition ["Vehicle accident report envelope, 1st edition"].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Criminal Identification and Records Branch [Headquarters], 1266 Louisville Road [919 Versailles Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

**PUBLIC HEARING AND COMMENT PERIOD.** A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 22, 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 November 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:** 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 reporting system, dissemination procedures, forms, and fee schedule for traffic collision reports.

(b) The necessity of this administrative regulation: This regulation is necessary to provide additional guidance related to the reporting system for traffic collisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by establishing and providing guidance as to the reporting system for traffic collisions, as required by KRS 189.635.

(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 establishing the forms and procedures that effectuate the reporting system.

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

(a) How the amendment will change this existing administrative regulation: The primary amendments to this regulation include: replacing the term "accident" with "collision; including reference to the electronic submission of the reports; and including the news gathering certification as a material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to the correct procedures in place by the department.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments assist in the implementation of KRS 189.635.

(d) How the amendment will assist in the effective administration of the statutes: The amendment includes updated references to terms and materials that are utilized in maintaining the reporting system for traffic collisions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of State Police; persons operating vehicles on the highways as prescribed in KRS 189.635; certified peace officers throughout the state; and the approximately 400 law enforcement agencies in the state.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: 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: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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? The Department of State Police; persons operating vehicles on the highways as prescribed in KRS 189.635; certified peace officers throughout the state; and the approximately 400 law enforcement agencies in the state.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.635

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

##### 502 KAR 15:020. Abandoned vehicles[Definitions].

RELATES TO: KRS 189.450, 189.751, 189.752, 189.753

STATUTORY AUTHORITY: KRS 189.753(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.753(3) requires [directs] the department [Department of State Police] to locate abandoned vehicles, order their removal from the rights-of-way of state highways, and notify the owners of vehicles. This administrative regulation is adopted to establish [define] the procedures for location, removal, notification of owners and sale of abandoned vehicles.

Section 1. Definitions. (1) "Department" is The department

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

shall locate, order removal of, and send notification to the owner of vehicles which are abandoned on the rights-of-way of state highways. This administrative regulation will not affect vehicles abandoned on toll roads, interstate highways or other fully controlled access highways as defined in KRS 16.010(8)[603-KAR 5:025].

(2)[

~~Section 2. Definitions. (1)] "Presumed abandoned" means [it has been determined that] a vehicle [that] has been left upon the right-of-way [rights-of-way] of a state highway, county road, or city street for a period of three (3) [fifteen (15)] consecutive days.~~

~~(3)[(2)] "Rights-of-way" means in addition to the actual width of a state highway and the area between any separated highway, those areas lying outside the shoulders and ditch lines and within any landmarks such as fences, fence posts, cornerstones or other similar monuments indicating the boundary line.~~

~~Section 2. The department shall locate, order removal of, and send notification to the owner of vehicles which are abandoned on the rights-of-way of state highways, county roads, or city streets. This regulation will not affect vehicles abandoned on toll roads, interstate highways, or other fully controlled access highways as defined in 603 KAR 5:025.~~

~~Section 3. Location of Abandoned Vehicles. The department, upon a determination that [When the Department of State Police observes] a vehicle [that] is presumed [apparently] abandoned on a state highway, county road or city street shall affix a stalled vehicle check form [shall be affixed] to the vehicle noting the date and location. [Notwithstanding the provisions of KRS 189.450, the vehicle shall be presumed abandoned if it remains at the location for fifteen (15) consecutive days.]~~

~~Section 4. Removal and Storage of Abandoned Vehicles. (1) If [When] a vehicle is presumed abandoned, the department [Department of State Police] may order any person engaged in the business of storing or towing motor vehicles to remove the abandoned vehicle to a site chosen by the [such] person.~~

~~(2) As soon as practicable, the department [Department of State Police] shall, if possible, notify the owner by certified mail that the vehicle was illegally upon public property; the present location of the vehicle; that retrieval will require payment of towing and storage charges; and that the vehicle may be sold if not claimed within sixty (60) days.~~

~~(3) No notification shall be required if ownership cannot be determined.~~

~~(4) Notice by the department [Department of State Police] shall constitute substantial compliance of the notice requirement by the towing and storing business.~~

~~Section 5. Sale of Abandoned Vehicles. (1) If after a period of sixty (60) days the reasonable charges for towing and storing the vehicle have not been paid, the vehicle may be sold by the owner of the towing or storing facility to pay the charges.~~

~~(2) Prior to setting any date for sale, the towing or storage facility shall contact the state police and determine if the vehicle is part of an ongoing investigation that [which] would preclude sale, and to inform the state police of any anticipated date of sale.~~

~~(3) Ten (10) days prior to the sale, the towing or storing facility shall send a certified letter to the owner stating the time and place of the sale.~~

~~(4) If the owner fails to respond to this second notice or make provisions to pay the towing and storage charges, the vehicle may be sold pursuant to KRS 376.275.~~

~~(5) In the event of such sale, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.~~

~~(6) The towing or storage facility selling any vehicle shall by affidavit inform the department [Department of State Police] of the towing and storage charges, the proceeds of the sale, and transmit any excess funds which shall be deposited in the state police agency fund account.~~

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 22, 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 November 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: 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 establishes procedures for location, removal, notification of owners and sale of abandoned vehicles.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance for location, removal, notification of owners and sale of abandoned vehicles.

(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 189.753.

(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 updates the procedures to reflect current practices by the department.

(b) The necessity of the amendment to this administrative regulation: The amendment updates the procedures to reflect current practices by the department.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 189.753.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the procedures to reflect current practices by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of State Police; persons operating vehicles on the highways as prescribed in KRS 189.635; certified peace officers throughout the state; and the approximately 400 law enforcement agencies in the state.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: 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? The Department of State Police; persons operating vehicles on the highways as prescribed in KRS 189.635; certified peace officers throughout the state; and the approximately 400 law enforcement agencies in the state.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.635

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 20:020. Detection of deception examiners.

RELATES TO: KRS 329.010 -329.030[, 42 U.S.C. 3796gg-8]

STATUTORY AUTHORITY: KRS 15A.160, 329.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 329.030(6) require the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations establishing professional standards for detection of deception examiners. This administrative regulation establishes the practice

requirements for detection of deception examiners.

Section 1. Definitions. (1) "Detection of deception examiner" is defined by KRS 329.010(1).

(2) "Secretary" is defined by KRS 329.010(5).

(3) "Sex crime" means an offense or attempt to commit an offense defined in:

(a) KRS Chapter 510;

(b) KRS 530.020;

(c) KRS 530.064(1)(a);

(d) KRS 531.310; or

(e) KRS 531.320.

Section 2. Advertising, soliciting, and discrimination are prohibited as follows:

(1) An examiner shall not advertise in any manner which would tend to deceive or defraud the public.

(2) An examiner shall not publish or circulate any fraudulent, false, or misleading statements as to the skill or method of practice of any person or examiner.

(3) An examiner shall not claim superiority over other examiners as to skill or method of practice.

(4) An examiner shall not divide fees[;] or agree to split or divide the fees received for detection of deception services with any person for bringing or referring a client.

(5) An examiner shall not attempt to solicit business as a result of information or statements obtained from an examinee relating to the examinee's past employment or employer.

(6) An examiner shall not refuse to render detection of deception services to or for any person solely on account of the race, color, creed, sex, or national origin of the person.

Section 3. (1) The examiner shall inform the prospective examinee that taking the detection of deception examination is a voluntary act and the examiner shall obtain the written consent of the examinee to undergo the examination.

(2) The examiner shall not conduct an examination on any person whom the examiner believes, through observation or any other credible evidence, to be physically or psychologically unfit for the examination at that time.

(3) The examiner shall, immediately upon request of the examinee, terminate an examination in progress.

(4) The examiner shall not render a verbal or written opinion based on chart analysis, until the examinee has had a reasonable opportunity to explain any reactions to pertinent questions.

(5) The examiner shall not interrogate or conduct an examination of an examinee's sexual behavior, or ask any questions that can be construed as being sexually oriented or personally embarrassing to the examinee, regardless of marital status, unless the topic is a specific issue or unless it refers to the basic matter pertinent to the examination.

(6) The examiner shall not conduct an examination if the examiner has reason to believe the examination is intended to circumvent or defy the law.

(7) The examiner shall not knowingly issue, or permit an employee to issue, a polygraph examination report which is misleading, biased, or falsified in any way. Each report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.

(8) The examiner shall not conduct a polygraph examination without first reviewing the issues to be covered during the examination and the general content of the questions to be asked during the examination with the examinee.

(9)(a) During deception tests, the examiner shall not render a conclusive truthful or deceptive decision, based on chart analysis, without presenting the same relevant test questions to the examinee three (3) or more times.

1. If the examinee has submitted to fewer than three (3) presentations of each relevant question, the results shall be recorded as no opinion.

2. The fact of the examinee's refusal shall be noted in the verbal or written report of the examination.

(b) An examiner may terminate an examination in progress at the examiner's discretion if, in the examiner's opinion, the examinee has become physically or psychologically unfit, or has become uncooperative to the point that it would be useless to continue the examination.

(10)(a) All questions and answers asked during a polygraph examination shall be marked on the polygraph charts at the appropriate place on the chart where the question was asked and the answer given.

(b) If a question sheet with numbered questions is used, the number of the asked question along with the answer given shall be noted and the question sheet shall be attached to the polygraph chart and made a part of the examinee's file.

(c) Each polygraph chart shall be identified as to the person being examined, the examiner, time and date of the examination, and the chart number.

(11)(a) The examiner shall not, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion or which would infringe upon areas under the cognizance of professionals in those fields.

(b) The examiner may describe the appearance or behavior of the examinee, if:

1. The information is pertinent to the examination; and
2. The examiner refrains from offering any diagnosis which the examiner is professionally unqualified to make.

(12)(a) The examiner shall not offer testimony concerning the charts or conclusions presented by another examiner unless the examiner is thoroughly familiar with the techniques and procedures used by the other examiner.

(b) An examiner may testify concerning the examiner's independent examination of the same examinee.

(13) An examiner shall report to the cabinet any action or misconduct on the part of another examiner which would be in violation of the provisions of KRS Chapter 329 or 502 KAR Chapter 20.

Section 4. Detection of Deception Examinations of Victims of Sex Crimes. (1) The victim of a sex crime has the right to refuse examination and shall be informed of this right.

(2) An examination shall not be requested, required, or conducted of a sex crime victim as a condition for proceeding with the investigation of the crime.

(3) Except as provided by subsection (4) of this section, examination of a sex crime victim shall not be conducted unless:

(a) The victim's consent to the examination is in writing and received by the examiner before the examination begins;

(b) 1. The suspect has declined examination, has passed an examination or has been found unsuitable for an examination; or

2. After an investigation, the suspect cannot be identified or located;

(c) There is a clear issue to test on based on:

1. Interviewing the victim, any witnesses, any potential witnesses, and the suspect, if possible;
2. Submitting any evidence to the laboratory if appropriate; and
3. Pursuing any leads identified during the investigation; and

(d) Before the examination, the investigating officer has provided the examiner with a signed, written document:

1. Describing any inconsistencies in the victim's allegation;
2. Stating if any inconsistency can be substantiated by existing physical or testimonial evidence;
3. Listing investigative strategies that have been used in the case;
4. Declaring that the victim has not been told that the investigation would cease if the victim refuses to consent to an examination; and
5. Containing no reference to whether the victim is behaving like a typical sexual assault victim.

(4)(a) A sex crime victim may request examination. The investigator may arrange for the requested examination and the examination may be conducted if:

1. The request is voluntary and at the victim's own initiative;
2. It is documented in writing that the request is by the victim;
3. The written request is signed by the victim;

4. The written request is received by the examiner before the examination begins; and

5. The victim has an opportunity to consult with a victim's advocate prior to the examination.

(b) An examination shall not be considered to be at the victim's request if the victim agrees to the examination in response to a request by the investigator to take an examination.

(5) Every reasonable attempt shall be made to avoid visible and audio contact between the victim and suspect during the examination process. If contact is made, the examination shall be postponed and rescheduled for another date and time.

(6) The victim shall be advised that at the victim's request, a victim's advocate shall be allowed to watch the examination from a two (2) way mirror or by closed circuit television in real time. The examiner and the victim shall be the only two (2) individuals inside the examination room during the entire examination process, except if a language interpreter is required.

(7) At the beginning of the examination, the examiner shall advise the victim that the examination is a stressful experience and that if the victim feels uncomfortable at any time with the polygraph process, it shall be terminated immediately.

(8) The victim shall not be interrogated under any circumstance. A post-examination debriefing shall be conducted to give the victim the opportunity to explain any unresolved responses on the examination. The victim shall be advised that upon the victim's request, a victim's advocate shall be allowed to watch the debriefing session from a two (2) way mirror or closed circuit television.

(9) The testing format utilized shall be a researched comparison/control question format (CQT). The relevant questions shall be answered with a "yes" answer.

(10) An irrelevant/relevant question format shall not be utilized on any sex crime victim.

(11) Past sexual history of the victim shall not be explored by the examiner.

(12) Sex related comparison/control questions shall not be asked of the victim. Lie comparison questions excluding sex shall be used on sex crime victims.

(13) At the end of the examination, the examiner shall advise the victim of the results.

(14) Quality control of the examination shall be conducted in writing and maintained with the polygraph file at least until after adjudication of the case.

(15) The entire examination shall be videotaped with adequate picture and sound from the time the victim walks into the testing room until the victim leaves the testing room for the last time. There shall not be a break in the videotaping of the process. The videotape shall be maintained as evidence until at least the investigation is adjudicated.

Section 5. (1) The examiner shall maintain on file for at least two (2) years all records, papers, polygraph charts, consent to examination forms, notes, question lists or sheets, and reports of polygraph examinations that the examiner conducted.

(2)(a) Except as provided in paragraph (b) of this subsection, an examiner who leaves the employment of another examiner, agency, firm, or company shall be allowed access, after showing reasonable cause, to the files of examinations that the examiner conducted during the two (2) year period prior to the date of the request.

(b) Without the approval of the employing examiner, agency, firm, or company, the examiner shall not remove any of the material contained in the file or make notes of any of the information contained therein.

(3) The cabinet shall, if there is just cause, inspect the records, reports, polygraph charts, and all paperwork connected with an examination to determine if an examiner is conducting examinations in accordance with the provisions of KRS Chapter 329 and 502 KAR Chapter 20.

Section 6. Continuing Education Requirements. (1) Each examiner shall complete at least twenty (20) hours of instruction in subject matter relating directly to the polygraph profession during

the licensing year. Acceptable polygraph training for purposes of this requirement shall be:

(a) Polygraph seminars, courses, or other training sponsored by any national polygraph association, state polygraph association, or American Polygraph Association accredited polygraph school;

(b) Any training in polygraphy sponsored by a law enforcement training academy approved by the secretary or his or her designee if the instructor is certified by the Kentucky Law Enforcement Council;

(c) Training received during the course of internship established in 502 KAR 20:030 and approved by the Secretary in writing; or

(d) Any training directly relating to polygraph subject material which has been preapproved by the secretary or his designee in writing.

(2) Each examiner submitting a request to renew the examiner's license for the following year shall also submit proof of completion of the required instruction such as a copy of the diploma, certificate, or other documentation confirming instruction and attendance.

COLONEL PHILLIP "PJ" BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 3:00 p.m. on November 22, 2021, at 521 Lancaster Avenue, 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 November 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: 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 administrative regulation establishes the practice requirements for detection of deception examiners.

(b) The necessity of this administrative regulation: This regulation is necessary to define the standards for polygraph studies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the authorizing statute by establishing the procedural requirements necessary polygraph studies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clearly outlines the procedures for polygraph studies.

(2) If 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 the procedures to follow for the implementation of certain polygraph examiners.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to streamline the trial board proceeding process and remove the existing ambiguity.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment conforms to the authorizing statute by more clearly defining the procedural requirements necessary for the discipline and removal of officers.

(d) How the amendment will assist in the effective administration of the statutes: The revised text within the regulation will remove the existing ambiguity as to when a continuance may be requested.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, the trial board established within the Kentucky State Police, those involved in proceedings with the trial board.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities can now effectively ascertain when a continuance may be granted.

(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 process is now more clearly defined.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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 Kentucky State Police, the trial board established within the Kentucky State Police, those involved in proceedings with the trial board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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**  
**Department of State Police**  
**(Amendment)**

**502 KAR 30:010. Criminal History Record Information System.**

RELATES TO: KRS 15A.160, 17.140

STATUTORY AUTHORITY: KRS 15A.160, 17.140 [47.080]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 provides and [47.080 provide] that the Secretary of the Justice and Public Safety Cabinet may adopt [such] administrative regulations as [are] necessary to properly administer the cabinet. KRS 17.140 requires the Justice and Public Safety Cabinet to establish [establishes] the Centralized Criminal History Record Information System, under the direction, control and supervision of the Commissioner of the Department of the Kentucky State Police. This administrative regulation establishes the definitions to be used in the administration of the Centralized Criminal History Record Information System.

Section 1. [As employed in 502 KAR 30:010 through 502 KAR 30:070, unless the context requires otherwise:]

(1) "Administration of criminal justice" means performance of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and dissemination of CHRI. ["Criminal History Record Information System" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.]

(2) "Criminal history record information," or "CHRI", [hereinafter referred to as CHRI,] means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including, but not limited to, sentencing, correctional supervision and release. [CHRI shall not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system, or the evaluative information, such as statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. CHRI shall be limited to information concerning persons who have attained the age of eighteen (18) and shall not include any information concerning criminal offenses of acts of delinquency committed by any person before that person has attained the age of eighteen (18); provided, however, that if a person under the age of eighteen (18) is adjudicated as an adult and found guilty in a circuit court, information relating to such criminal offense shall be deemed CHRI. CHRI shall not include any information concerning any offense which is not punishable by incarceration.]

(3) "Criminal History Record Information System" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information. ["Criminal justice agency" means:

(a) Courts for purposes agreed upon between the secretary and Chief Justice;

(b) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer, warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution of the retarded; state police, State Fire Marshal, Board of Alcoholic Beverage Control; Justice Cabinet; Cabinet for Human Resources; Transportation Cabinet; Corrections Cabinet; and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents.]

(4) "Criminal justice agency" means:

(a) Courts for purposes agreed upon between the secretary and Chief Justice;

(b) A government agency or any subunit that thereof which performs the administration of criminal justice pursuant to a statute or executive order, and [which] allocates a substantial part of its annual budget to the administration of criminal justice; or

(c) Any other agency as agreed upon by the secretary.

(d) The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer, warden of a prison, mental hospital or institution; state police, State Fire Marshal; Department of Alcoholic Beverage Control; Justice and Public Safety Cabinet; Department of Corrections; and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents. ["Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of CHRI.]

(5) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination of proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include[, but not be limited to]: acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, conviction [convicted], youthful offender determination, death [deceased], deferred disposition, dismissed civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled or released from correctional supervision, or any other disposition deemed appropriate by the court.

(6) "Nonconviction data" means [arrest] information obtained [without disposition if an interval of one (1) year has elapsed] from the date of arrest to [and no active prosecution of] the date of disposition, in matters that do not result in a conviction, including [charges is pending; all] information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, including [as well as] all acquittals and [all] dismissals.

(7) "NLETS" means the National Law Enforcement Telecommunication System. ["Uniform offense report", hereinafter "UOR-1," means the report form developed pursuant to KRS 15A.190 and 17.150 on which every felony case, every misdemeanor case of theft by unlawful taking or disposition, every case of unauthorized use of a motor vehicle, and every other instance where there is an allegation that a criminal offense has been committed against a victim's person or property and a

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

uniform citation will not suffice, shall be recorded and reported by forwarding a completed UOR-1 form to the Kentucky State Police, Records Section, hereinafter Records.

~~(8) "Court disposition uniform offense report," hereinafter "UOR-3," means that report form developed pursuant to KRS 15A.190 and 17.150 on which either preliminary or final court dispositions on all criminal offenses involving arrest(s) other than those reported on a uniform citation shall be recorded with final dispositions on all cases reported by forwarding a completed UOR-3 to Records.~~

~~(9) "NLETS" means the National Law Enforcement Telecommunication System.]~~

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 22, 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 November 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: 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 definitions to be used in the administration of the Centralized Criminal History Record Information (CHRI) System.

(b) The necessity of this administrative regulation: This regulation is required in order to properly understand 502 KAR 30:010 through 502 KAR 30:070, as this regulation provides the requisite definitions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the definitions for the centralized CHRI system, which is required pursuant to KRS 17.140.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is necessary to assist in the comprehension, understanding, and implementation of 502 KAR 30:010 through 502 KAR 30:070.

(2) If 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 the existing language of the regulation, particularly in regard to what CHRI encompasses.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to more clearly define the regulation, and to provide guidance to the Department regarding the current procedures in place.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment more clearly defines CHRI, and provides a more uniform and efficient centralized CHRI system.

(d) How the amendment will assist in the effective administration of the statutes: The Department can more effectively

ascertain the procedures involved in maintaining the CHRI system now the regulation is more clearly defined. Outdated procedures, rules, and forms have been deleted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, criminal justice agencies, individuals with sensitive information contained in the CHRI 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: No additional actions are required on the part of the regulated entities in order to effectuate compliance with the updated regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit from current procedures and definitions being added to the regulation, with CHRI more clearly defined.

(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: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 State Police, criminal justice agencies, individuals with sensitive information contained in the CHRI system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 17.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? 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**  
**Department of State Police**  
**(Amendment)**

**502 KAR 30:020. Arrest and disposition reporting procedure.**

RELATES TO: KRS 17.110, 17.115

STATUTORY AUTHORITY: 15A.160, [47.080, ]17.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.110 mandates that all city and county law enforcement agencies shall submit to the Justice Cabinet, Department of State Police, photographs, and a description report of the offense on all persons arrested[ on a felony charge]. KRS 17.115(2) requires persons in charge of any penal or correctional institution to provide the cabinet with fingerprints and descriptions on all persons committed to their custody or detained by them on cases where fingerprints and descriptions are taken, together with a report of the disposition. KRS 17.150(6) authorizes the Secretary of Justice to adopt administrative regulations that are necessary to insure the accuracy of [said ]criminal history record information. This administrative regulation establishes arrest and disposition reporting procedures.

Section 1. Offense Reporting Procedure. [Within thirty (30) days of the arrest for an offense covered by KRS 17.110, two (2) sets of fingerprint cards, a mug shot or the negative of the mug shot, and a general description report (UOR-1) of the offense shall submitted to Records. Further,] Law enforcement and criminal justice agencies shall cooperate with Records by complying with a "unique numbering system" to allow court disposition tracing. The "unique numbering system" shall be accomplished by the issuance of a Uniform Citation with every [felony ]arrest as it relates to 502 KAR 30:020 subject to an agreement with the Chief Justice of the Supreme Court of Kentucky as set out in Section 2(2) of this administrative regulation.

**Section 2. Disposition Reporting Procedures.**

(1) Dispositions shall be submitted from each city and county law enforcement agency to Records[~~in the form of the Uniform Offense Report (UOR-3);~~] or any subsequent disposition reporting instrument required by the Kentucky State Police.

(2) Upon suitable written agreement with the Chief Justice of the Kentucky Supreme Court and the Secretary of the Justice Cabinet, a unique tracking number will be assigned to each offender at the time of arrest. This unique number will be utilized throughout the movement of the offender through the criminal justice system, thereby enabling the Administrative Office of the Courts to provide a system compatible ~~format[computer tape]~~ to Records for automatic update of court dispositions in the CHRI files.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 22, 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 November 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: 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 administrative regulation establishes arrest and disposition reporting procedures.

(b) The necessity of this administrative regulation: This regulation is necessary in order to supply the Department with the required information pertaining to arrests made in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the reporting system necessary to effectively inform the Department of arrests made in the Commonwealth, and the eventual disposition of the matter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation details the time allotted for an offense to be submitted to Records, and details the requirements of the unique numbering system in order to effectively keep track of the reported offenses.

(2) If 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 the existing language of the regulation, and removes outdated terms and requirements, including the completion of a UOR-1 or UOR-3 form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order for the regulation to reflect current procedures implemented by the Department.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation allows for the reporting procedures to be more effectively understood by the Department and reporting agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the existing language, which results in a more concise, and clear regulation; the amendment also removed outdated terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and criminal justice agencies.

(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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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 Department and criminal justice agencies will benefit from more clearly defined procedures, which will assist in the administration of the procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police, and criminal justice agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 17.110, 17.115, 17.150

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 30:030. Audit of Criminal History Record Information System.

RELATES TO: KRS 17.150

STATUTORY AUTHORITY: KRS 15A.160, [17.080], 17.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.140 establishes a centralized Criminal History Record Information System in the Justice Cabinet under the direction of the Commissioner of the Department of State Police. KRS 17.150(6) provides that the Secretary of Justice shall adopt administrative regulations that are necessary to insure the accuracy of criminal history record information being reported to the centralized criminal history record information system. This administrative regulation establishes the requirements for audits of the centralized Criminal History Record Information System and law enforcement and criminal justice agencies which submit or receive criminal history record information to or from the centralized Criminal History Record Information System.

Section 1. The Records Section shall annually conduct an in-

house audit of a random representative sample of hard copy data contained in the centralized Criminal History Record Information System. The scope of the audit shall include[ but is not limited to]:

- (1) Adherence to federal and state regulations;
- (2) Completeness and accuracy of CHRI;
- (3) CHRI dissemination procedures;
- (4) Security; and
- (5) Compliance with mandated access and review procedures.

The[~~Said~~] audit shall be conducted in accordance with guidelines set out in 28 C.F.R.; 20.21(e)[, ~~utilizing the standard audit instrument as prescribed by Records~~]. A report of the audit findings shall be submitted by the administrative head of Records to the Commissioner, Department of State Police and the Secretary of the Justice Cabinet on or before January 10 of each year.

Section 2. Records shall conduct, on an annual basis, audits of at least four (4) criminal justice agencies, submitting or receiving data from or to the centralized Criminal History Record Information System. The criminal justice[~~Said~~] agencies shall be picked at random. The[~~Sueh~~] audits shall be conducted in accordance with guidelines set out in 28 C.F.R.; 20.21(e), utilizing the standard audit instrument. A report of the audit findings shall be submitted to the administrative head of the respective criminal justice agency within thirty (30) working days after the audit has been completed. The scope of the audit shall include[ but not be limited to]:

- (1) Adherence to federal and state regulations;
- (2) Completeness and accuracy of CHRI;
- (3) CHRI dissemination procedures;
- (4) Security; and
- (5) Compliance with mandated access and review procedures.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 22, 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 November 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: 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 requirements for audits of the centralized Criminal History Record Information System and relevant agencies which submit or receive criminal history record information from same.

(b) The necessity of this administrative regulation: This regulation ensures compliance with KRS 17.150, while similarly confirming the agency is operating and complying with the applicable federal and state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation works to ensure the accuracy of criminal history record information provided to law enforcement and criminal justice agencies that rely upon a system

of centralized information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidance to the Records Section and to criminal justice agencies regarding the criteria that will be judged in the audit, and similarly sets forth the audit procedure in general terms.

(2) If 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 clarify the existing language of the administrative regulation, providing essential guidance to the Records Section and the relevant agencies.

(b) The necessity of the amendment to this administrative regulation: The previous language was unclear and not completely defined within the relevant sections of the text.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment further clarifies the language of the regulation which works to ensure the completeness and accuracy of the criminal history record information that is provided.

(d) How the amendment will assist in the effective administration of the statutes: The clarified language allows for the Records Section, and relevant agencies, to have clear guidance on how criminal history record information is to be maintained and disseminated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive criminal history record information to or from the Records System.

(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 amendment does not require the regulated entities to take any action separate and apart from the previous language of the regulation, instead, the amendment clearly defines the scope of the audit.

(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 regulated agencies will have more clearly defined guidance on the scope of the audit, and can more effectively ensure compliance with the applicable regulations and procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase fees, directly or indirectly.

(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 Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive criminal history record information to or from the Records System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, KRS 17.150

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 30:050. Security of centralized criminal history record information.

RELATES TO: KRS 17.140

STATUTORY AUTHORITY: KRS 15A.060, [47.080,]17.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS [47.080] authorizes the Secretary of Justice to institute rules and administrative regulations and direct proceedings and actions for administration of laws and functions that are invested in the Justice Cabinet. KRS 17.140 establishes, in the Justice and Public Safety Cabinet under the direction, control, and supervision of the Commissioner of the Department of State Police, a centralized criminal history record information system. KRS 17.140 defines a centralized criminal history record information system as the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation, or dissemination of criminal history records maintained by the Justice Cabinet. This administrative regulation sets specific security standards to preserve the CHRI in an acceptable state.

Section 1. Procedures shall be implemented in the centralized criminal history record information system to insure that access to criminal history record information is restricted to authorized persons. The ability to access, modify, change, update, purge, or destroy such information shall be limited to authorized criminal justice personnel, or other authorized persons who provide operational support, such as programming or maintenance. Technologically advanced software or [and/or] hardware designs shall be implemented to prevent unauthorized access to criminal history record information.

Section 2. Procedures shall be implemented in the centralized criminal history information system to determine what persons have authority to enter in areas where criminal history information is stored and implement access control measures to insure entry is limited to specific areas where authorization is valid. Further, access control measures shall be implemented to insure unauthorized persons are totally denied access to areas where criminal history record information is stored. [Said ]Access

constraints shall include~~[-but not be limited to-]~~ the system facilities, systems operating environments, data file contents, whether while in use or when stored in media library, and system documentation.

Section 3. Procedures shall be implemented in the centralized criminal history information system to insure that computer operations which support the criminal history record information data base, whether dedicated or shared, operate in accordance with procedures developed or approved by the Justice Cabinet, and further insure that:

(1) CHRI is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by unauthorized persons.

(2) Operational programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than designated terminals within the Records.

(3) The destruction, partial deletion, total deletion, or record correction is limited to designated terminals under the direct control of records.

(4) Operational programs are used to detect and store for the output of designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program or file.

(5) The programs specified in subsections (2) and (4) of this section are known only to criminal justice agency employees responsible for criminal history record information system control or individuals in agencies pursuant to a specific written agreement with the Justice Cabinet to provide such programs and the operational program(s) are continuously kept under maximum security conditions.

(6) Procedures are instituted to assure that any individual or agency authorized direct access is responsible for:

(a) The physical security of criminal history record information under its control or in its custody; and

(b) The protections of such information from unauthorized access, disclosure or dissemination.

Section 4. Procedures shall be implemented in the centralized criminal history record information system to protect CHRI from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

Section 5. Emergency Plans Required. Written plans and instructions dealing with emergencies described in Section 4 of this administrative regulation shall be developed in manual form and cover all foreseeable incidents ranging from minor accidents to major disasters causing the destruction of computer facilities, entire data bases, ~~and/or~~ CHRI contained in manual files. Employees of the centralized criminal history record information system shall be trained in procedures and specifically assigned responsibilities in case of an emergency. Plans and instructions ~~shall include~~~~should be inclusive of, but not limited to,~~ emergency shutdown and evacuation procedures, a disaster recovery plan to restart critical system functions, procedures for backup files for critical data such as fingerprint cards, and duplicate system designs. The Commissioner of the Department of State Police shall make available needed personnel to reinstitute the centralized criminal history record information system as soon as feasible after accident or disaster.

Section 6. The records commander shall institute procedures for the screening, supervising, and disciplining of agency personnel in order to minimize the risk of compromising internal security. A background investigation of all prospective employees for records shall be conducted. The scope of the background investigation shall ~~include~~~~be inclusive of, but not limited to,~~:

(1) Verification of all items as listed on the employment application;

(2) Moral character;

(3) Financial history;

(4) Individual as well as spouse arrest history inclusive of juvenile files; and

(5) Agency personnel records.

All records employees ~~shall~~~~will~~ agree to and sign nondisclosure statements and notice of security breach forms. The records commander shall so notify the Commissioner of the State Police as to any violation of security policy. A violation of said security policy shall include~~[-but not be limited to-]~~ the intentional violation or wanton disregard of ~~the~~~~any or all~~ security policies with regard to criminal history record information as set forth by section policy ~~or~~~~;~~ the compromising of an employee's security by committing, facilitating, or being a party to a crime. Upon notification by the records commander of a security compromise, the commissioner shall take immediate appropriate administrative action.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 22, 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 November 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: 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 sets specific security standards to preserve criminal history record information (CHRI) in an acceptable state.

(b) The necessity of this administrative regulation: This regulation ensures compliance with KRS 17.140 and ensures that the CHRI remains secure to prevent unauthorized access.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation works to ensure the appropriate processes for preservation of the criminal history records maintained by the Justice and Public Safety Cabinet and implements procedures to limit access to the protected information to authorized persons.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Records Section in implementing and maintaining the appropriate procedures to effectively protect and store the protected CHRI.

(2) If 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 clarify the existing language of the administrative regulation, which provides guidance on how to effectively maintain and protect sensitive information.

(b) The necessity of the amendment to this administrative regulation: The previous language was unclear and not appropriately defined within relevant sections of the text.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment further clarifies the language of the regulation which works to ensure the appropriateness of the procedures implemented by the Records Section.

(d) How the amendment will assist in the effective administration of the statutes: The amendment contains language that is more clearly defined, which will benefit the personnel charged with implementing the subject procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police, the Justice Cabinet, and all persons with personal information stored within the criminal history record information database maintained by Records.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendment does not require the regulated entities to take any action separate and apart from the previous language of the regulation; instead, this amendment provides clarification of the appropriate processes.

(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 regulated agencies will have more clearly defined guidance on the appropriate procedures regarding the sensitive information that they are charged with protecting.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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 Department of the Kentucky State Police, the Justice Cabinet, and all persons with personal information stored within the criminal history record information database maintained by Records.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.140, KRS 15A.060

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 30:060. Dissemination of criminal history record information.

RELATES TO: KRS 11.160(1)(e), 11.160(2)(e), 15.540, 17.115, 17.140, 17.147, 17.151, 17.152[47.1522], 17.160, 17.167(4), [454.650,] 237.110(7), 311A.100

STATUTORY AUTHORITY: KRS 15A.150, 15.382, 17.150(6), 17.160(3), 17.165, 17.167, 156.483, 160.151, 160.380, 161.148, 199.462(4), 216.793, 238.525, 281A.040, 281A.300, 324.045, 329.030, 329A.025, 351.090, 351.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.115 ~~authorizes[provides that]~~ the Justice and Public Safety Cabinet ~~to[shall]~~ cooperate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification. KRS 17.147(6) ~~requires[provides that]~~ the Department of Kentucky State Police ~~to[shall]~~ supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs. [Further,] KRS 17.150(6) requires the Secretary of the Justice and Public Safety Cabinet to adopt administrative regulations to carry out the provisions of the criminal history record information system. This administrative regulation establishes the conditions required for[under which] the dissemination of data from the criminal history record information system[may disseminate data].

Section 1. Dissemination of Criminal History Record Information (CHRI). Use of CHRI disseminated to noncriminal justice agencies shall be limited [to the purpose for which it was given]. An agency or individual shall not confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information itself. [Dissemination of ]CHRI shall ~~be regulated by the specific category of criminal history record information. Those categories shall~~ include:

(1) Nonconviction data. Dissemination of nonconviction data shall ~~not include [with the exception of the computerized Kentucky State Police] files available for access[accessed]~~ by an open records[record] request.~~[directly to]~~ The dissemination[Department] of nonconviction data shall [State Police,] be limited, [whether] directly or through an intermediary, to:

(a) Criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment.

(b) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court order, as determined by the General Counsel of the, Justice and Public Safety Cabinet.

(c) Individuals and agencies pursuant to a specific agreement as outlined in 502 KAR 30:040 with the Department of Kentucky State Police, to provide services required for the administration of criminal justice pursuant to that agreement.

(d) Individuals and agencies for the express purpose of evaluation research, or statistical activities pursuant to an agreement with the Criminal Identification and Records Branch of the Kentucky State Police [(Records)]. The agreement shall:

1. Limit the use of data to evaluation, research, or statistical purposes;
2. Insure the confidentiality and security of the data consistent with these administrative regulations; and
3. Provide sanctions for violations of the agreement.

(2) Conviction data. Dissemination of conviction data shall be limited as follows:

(a) Juvenile records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall not be released to the public without court order. This restriction shall not apply to juveniles [who were] tried as an adult.

(b) Criminal history record checks for employment or volunteer purposes. ~~CHRI [Criminal history record information] concerning [of] a conviction [nature] may be disseminated to potential employers of persons. To obtain CHRI [criminal history record information] regarding convictions, a prospective employee or volunteer through the potential employer shall complete the relevant form, located on the Kentucky State Police Web site, [prescribed by this administrative regulation,] which is appropriate for the request. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the potential employer, or other entity requesting the CHRI, signature of the prospective employee or volunteer, and a witness signature. The form shall also include sex, race, date of birth, Social Security number, and previous addresses of the prospective employee or volunteer. The prospective employer shall be responsible for the completion of the appropriate form and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer, with the necessary release form.~~

(c) Nonemployment criminal records checks. ~~CHRI regarding [Criminal history record information of] a conviction [nature] may be disseminated to individuals, entities, or organizations in regard to emigration or housing. To obtain CHRI [criminal history record information] regarding convictions, an individual shall complete the relevant form, located on the Kentucky State Police Web site, [prescribed by this administrative regulation,] which is appropriate for the request. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the recipient individual, entity or organization, signature of the person about whom the CHRI is being requested [individual requester], and a witness signature. The form shall also include sex, race, date of birth, Social Security number and previous addresses of the person about whom the CHRI is being requested [individual applicant]. The applicable forms shall be as follows:~~

1. Request for KSP Conviction Records/Housing, 10/03 edition; and

2. Request for Conviction Records/Emigration, 10/03 edition. ~~The applicant shall be responsible for the completion of the form and shall submit a check or money order in the amount of twenty (20) dollars, made payable to the Kentucky State Treasurer. [~~

~~(d) In regard to employment criminal records checks, the prospective employer shall be responsible for the completion of the appropriate form as indicated in paragraph (b) of this subsection and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer.~~

~~(e) If the criminal records check is nonemployment in nature, the applicant shall be responsible for the completion of the form as listed in paragraph (c) of this subsection and shall submit a check or money order in the amount of twenty (20) dollars, made payable to the Kentucky State Treasurer.]~~

~~(d)[(f)] Pursuant to KRS 17.167(4), employees and members of fire departments, ambulance services, and rescue squads shall be exempted from a [the] fee [required in this section].~~

~~(e)[(g)] The fee in this section shall not apply to applications for a license, or a renewal of a license, to carry a concealed deadly weapon. The fees for this license are provided in KRS 237.110(7).~~

Section 2. Electronic Log. As outlined in 502 KAR 30:040, the computerized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHRI from the computerized criminal history record information system shall electronically log all disseminations of CHRI. The log shall contain [at least] the following information: the name of the agency and individual receiving CHRI, the date of release, the individual to whom the CHRI relates, the items of CHRI released, and, in the

case of secondary dissemination, the agency which provided the CHRI. Transaction logs shall be maintained in a records subject accessible state for at least twelve (12) months from the date of CHRI dissemination.].

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

- ~~(a) "Request for Conviction Records—Employment/Professional License", 10/08 edition;~~
- ~~(b) "Request for Conviction Records/Child Care", 9/08 edition;~~
- ~~(c) "Request for Conviction Records/Adoptions and Foster Homes", 9/08 edition;~~
- ~~(d) "Request for Conviction Records/Lottery", 10/08 edition;~~
- ~~(e) "Request for Conviction Records/Long-Term Care Facility", 10/08 edition;~~
- ~~(f) "Request for Conviction Records/Kentucky Department of Mines and Minerals", 10/08 edition;~~
- ~~(g) "Request for Conviction Records/Fire Department, Ambulance Service and Rescue Squad", 10/03 edition;~~
- ~~(h) "Request for Conviction Records/Minors", 10/08 edition;~~
- ~~(i) "Request for Conviction Records/Nonpublic Schools", 9/08 edition;~~
- ~~(j) "Request for Conviction Records/Department of Education", 9/08 edition;~~
- ~~(k) "Request for Conviction Records/Legislative Research Commission", 10/08 edition;~~
- ~~(l) "Request for Conviction Records/Housing", 10/08 edition;~~
- ~~(m) "Request for Conviction Records/Emigration", 9/08 edition;~~
- and
- ~~(n) "Request for Conviction Records/Public Schools", 10/08 edition.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Post 12 at 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-2221, Monday through Friday, 8 a.m. until 4:30 p.m.]~~

COL. PHILLIP BURNETT JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 22, 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 November 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: 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 administrative regulation establishes the conditions under which the criminal history record information system may disseminate data.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to both the Department and agencies (both criminal and non-criminal) on the requirements that must be met before criminal history record information (CHRI)



can be disseminated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by ensuring that the CHRI system is efficient in supplying the appropriate data to requesting agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the procedure that an agency must comply with in order to access CHRI that is stored and maintained pursuant to KRS 17.115.

(2) If 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 the language of the existing regulation by more appropriately defining the language used.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to more clearly establish how the Department manages requests for CHRI, and what might be supplied.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment more accurately reflects the necessary materials that an agency must provide before receiving information contained within the CHRI system.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will result in the clarification of the necessary requirements that must be met prior to the dissemination of CHRI.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and agencies requesting CHRI from the Department.

(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 additional action is required on the part of the agency in order to effectively comply with the amended regulation.

(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 Department and requesting agencies will benefit from a regulation that more clearly defines the process of requesting CHRI, which will result in more efficient administration of the statute.

(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: Not applicable.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No. This amended regulation does not establish any fees, nor does it directly or indirectly increase 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? The Department of Kentucky State Police, and agencies requesting CHRI from the Department.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.150, 15.382, 17.150(6), 17.160(3), 17.165,

17.167, 156.483, 160.151, 160.380, 161.148, 199.462(4), 216.793, 238.525, 281A.040, 281A.300, 324.045, 329.030, 329A.025, 351.090, 351.315

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 30:070. Inspection of criminal history record information by record subject.

RELATES TO: KRS 17.140, 17.150, 61.872, 61.878, 61.884

STATUTORY AUTHORITY: KRS 15A.150, [47-080],[17.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.150(5) makes that portion of KRS Chapter 61 which deals with administrative and judicial remedies for the inspection of public records and penalties appealable. KRS 61.884 allows the individual record subject to access their personal CHRI [relating to him] or other data in which the record subject is mentioned by name. This administrative regulation establishes guidelines by which CHRI may be accessed by the individual record subject.

Section 1. This administrative regulation [~~These administrative regulations~~] shall provide for the initiation of access and review[~~access/review~~] procedures [at each] of CHRI maintained by the Kentucky State Police.[~~Posts throughout~~] The [Commonwealth with the exception of Frankfort, Post 12.]Records Section shall serve as the location for record access and review [access/review] for individuals near Frankfort.[~~Access/review procedure shall be uniform throughout the various designated sites.~~]

Section 2. Access and Review Procedures[~~Access/Review Procedure~~]. The record subject shall complete the "Request for Review" form provided by Records[~~at the respective access/review site~~]. A duplicate copy of the[~~said~~] form shall be provided to the requester, or requester's legal counsel. The requester shall be required to provide one (1) set of rolled fingerprints.[~~from~~] The [requester on a completed KSP Form 22, will be forwarded to Records where ]submitted fingerprints will be used to verify the record subject's identity. The Records staff shall note the date of the request as indicated on the "Request for Review" form and shall schedule the record review within three (3) working days of the receipt of the request, unless a detailed explanation of the cause is given for further delay along with the place, time and earliest date on which the CHRI will be available for inspection. The requester shall be notified [forthwith ]by Records of the scheduled date of review.[~~All record reviews will be conducted from 8 a.m. through 4 p.m., Monday through Friday with the exception of legal holidays, at the designated State Police Post or the Records Section. Records shall returned to the post of the respective~~]

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

~~access/review request, the "Request for Review" form, the fingerprints taken from the individual for identity verification, a copy of the letter to the record subject scheduling the review date, and a certified copy of the individual's criminal history record.~~

~~Section 3. Record Reviewing Procedures. In order to insure that the subject appearing at the Post for the scheduled review of the CHRI supplied from Records is in fact the same person the submitted set of fingerprints were obtained from, visual recognition is required by Post personnel before allowing the individual to actually access the CHRI. The individual, and his attorney (if written approval is submitted by the record subject) shall be allowed to inspect the copy of the CHRI. Reasonable assistance shall be provided by Post personnel to insure understanding of the CHRI. After the record subject has inspected the CHRI, Post personnel should ascertain if a challenge of the content of the records will be initiated. Basis for challenge shall stem from erroneous information, misinformation, or fictitious information. The individual shall be informed that a challenge must be initiated within thirty (30) working days of the actual review. If a challenge is not initiated at the time of review, a copy of the individual's record will be retained at the Post and will be filed with the individual's "Request for Review" form in a manner convenient to the Post. Information regarding the "Request for Review" shall remain at the Post not less than thirty (30) working days from the actual date of review to allow the individual ample time to challenge the record content. If, after thirty (30) working days a challenge has not been initiated, all material regarding the review shall be returned to Records where a permanent record of the review shall be maintained.~~

~~Section 4. Challenge of Record Contents. If the record subject desires to challenge the contents of the record, the individual shall complete the "Challenge of Record" form (bottom portion of the original form). A duplicate copy should be provided to the individual. It should be noted on the form if the individual requests a copy of the record for purposes of challenge. A copy of the individual's record furnished through the Post by Records shall be given to the individual if a challenge is initiated and the individual states a need for a copy of the record for purposes of pursuing a challenge. The copy provided by Records shall be permanently marked or stamped to indicate that the copy is for the purpose of challenge and that any other use thereof would be in violation of federal and state law. The Post shall forward to Records a "Challenge of Record" form and any documents submitted by the individual in support of the challenge.~~

~~Section 5. Processing of Challenge by Records. Records shall conduct a comparison of the information under challenge with the original input documents and information contained in the repository files. Any errors or omissions discovered in the repository files shall be corrected. If no error is found, Records shall forward a copy of the original challenge form, a copy of the record as contained in the files, and any other relevant information to the agency or agencies which the Record Section's records indicate as contributing the information under challenge and shall request them to examine in an expeditious manner all relevant files to determine the validity of the challenge. Records shall notify the individual or his legal counsel in writing of the status of said challenge within thirty (30) working days of the challenge date. Status of challenge includes, but is not limited to, notice of clarification of record, expungement of erroneous data, substantiating record or ongoing research process.~~

~~Section 6. Administrative Review. If the record subject is dissatisfied with the action taken by Records, the individual may request an Administrative Review. This request shall be submitted in writing and directed to the attention of the Commander of the Records Section. The Commander of the Records Section shall notify in written form the Administrative Review Officer of the request for Administrative Review upon receipt of such request. An individual within the Department of State Police and designated by the Commissioner as the Administrative Review Officer shall~~

~~review the individual's record in the same manner as performed by Records. The Administrative Review Officer shall notify the individual, in writing, of the decision of the Administrative Review. This notification shall be within thirty (30) days of submission of the written request for the Administrative Review. Any further appeal by the individual will be directed to the court for judicial review.~~

~~Section 7. Action Taken if Error or Omission Found Within Record. Records shall correct necessary documents maintained in custody. Notification of all known criminal justice recipients of the erroneous information within the past year and corrections shall be effected in written form. Records shall furnish the individual, upon request, a written list of known noncriminal justice recipients within the past year and of corrections to be made. Records will require that the agency originating the erroneous information notify all known criminal justice recipients within the past year and of corrections to be made. Further, the originating agency will be requested to furnish the individual, upon request, a written list of all known noncriminal justice recipients of erroneous information within the past year.]~~

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 22, 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 November 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: 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](mailto: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 provides the procedure for access and review of the criminal history record information (CHRI) maintained by the Records Section of the Kentucky State Police.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the accepted standards regarding CHRI, particularly in regard to who might access and review same.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the method by which the Records Sections is to permit review and inspection of CHRI.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear and reasonable procedures that allow for the inspection of CHRI, in addition to providing the record subject information on how to access his protected information.

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

(a) How the amendment will change this existing administrative regulation: The amendments clarify the existing language of the regulation, most specifically in regard to the fact that the Records Section is not responsible for remedying alleged errors found in the

CHRI.

(b) The necessity of the amendment to this administrative regulation: The previous language relating to the methods of challenging CHRI was unclear and did not effectively represent the current procedures employed by the Records Section.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows the Records Section to more effectively allow access to the CHRI.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes the ambiguity that was present in the prior language regarding the procedure for challenging alleged errors in the CHRI.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, the Department of Criminal Justice Training, and all persons attempting to access or inspect CHRI.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities will continue to inform the requesting individuals that any challenges to be made regarding their CHRI should be directed to the AOC.

(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 allows the Records Section to adhere to the accepted standards already in place.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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, nor does it increase fees directly or indirectly.

(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 Kentucky State Police, the Department of Criminal Justice Training, and all persons attempting to access or inspect CHRI.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.150, 17.140, 17.150, 61.872, 61.878, 61.884

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 DEPARTMENT OF STATE POLICE (Amendment)

##### 502 KAR 31:020. Sex Offender Registration System.

RELATES TO: KRS 17.500-17.540, 42 U.S.C. 14071

STATUTORY AUTHORITY: KRS 15A.160, 17.500(6), 17.510, 17.520(5)[, 42 U.S.C. 14071]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.510 requires[and 42 U.S.C. 14071 require] the Justice and Public Safety Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

##### Section 1. Definitions.

(1) "Authorizing Official" means an official identified in KRS 17.510(3), (4), and (5).

(2) "[Cabinet]" is defined in KRS 17.500(2).

(3) "[Department]" means the Department of Kentucky State Police.

(3) [(4)] "LINK" means the Law Information Network of Kentucky.

(4) [(5)] "NCIC" means the National Crime Information Center.

(5) [(6)] "Registrant" is defined by KRS 17.500(5).

(6) [(7)] "Registrant information" means the specific information set forth in KRS 17.500(6) as well as the name and address of any place where the registrant is a student.

(7) [(8)] "SOR" means the Sex Offender Registry.

##### Section 2. Sex Offender Duty to Register Notification Form.

(1) A registrant shall provide the information required to complete the Sex Offender Duty to Register Notification Form #P:227.

(2) Completion of Sex Offender Duty to Register Notification Form #p:227.

(a) The Division of Probation and Parole shall complete the Sex Offender Duty to Register Notification Form #P:227 for the sentencing court.

(b) A registrant shall, in the presence of the sentencing judge, sign the Sex Offender Duty to Register Notification Form #P:227 on the registrant's signature line, in ink.

(c) A copy of the completed form shall be provided to the registrant.

##### Section 3. Kentucky Sex Offender Registrant Responsibility Form[if Registrant is Incarcerated].

(1) [If incarcerated,]A registrant shall provide the information required to complete Kentucky Sex Offender Registrant Responsibility form.

(2) Completion of Kentucky Sex Offender Registrant Responsibility form.

(a) An authorizing official shall complete the Kentucky Sex Offender Registrant Responsibility form.

(b) A registrant shall, in the presence of an authorizing official, sign the Kentucky Sex Offender Registrant Responsibility form on the [inmate] signature line, in ink or electronically.

(c) An authorizing official shall sign and date the Kentucky Sex Offender Registrant Responsibility form, in ink or electronically.

##### Section 4. SOR Registration Forms.

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

(1) The following Sex Offender Registry Forms have been established:

(a) The Kentucky Sex Offender Registry Entry and Modification Form #P:225 shall be completed by all persons required to register pursuant to KRS 17.510(2) as follows:

1. Persons initially registering with the Sex Offender Registry; and

2. Persons changing registrant information; and

(b) The Kentucky Sex Offender Registry Move-In Form (#P:226) shall be completed by all parties required to register pursuant to KRS 17.510(6) or (7).

(2) Completion of the #P:225 and the #P:226.

(a) The #P:225 and #P:226, as appropriate, shall be completed either in the presence of or by the authorizing official and shall include:

1. The date of release from custody;

2. Maximum discharge date of supervised release, or serve out date, whichever is later;

3. [Initial date of registry expiration;

4.] Name of person completing the form, if registrant is assisted;

4.[5.] Office phone number of the releasing entity; and

5.[6.] The date the form is signed.

(b) The registrant shall read the #P:225 or #P:226, as appropriate, in the presence of the authorizing official.

(c) The registrant shall sign the #P:225 or #P:226, as appropriate, on the registrant's signature line of the form, in ink or electronically.

(d) The authorizing official shall sign the #P:225 or #P:226, as appropriate, on the authorizing official signature line.

(e) The authorizing official shall mail one (1) copy of the completed #P:225 or #P:226 to the department on the day the form is submitted electronically[completed].

(3) A #P:225 or #P:226 shall not be considered complete if:

(a) It does not contain the registrant information required by KRS 17.500(6) and this administrative regulation;

(b) It contains erroneous or false information;

(c) An item on the form cannot be read or understood; or

(d) The registrant or authorizing official fails to sign the appropriate line.

(4) If the department determines that a #P:225 or #P:226 is incomplete, the department shall notify the submitting authorizing official, of:

(a) The reason the #P:225 or #P:226 Entry Form was determined to be incomplete; and

(b) The action required to complete the #P:225 or #P:226.

(5) Once[When] the deficiencies of an incomplete #P:225 or #P:226 are corrected, the department shall enter the corrected information into the SOR, LINK and NCIC.

(6) The department shall enter correct information from an incomplete #P:225 or #P:226 into SOR, LINK, and NCIC.

Section 5. Sex Offender Registry Address Verification Forms. A registrant shall verify the accuracy of the registrant information contained in the appropriate Sex Offender Registry Address Verification Form (#SOR 1T, #SOR 1L, #SOR 1WL, and #SOR 1WT) mailed to him or her by the department.

(1) Annually, the department shall mail, during the birth month of each ten (10) or twenty (20) year registrant that resides in Kentucky, an Address Verification Form #SOR 1T to the last known address of the registrant.

(2) Annually, the department shall mail, during the birth month of each ten (10) or twenty (20) registrant that resides in another state, but has entered Kentucky for employment, to carry on a vocation, or as a student, an Address Verification Form (#SOR 1WT) to the last known address of the registrant.

(3) At least once every ninety (90) days, the department shall mail an Address Verification Form (#SOR 1L) to the last known address of each lifetime registrant that resides in Kentucky.

(4) At least once every ninety (90) days, the department shall mail to the last known address of each lifetime registrant that resides in another state, but has entered Kentucky for employment, to carry on a vocation, or as a student, an Address Verification

Form (#SOR 1WL).

(5) Completion of Sex Offender Registry Address Verification Forms. A registrant shall:

(a) Complete each item in the Address Verification Form;

(b) Sign the Address Verification Form on the signature line in ink; and

(c) Mail the completed Address Verification Form to the department on the day the form is completed.

(6) An Address Verification Form shall not be considered complete if:

(a) It does not contain the information required;

(b) It contains erroneous or false information;

(c) An item on the form cannot be read or understood; or

(d) The registrant fails to sign on the appropriate line.

(7) If the department determines that an Address Verification Form is incomplete, the department shall return the form to the submitting registrant, notifying the submitting registrant of:

(a) The reason the Address Verification Form was returned; and

(b) The action required by the registrant to properly complete the Address Verification Form prior to validation thereof.

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

(a) "Sex Offender Duty to Register Form #P:227", June 2006;

(b) "Sex Offender Registry Entry and Modification Form #P:225", December 2017[June 2006];

(c) Form #P:226", December 2017[June 2006];

(d) "Sex Offender Registry Address Verification Form #SOR 1T", December 2018[May 2009];

(e) "Sex Offender Registry Address Verification Form #SOR 1L", December 2018[May 2009];

(f) "Sex Offender Registry Address Verification Form #SOR 1WT", December 2018[May 2009];

(g) "Sex Offender Registry Address Verification Form #SOR 1WL", December 2018[May 2009]; and

(h) "Kentucky Sex Offender Registrant Responsibility Form", January 2019[July 2006].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Data Processing Section, 1266[4250] Louisville Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on November 23, 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 November 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: 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 administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

(b) The necessity of this administrative regulation: This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the implementation of the Sex Offender Registration System (SOR).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by implementing the SOR.

(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 establishing the appropriate definitions and 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 serves to update the forms currently in use by the department.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the statutory authority and procedures up to date.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment assists in the administration of the statutes by establishing the appropriate procedures and definitions for the SOR.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the definitions and procedures currently in use by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; law enforcement; individuals on the SOR.

(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.

(7) Provide an assessment of whether an 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? The Department of Kentucky State Police; law enforcement; individuals on the SOR.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 15A.160, 17.500(6), 17.510, 17.520(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. 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

Department of State Police.

(Amendment)

502 KAR 35:010. Definitions.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 17.080 provide that the Secretary of the Justice and Public Safety Cabinet may adopt [such] administrative regulations that are necessary to properly administer the laws and functions vested in the cabinet. KRS 17.450 establishes the Kentucky Missing Child Information Center. This administrative regulation establishes the definitions to be used in the administration of the Kentucky Missing Child Information Center.

Section 1. As employed in 502 KAR 35:010 through 502 KAR 35:050, unless the context requires otherwise:

(1) "Kentucky Missing Child Information Center" means a system including equipment, facilities, procedures, agreements and organizations thereof, for the collection, processing, and subsequent dissemination of information related to missing children.

(2) "Missing child information," hereafter referred to as MCI, is reported to and preserved in the Kentucky Missing Child Information Center. MCI shall include [be inclusive of], but not be limited to, all information as listed on the KSP Form 261, Kentucky Missing Person's Report[Form].

(3) "~~Kentucky Missing Persons Report Form~~" means the form furnished to all requesters by the Kentucky State Police for the purpose of obtaining personal identifiers, characteristics, habits and actions for use in the entry of information in the Kentucky Missing Child Information Center.]

(3)[(4)] "Law enforcement agency" means a full-time governmental agency or any subunit thereof which is charged with the responsibility of the detection and prevention of crime, apprehension of criminals, the maintaining of law and order throughout the respective jurisdiction, to collect, classify and maintain information useful for the detection of crime and the

identification, apprehension and conviction of criminals and to enforce laws within that respective governmental jurisdiction.

(4)[(5)] "Child" means any person under eighteen (18) years of age or any persons certified or known to be mentally incompetent or disabled.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 23, 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 November 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: 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 administrative regulation establishes the definitions to be used in the administration of the Kentucky Missing Child Information Center.

(b) The necessity of this administrative regulation: This regulation ensures compliance with KRS 17.450, while similarly confirming the agency is operating and complying with the applicable federal and state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation works provides the definitions necessary to administer the Kentucky Missing Child Information Center.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidance to law enforcement by updating the defined terms in the 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 will clarify the existing language of the administrative regulation by providing the proper terms and definitions.

(b) The necessity of the amendment to this administrative regulation: The previous language was unclear and not completely defined within the relevant sections of the text.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment further clarifies the language of the regulation and the Chapter.

(d) How the amendment will assist in the effective administration of the statutes: The clarified language allows for the relevant agencies to have clear guidance on the administration of the Chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Kentucky Missing

Children Information Center.

(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 amendment does not require the regulated entities to take any action separate and apart from the previous language of the regulation, instead, the amendment clearly defines the scope of the audit.

(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 regulated agencies will have more clearly defined guidance on the scope of the audit, and can more effectively ensure compliance with the applicable regulations and procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase fees, directly or indirectly.

(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 Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Kentucky Missing Children Information Center.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 17.080, 17.450

(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? 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)**

**502 KAR 35:020. Capabilities of the Missing Child Information Center computer system.**

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.060 17.080, 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.080

authorizes the Secretary of the Justice and Public Safety Cabinet to institute rules and administrative regulations and direct proceedings and actions for administration of laws and functions that are vested in the cabinet[Justice Cabinet]. KRS 17.450 establishes the[, in the Justice Cabinet, a] Kentucky Missing Child Information Center. [As defined in 502 KAR 35:010(1), the Kentucky Missing Child Information Center shall act as a central repository of and a clearing house for information with regard to those Kentucky-related children believed to be missing.] This administrative regulation sets specific computer program standards and information submission guidelines for the Kentucky Missing Child Information Center.

Section 1. The Kentucky Missing Child Information Center shall maintain a system capable of accepting and initiating the capture, retention, and [subsequent]dissemination of information relating to missing children from Kentucky and missing children believed to be located in Kentucky. The system shall:

(1) Be capable of retrieving missing child information by name, description, date of birth, Social Security number, fingerprint class, body marks, known associates, and the associates' locations;

(2) Communicate with the National Crime Information Center; and

(3) Ensure the ability to provide statistical data associated with the Kentucky Missing Child Information Center.

Section 2. The Kentucky Missing Child Information Center shall be located within the Kentucky State Police for administrative purposes.[

~~Section 3. The system shall be developed that will at a minimum be capable of the retrieval of missing child information by name, description, date of birth, Social Security number, fingerprint class, body marks, known associates and the associate's locations. The system shall also be developed to ensure the ability to provide statistical data associated with the Kentucky Missing Child Information Center.]~~

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 23, 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 November 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: 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 administrative regulation sets specific computer program standards and information submission guidelines for the Kentucky Missing Child Information Center.

(b) The necessity of this administrative regulation: This regulation ensures compliance by setting forth the appropriate standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides the standards necessary for submission of information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidance to law enforcement by updating the defined terms in the 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 will clarify the existing language of the administrative regulation and include requirements for submission.

(b) The necessity of the amendment to this administrative regulation: The previous language was unclear and not completely defined within the relevant sections of the text.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment further clarifies the language of the regulation and the Chapter.

(d) How the amendment will assist in the effective administration of the statutes: The clarified language allows for the relevant agencies to have clear guidance on the administration of the Chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Kentucky Missing Children Information Center.

(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 amendment does not require the regulated entities to take any action separate and apart from the previous language of the regulation, instead, the amendment clearly defines the scope of the audit.

(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 regulated agencies will have more clearly defined guidance on the scope of the audit, and can more effectively ensure compliance with the applicable regulations and procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase fees, directly or indirectly.

(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 Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Kentucky Missing Children Information Center.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 17.080, 17.450

(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? 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**  
**Department of State Police.**  
**(Amendment)**

**502 KAR 35:030. Quality of information reported to the Kentucky Missing Child Information Center.**

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.060, 17.080, 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.450(8) provides that the Secretary of the Justice and Public Safety Cabinet may issue administrative regulations in order to provide for the orderly receipt and retrieval [and/or retrieval] of missing child information. This administrative regulation establishes the procedures for the entry and retrieval of missing child information [procedures].

Section 1. Only law enforcement agencies as defined in this Chapter [502-KAR-35:040(4)] shall be allowed to enter, change existing information or retrieve information from the files of the Missing Child Information Center. Initial entry or modification of existing missing child information shall [only] be accomplished by the submission of KSP Form 261, the Kentucky Missing Persons Report Form to the Missing Child Information Center. Each submitted form [Kentucky Missing Persons Report Form] shall be as complete as possible and list the submitting law enforcement officer's name and [as well as] the authorizing law enforcement agency.

[Section 2. A parent or guardian may enter or retrieve missing child information directly to or from the Missing Child Information Center on his child when the law enforcement agency of jurisdiction has refused to enter or retrieve such missing child information. The parent or guardian of the missing child that has been denied service by a law enforcement agency may directly contact the Kentucky Missing Child Information Center for assistance in the initial entry, modification thereof, or retrieval of

information relating to his or her missing child. The Missing Child Information Center shall immediately notify the State Police Post, which serves the area, to initiate an investigation on the missing child.]

Section 2. [Section 3.] Affidavit Certifying Noncompliance with KRS 17.450 by a Law Enforcement Agency. The parent or guardian attesting that a law enforcement agency has not rendered the appropriate service as outlined in KRS 17.450 or 17.460 shall be required to file a formal affidavit outlining the circumstances surrounding the failure of the law enforcement agency to provide service. Copies of the [said] affidavit shall be forwarded to the chief administrative officer of the agency denying service in addition to the State Police Post which will conduct the investigation on the missing child.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 23, 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 November 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: 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 administrative regulation establishes the procedures for the entry and retrieval of missing child information.

(b) The necessity of this administrative regulation: This regulation ensures compliance by setting forth the appropriate standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides the standards necessary for submission of information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidance to law enforcement by updating the defined terms in the 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 will clarify the existing language of the administrative regulation and include requirements for submission.

(b) The necessity of the amendment to this administrative regulation: The previous language was unclear and not completely defined within the relevant sections of the text.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment further clarifies the language of the regulation and the Chapter.

(d) How the amendment will assist in the effective administration of the statutes: The clarified language allows for the relevant agencies to have clear guidance on the administration of



the Chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Kentucky Missing Children Information Center.

(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 amendment does not require the regulated entities to take any action separate and apart from the previous language of the regulation, instead, the amendment clearly defines the scope of the audit.

(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 regulated agencies will have more clearly defined guidance on the scope of the audit, and can more effectively ensure compliance with the applicable regulations and procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase fees, directly or indirectly.

(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 Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Kentucky Missing Children Information Center.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 17.080, 17.450

(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? 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 Department of State Police. (Amendment)

#### 502 KAR 35:040. Reporting of missing children by law enforcement agencies.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.160 17.080, 17.450, 17.460

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.450 mandates that the Justice and Public Safety Cabinet shall establish a Kentucky Missing Child Information Center which shall serve as the central repository [Central Repository] of and clearing house for information about Kentucky related missing children. KRS 17.460 mandates that the law enforcement agencies receiving notification of a missing child shall report information relating to that missing person to the Missing Child Information Center in a timely nature. This administrative regulation establishes procedures and time frames associated with the reporting of a missing child.

##### Section 1. Reporting to the Missing Child Information Center.

(1) A KSP Form 261, "Kentucky [As defined in this Chapter 502 KAR 35:040(3), a Kentucky] Missing Person's Report Form" shall be [initiated and] completed immediately by a law enforcement agency upon receiving notification from a parent or guardian that a child is missing. This form shall:

(a) Be completed to the fullest extent possible by the law enforcement agency receiving the missing child report; and

(b) The form shall be forwarded to the Missing Child Information Center no later than twenty-four (24) hours after notification was made.

(2) If possible, a current photograph [and a Child-I-Dent Form] will be obtained from the parent, guardian, or, if approved by the parent or guardian, from the school of the missing child. [The Kentucky Missing Persons Report Form shall either be completed by the responsible law enforcement agency or completed to the fullest extent possible with the information available and in all cases will be forwarded to the Missing Child Information Center no later than twenty-four (24) hours after notification by parent or guardian. In the event that the missing child is located prior to forwarding the report form, it is not necessary to forward that report form to the Missing Child Information Center.]

##### Section 2. LINK/NCIC Entry.

(1) The law enforcement agency receiving the initial report of a missing child shall immediately enter into the Law Information Network of Kentucky "LINK" and the National Crime Information Center ("NCIC") computer criterion information related to the missing child.

(2) [Section 3.] In the event that the reporting agency does not have direct terminal access to NCIC or is not participating in the regional LINK/NCIC Network, it shall be the responsibility of the reporting agency to enter criterion information through the nearest Kentucky State Police Post. Responsibility for [It shall not be the responsibility of said post to assure] the ongoing investigation of the missing child incident[, that responsibility] shall remain with the reporting [submitting] agency and shall not automatically transfer to the Kentucky State Police post that entered the information on behalf of the reporting agency.

Section 3. [Section 4.] As soon as possible, but no later than twenty-four (24) hours after the entry of missing child information, the investigating law enforcement agency shall notify law enforcement agencies having concurrent jurisdiction via electronic or telecommunicative means. Receiving agencies shall promptly notify agency duty personnel of all information relating to a missing child incident.

Section 4. [Section 5.] The Kentucky Missing Person's Web

site. The Kentucky Missing Child Information Center shall:

(1) Maintain a public website for missing persons in Kentucky; and

(2) Issue bulletins [issue flyers] containing physical and situational descriptions, or photographs whenever possible, of missing children on the Kentucky Missing Person's Web site, [when requested by a law enforcement agency or when determined by the Kentucky Missing Child Information Center.] Any bulletin that is issued shall contain the following information, at minimum: [Minimum information required before a bulletin flyer may be issued from the Kentucky Missing Child Information Center, shall be:]

(a) Reporting agency;[;]

(b) Case number;[;]

(c) ORI;[;]

(d) Date missing;[;]

(e) Name;[;]

(f) Address;[;]

(g) Sex;[;]

(h) Race;[;]

(i) Date of birth;[;]

(j) Height;[;]

(k) Weight;[;]

(l) Hair color;[;]

(m) The most recent photograph providing an adequate likeness; and[;]

(n) Signature of parent or guardian[; officer submitting report, and agency authorization. It shall be the responsibility of the investigating agency to request that a flyer be issued and to submit to the Kentucky Missing Child Information Center all information needed.]

(3) Bulletins [Flyers] will be provided through access to the public Kentucky Missing Person's Web site to all Kentucky law enforcement agencies as defined in 502 KAR 35:010(4) in addition to law enforcement agencies in geographical areas where there is reason to believe the missing child is proceeding to or in the process of being taken to.

Section 5. [Section 6.] Cancellation of Missing Child Report. (1) It shall be the responsibility of the law enforcement agency that found or returned the missing child to append the existing LINK/NCIC message by placing a locator message on the entry.

(2) It shall be the responsibility of the reporting agency upon notification and verification that the child has been found, to cancel missing child entries in LINK/NCIC.

(3) The Kentucky Missing Child Information Center shall [may] require information related to the location [finding] or recovery of the missing child to [better] provide statistical information on missing children, as required by 502 KAR 35:050.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 23, 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 November 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: 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 administrative regulation establishes procedures and time frames associated with the reporting of a missing child.

(b) The necessity of this administrative regulation: This regulation ensures compliance by setting forth the appropriate standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 17.350 requires the Cabinet to establish the Kentucky Missing Child Information Center. This regulation establishes the time frames necessary for implementation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidance to law enforcement by updating the defined terms in the 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 will clarify the existing language of the administrative regulation and include requirements for submission.

(b) The necessity of the amendment to this administrative regulation: The previous language was unclear and not completely defined within the relevant sections of the text.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment further clarifies the language of the regulation and the Chapter.

(d) How the amendment will assist in the effective administration of the statutes: The clarified language allows for the relevant agencies to have clear guidance on the administration of the Chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Kentucky Missing Children Information Center.

(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 amendment does not require the regulated entities to take any action separate and apart from the previous language of the regulation, instead, the amendment clearly defines the scope of the audit.

(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 regulated agencies will have more clearly defined guidance on the scope of the audit, and can more effectively ensure compliance with the applicable regulations and procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase fees, directly or indirectly.

(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 Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Kentucky Missing Children Information Center.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 17.080, 17.450

(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? 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 Department of State Police (Amendment)

#### 502 KAR 35:050. Statistical analysis of information related to missing children.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.450, 17.460

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.080 provides that the Secretary of Justice and Public Safety Cabinet may adopt such rules and administrative regulations as ~~are~~ necessary to properly administer the cabinet. KRS 17.450 provides that the Secretary ~~may~~ [of Justice] further issue administrative regulations which will provide for the functioning of the Kentucky Missing Child Information Center. KRS 17.450 requires that the Kentucky Missing Child Information Center annually report statistical information ~~regarding~~ [with regard to] the numbers of children missing from or believed missing in the Commonwealth of Kentucky. This administrative regulation establishes rules and administrative regulations ~~regarding~~ [with regard to] the furnishing of ~~the~~ [said] statistical data.

Section 1. Annual Report Required. On or before July 1 of each year, a written report shall be provided to the Secretary [of Justice] that will include statistical information ~~regarding~~ [with regard to] missing children in the Commonwealth of Kentucky.

Section 2. Law Enforcement Agency Assistance Required. The Kentucky Missing Child Information Center may require additional assistance from all law enforcement agencies ~~regarding~~ [with regard to] the development of the statistical data report as outlined in Section 1 of this administrative regulation. ~~The~~ [Said] assistance shall ~~include~~ [be inclusive of] but not be limited to in-depth case analysis with regard to a specific missing child incident, overall trends within a given geographical or jurisdictional area, and an in-

depth missing child recovery trend analysis as well as the agency's methodology for finding and returning missing children.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 11:00 a.m. on November 22, 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 November 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: 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 administrative regulation establishes arrest and disposition reporting procedures.

(b) The necessity of this administrative regulation: This regulation is necessary in order to supply the Department with the required information pertaining to arrests made in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the reporting system necessary to effectively inform the Department of arrests made in the Commonwealth, and the eventual disposition of the matter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation details the time allotted for an offense to be submitted to Records, and details the requirements of the unique numbering system in order to effectively keep track of the reported offenses.

(2) If 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 the existing language of the regulation, and removes outdated terms and requirements, including the completion of a UOR-1 or UOR-3 form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order for the regulation to reflect current procedures implemented by the Department.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation allows for the reporting procedures to be more effectively understood by the Department and reporting agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the existing language, which results in a more concise, and clear regulation; the amendment also removed outdated terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and criminal justice agencies.

(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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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 Department and criminal justice agencies will benefit from more clearly defined procedures, which will assist in the administration of the procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of State Police**  
**(Amendment)**

**502 KAR 40:010. Law Information Network of Kentucky.**

RELATES TO: KRS 16.060, 17.110

STATUTORY AUTHORITY: KRS 16.060, 16.080, ~~17.080~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.060 mandates that the Commissioner of the Department of State Police shall collect, classify and maintain information useful for the detection of crime and the identification, apprehension and conviction of criminals. KRS 17.110 provides that city and county police shall file felony arrest reports with the Justice Cabinet, Department of State Police. ~~[KRS 17.080 provides that the Secretary of Justice may adopt rules and administrative regulations necessary to carry out the functions vested in the cabinet by KRS Chapter 17.]~~ KRS 16.080 provides that the Commissioner of the Department of State Police may adopt such rules and administrative regulations necessary to carry out the responsibilities of the department ~~[Department of State Police as outlined in KRS 16.010 to 16.170]~~. This administrative regulation establishes the definitions to be used in the administration of the Law Information Network of Kentucky.

Section 1. As employed in 502 KAR 40:010 through 502 KAR 40:040, unless the context requires otherwise:

(1) "Law Information Network of Kentucky," hereafter referred to as LINK, shall be defined as the system, including hardware, software, equipment; facilities, procedures, agreements and organizations thereof responsible for the timely acceptance, processing, and subsequent dissemination of criminal justice information.

(2) "Criminal justice information," hereafter referred to as CJI, shall be defined as information collected by criminal justice agencies that is needed for performance of their legally authorized, required function. This includes: wanted person information; stolen property information; criminal history information; information compiled in the course of investigation of crimes that are known or believed on reasonable grounds to have occurred, including

information on identifiable individuals; and information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity.

(3) "Criminal justice agency" shall be defined as: a governmental agency or a subunit thereof which performs administration of criminal justice pursuant to a statute, regulation, ordinance, or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, State Police, State Fire Marshal, fire department, Board of Alcohol Beverage Control, Justice and Public Safety Cabinet and every other criminal justice agency engaged in the administration of criminal justice.

(4) "Administration of criminal justice" shall be defined as the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage and dissemination of Criminal History Record Information (CHRI).

(5) "Satellite agency" shall be defined as a nonterminal agency accessing the LINK System through a terminal agency.

(6) "Terminal agency" shall be defined as an agency that has direct access to the LINK System via automated means.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 1:00 p.m. on November 23, 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 November 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: 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 administrative regulation establishes the definitions to be used in the administration of the Law Information Network of Kentucky.

(b) The necessity of this administrative regulation: This regulation ensures compliance by setting forth the appropriate defined terms for implementation of the Law Information Network of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 17.110 requires all city and county police to file felony arrest reports with the department; this regulation assists in the implementation of that directive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation

provides guidance to law enforcement by updating the defined terms in the 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 will clarify the existing language of the administrative regulation and include updated defined terms.

(b) The necessity of the amendment to this administrative regulation: The previous language was unclear and not completely defined within the relevant sections of the text.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment further clarifies the language of the regulation and the Chapter.

(d) How the amendment will assist in the effective administration of the statutes: The clarified language allows for the relevant agencies to have clear guidance on the administration of the Chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Law Information Network of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The amendment does not require the regulated entities to take any action separate and apart from the previous language of the regulation, instead, the amendment clearly defines the scope of the audit.

(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 regulated agencies will have more clearly defined guidance on the scope of the audit, and can more effectively ensure compliance with the applicable regulations and procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase fees, directly or indirectly.

(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 Department of the Kentucky State Police, and all law enforcement and criminal justice agencies which submit or receive information through the Law Information Network of Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.060, 17.110

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 Department of State Police (Amendment)

##### 502 KAR 45:005. Definitions.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the definitions to be used in the administrative regulations concerning the selection process for trooper cadets.

##### Section 1. Definitions.

(1) "Applicant" means a fully-qualified person as contemplated in KRS 16.040 who submits an employment application for the position of cadet trooper and who participates in the selection process.

(2) "Appointment" means selection by the commissioner [Commissioner] of a cadet trooper for employment as an officer, upon successful completion of basic training at the Kentucky State Police Academy.

(3) "Aptitude examination" means an assessment of the cognitive abilities used to determine if applicants can successfully perform the essential job tasks of a Kentucky State Police Trooper.

(4)[(3)] "Cadet trooper" means an applicant for employment as an officer who is selected by the commissioner to attend the Kentucky State Police Academy and conditionally employed as a trainee.

(5)[(4)] "Candidate" means an applicant for employment who has successfully completed all phases of the selection process and whose name has been placed on the register.

(6) "Immediate family" means the parents, step-parents, siblings, step-siblings, aunts, or uncles of an applicant for employment.

(7) "Law Enforcement Accelerated Program" or "LEAP" means the accelerated training program reserved for applicants who are current officers who have at least two (2) years of Kentucky Police Officer Professional Standards (POPS) certified law enforcement experience.

(8)[(5)] "Physical Fitness Test" or "PFT" means a series of physical fitness tests[Content Based Task Test (CBTT)] means the physical fitness test consisting of simulated essential job tasks; used to determine if applicants can perform the essential job tasks required during basic training at the Kentucky State Police Academy.

(9)[(6)] "Register" means the list of persons eligible for selection as a cadet trooper.

(10) "Trooper Applicant Points System" or "TAPS" means a calculated point system that may be based upon the educational, military, and law enforcement experience of an applicant or graduation from the Kentucky State Police Apprenticeship program.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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: 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 definitions to be used in the administrative regulation concerning the selection process for law enforcement officers.

(b) The necessity of this administrative regulation: This regulation is necessary to define the law enforcement terms used, particularly in regard to the application process for law enforcement officers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation assists in the administration of KRS 16.040 by defining the necessary terms used throughout the application process to become a law enforcement officer.

(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 relevant statutes by providing clarity to the language that is used throughout, and provides the necessary guidance to potential applicants.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the Content Based Task Test (or "CBTT") definition as it is out of date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the selection process to become a law enforcement officer.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides the definitions necessary to fully and properly understand the statutes authorizing

the Commissioner to prescribe the requirements for applicants to become law enforcement officers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the regulation in order to ensure that the entire section is complete and accurately reflects the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, and applicants to become law enforcement officers.

(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; instead the revised regulation accurately reflects the terms that are used today during the application and selection process.

(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: This revised regulation is now accurately up to date and reflects the terms used, as opposed to containing outdated terms.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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 Kentucky State Police, and applicants to become law enforcement officers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.040, KRS 16.050, KRS 16.080.

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

**502 KAR 45:015. Qualifications.**

RELATES TO: KRS 16.040, 16.050, 16.080

STATUTORY AUTHORITY: KRS 16.040, 16.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 sets forth the basic qualifications for appointment as an officer. KRS 16.080 vests in the commissioner the authority to adopt administrative regulations for enlistment. This administrative regulation establishes the procedure to be used to determine whether applicants possess the basic qualifications for appointment as a trooper.

Section 1. Age. Applicants shall submit a birth certificate to establish that they meet the age qualification of KRS 16.040(2)(a).

Section 2. Citizenship and Residency. (1) Applicants shall submit documentation verifying their citizenship and residency, in accordance with a college transcript verifying sixty (60) semester hours of credit from an accredited college or university or a high school diploma or GED with a copy of their DD-214 reflecting two (2) years of active duty military service or a notarized letter from the law enforcement employer certifying two (2) years of fulltime law enforcement employment as a sworn officer to establish the educational or experience qualification of KRS 16.040(2)(c)(d).

(2)

~~Section 3.~~ Applicants who are citizens of another country at the time of application shall submit naturalization certificates prior to employment to establish the citizenship qualification of KRS 16.040(2)(c).

(3)~~Section 4.~~ Applicants who are citizens of another state at the time of application shall submit Kentucky motor vehicle operator's licenses prior to appointment to establish the residency qualification of KRS 16.040(2)(c).

Section 3. Education and Experience.~~Section 5.~~ Applicants shall submit the following, electronically, or in paper form, pursuant to the requirements of KRS 16.040(2):

(1) A certified copy of their high school diploma or GED certificate to establish his or her educational experience qualifications.

(2) A certified copied of his or her college transcript verifying sixty (60) semester hours of credit from an accredited college or university.

(3) A certified copy of his or her DD-214 or a notarized letter from a commanding officer verifying two (2) years of active duty military service.

(4) A notarized correspondence on agency letterhead from the law enforcement employer certifying two (2) years of full-time, paid employment as a certified, sworn peace officer; or

(5) A notarized Kentucky State Police Three (3) Years Work Experience Verification Form (KSP-004a) certifying thirty-six (36) months of employment, volunteer work, or paid or unpaid internships, verifying having working an average minimum of thirty (30) hours per week or 130 hours per month.

(6) A notarized Kentucky State Police Three (3) Years Work Experience Verification Form (KSP-004a) certifying two (2) years of full time employment as a POPS certified peace officer with a Kentucky law enforcement agency, having actively served within the past twelve (12) months, when applying to a LEAP academy, as described in this Chapter.

~~Section 4. Aptitude Test. Applicants continuing in the selection process shall submit to an aptitude test [to a written examination] as described in this Chapter, designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department. [Following the written examination the commissioner shall determine the number of applicants advancing to the next component of the selection process based upon the vacant funded positions and the projected attrition rates as candidates advance through the selection process.]~~

~~Section 5.~~~~Section 6.~~ Physical Fitness Test. Applicants continuing in the selection process shall successfully complete the Physical Fitness Test (PFT), as described in this Chapter. ~~[Following the written examination an appropriate number of applicants shall advance to the Content Based Task Test (CBTT)]~~ to determine if [whether] the applicant is physically able to safely perform essential job tasks as required by the Kentucky State Police Academy. The inability to safely perform essential job tasks, with or without reasonable accommodations, shall be grounds for deferral or disqualification.

~~Section 6.~~~~Section 7.~~ Interview. Applicants continuing in the selection process shall successfully complete ~~[Following completion of the Content Based Task Test (CBTT) an appropriate number of applicants shall advance to]~~ the oral interview component of the selection process, as described in this Chapter.

~~Section 7.~~~~Section 8.~~ Background Investigation. Applicants continuing in the selection process ~~[Following successful completion of the oral interview component of the selection process, an appropriate number of applicants]~~ shall submit ~~[advance] to a [the]~~ background investigation, as described in this Chapter, [which may include a polygraph examination] to establish the good moral character qualification of KRS 16.040(2)(b).

~~Section 8.~~~~Section 9.~~ Following successful completion of the background investigation component of the selection process an appropriate number of applicants shall be given a conditional offer of employment and required to submit to a medical examination and psychological examination to determine his or her good health and fitness to safely perform essential job tasks with or without reasonable accommodations, as required by KRS 16.040(2)(b) and (3).

Section 9. Incorporation by Reference. (1) KSP Form 004a, "Kentucky State Police Three (3) Years Work Experience Verification Form", 2019 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of State Police, Recruitment Branch, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and on the agency website kentuckystatepolice.org.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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: 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 procedure to be used to determine whether the applicant possesses basic qualifications for appointment as an officer.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the basic qualifications for appointment as an officer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by establishing and setting forth the organization of the department and qualifications required of all applicants.

(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 statute by establishing what the materials that must be submitted by each applicant, in addition to the criteria the applicant will be tested upon.

(2) If 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 allows the regulation to more accurately reflect the current educational and employment qualifications, as determined by the commissioner and pursuant to KRS 16.040(2)(d). The amendment also reflects changes in the testing and the order the testing is administered.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect the qualifications required of each applicant, and to forego any unnecessary ambiguity.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation continues to conform to the authorizing statute by establishing and setting forth the organization of the department and qualifications required of all applicants.

(d) How the amendment will assist in the effective administration of the statutes: This regulation continues to assist in the administration of the statute by establishing the necessary qualifications an applicant must meet prior to becoming prior to being appointed as an officer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, applicants to become cadet troopers.

(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 allows the regulation to more accurately reflect the current practices of the department.

(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: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No 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 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 Kentucky State Police and applicants to become cadet troopers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.040, 16.050, 16.080

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

502 KAR 45:035. Application and selection process.

RELATES TO: KRS 16.040, 16.050(7), 16.080(1)

STATUTORY AUTHORITY: KRS 16.040, 16.050(7), 16.080(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040, 16.050(7) and 16.080(1) grant the Commissioner of the Kentucky State Police the authority to establish criteria for the appointment of department officers. This administrative regulation establishes eligibility requirements for applicants and the application forms [form] to be submitted by applicants.

Section 1. Eligibility Requirements for Testing. An applicant shall be eligible to take the aptitude[written] examination established by 502 KAR 45:045 and ~~[if otherwise eligible]~~ the Physical Fitness[Content-Based Task] Test established by 502 KAR 45:150 and the ~~[oral]~~ interview established by 502 KAR 45:055 if the applicant:

(1) Meets the requirements established by KRS 16.040(2)(b), (c) and (d);

(2) Is at least twenty-one (21) years of age; and

(3) Possesses a valid driver's license against which not more than six (6) points are currently assessed.



## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

Section 2. Application. (1) To apply for employment, an [An] applicant shall complete "Kentucky State Police - Cadet Trooper Application for Employment" form.

(2) An applicant may submit [shall type or print legibly in ink the information requested on] the "Kentucky State Police - Cadet Trooper Application for Employment" form in paper or electronic form.

Section 3. Documents Submitted with Application. An applicant shall submit [attach] the following documents with his or her application, in paper or electronic form:

(1) A certified copy of the applicant's birth certificate and operator's license; and

(2) A certified copy of college or university transcripts, if applicable; or

(3) Aa certified copy of the applicant's high school diploma or GED certificate and any other additional materials, determined by the commissioner, and as described in this Chapter, as necessary to establish the educational or experience qualifications of KRS 16.040(2)(d).

Section 4. Law Enforcement Accelerated Program (LEAP). (1) The commissioner may conduct an accelerated academy.

(2) A LEAP applicant shall submit the following documents with his or her application, in paper or electronic form:

(a) A completed "Kentucky State Police - Cadet Trooper Application" form.

(b) A copy of his or her Kentucky POPS certificate, and

(c) A completed "Kentucky State Police Three Years Work Experience Verification" form.

(3) The applicant shall undergo an interview with the Post Commander nearest the applicant's home address.

(4) The applicant shall not be subject to an existing employment contract, including any employment contract authorized under Chapter 70 of the Kentucky Revised Statutes[If an applicant has had at least two (2) years' experience in law enforcement:

(a) A certified copy of the applicant's high school diploma or GED certificate; and

(b) A notarized letter from his law enforcement employer, stating:

1. Whether the applicant was a fulltime, sworn officer; and

2. The period during which the applicant was employed.

(4) If an applicant has had at least two (2) years' active duty experience in the military, a copy of the applicant's:

(a) DD214, or a notarized letter from the applicant's commanding officer verifying the applicant's length of service; and

(b) A certified copy of the applicant's high school diploma or GED certificate].

Section 4. Filing of Application. (1) An applicant may mail or submit his application to the Kentucky State Police Recruitment Office, 919 Versailles Road, Frankfort, Kentucky 40601.

(2) An applicant may make an appointment to submit his application at the nearest state police post or driver testing station in Louisville or Lexington.

(3) When an application is filed, an applicant shall choose a date and time to report for the written examination from the list of examinations furnished by the department pursuant to 502 KAR 45:045.

(4) If an applicant is not selected to participate in a phase of the selection process established by 502 KAR Chapter 45, he shall not reapply for a twelve (12) month period following the date upon which he first took the written examination.]

Section 5. Not Recommended. If an applicant has not been recommended by two (2) previous background investigations, the applicant shall be required to appeal, in writing, to the State Police Personnel Board for approval to reapply.

Section 6. Incorporation by Reference. (1) KSP Form 4, "Kentucky State Police - Cadet Trooper Application for

Employment" [02-97" form], 2019 edition is incorporated by reference.

(2) KSP Form 004a, "Kentucky State Police Three (3) Years Work Experience Verification Form", 2019 edition, is incorporated by reference.

(3) It may be inspected, copied, or obtained at the Department of State Police, Recruitment Branch [Office], 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and on the agency Web site at kentuckystatepolice.org.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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: 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 eligibility requirements for those applying to become state police officers, and similarly establishes the application form to be submitted by such applicants.

(b) The necessity of this administrative regulation: This regulation is necessary in order to properly inform applicants of the requirements that must be met in order to successfully apply to be state police officers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the authorizing statute as it serves to confirm the applicant's suitability for employment as an officer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will continue to assist the department in conducting the application and selection process in a uniform manner.

(2) If 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 the application process by inserting the appropriate language and terms that are now used by state police officers charged with administering the application and selection process.

(b) The necessity of the amendment to this administrative regulation: The amendment of the regulation is necessary to accurately reflect the application and selection process to become a law enforcement officer.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment continues to conform to the authorizing statute by working to confirm and ensure that selected applicants are suitable for employment as law enforcement officers.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment reflects the current procedures used by the state police, and updates the testing methodologies that are used.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, Kentucky State Police staff who assist in processing applications, and applicants who wish to become state police.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities must now comply with the requisite testing listed within the amendment, as the prior language did not accurately reflect the testing that was done.

(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 application and selection process is now more defined, as it reflects the testing and requirements implemented by the agency.

(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: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 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 Kentucky State Police, Kentucky State Police staff who assist in processing applications, and applicants who wish to become state police.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.040, 16.050(7), 16.080(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 Department of State Police (Amendment)

##### 502 KAR 45:045. Aptitude [Written] examination.

RELATES TO: KRS 16.050, 16.080(1)

STATUTORY AUTHORITY: KRS 16.050, 16.080(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 and 16.080(1) require the establishment of open competitive examination of applicants for employment as troopers. This administrative regulation establishes the criteria for the aptitude[written] examination.

Section 1. The aptitude[written] examination shall be:

(1) Practical in nature; and

(2) Designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department.

Section 2. The aptitude[(1)—An] examination shall be administered at the times and places designated by the commander of the Recruit Branch[commissioner].

~~(2) The commissioner may direct that an examination be conducted regionally if he finds a regional examination to be convenient and practicable.]~~

Section 3. The Recruitment Branch shall work in coordination with the State Police Personnel Board to establish the aptitude test. [An applicant may take the examination:

~~(1) Two times in a twelve (12) month period.~~

~~(2)(a) If an applicant fails the written examination, he may notify the recruitment office of the department that he wishes to retake the examination.~~

~~(b) If he has notified the recruitment office as provided by this subsection, he:~~

~~1. May retake the written examination once; and~~

~~2. Shall retake the next written examination that is scheduled at least thirty (30) days after the written examination the applicant failed.]~~

Section 4. An applicant shall have submitted a completed application prior to taking the aptitude[written] examination.

Section 5. The aptitude[An] examination shall be rated impartially.

Section 6. An applicant shall be informed of his score.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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: 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 criteria for the aptitude examination administered by the Kentucky State Police to those who apply to become state troopers.

(b) The necessity of this administrative regulation: This regulation exists to define the procedures used to administer the aptitude test by Kentucky State Police.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes by providing for open and competitive examination as to fitness of applicants for employment as state troopers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides the appropriate guidance to applicants on the type of testing that will be prescribed, as well as other necessary information, including how many times the applicant may take the examination.

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

(a) How the amendment will change this existing administrative regulation: The primary change to the amendment reflects the designation from a "written" examination to an "aptitude" examination, but also includes minor clarifications to the procedures used.

(b) The necessity of the amendment to this administrative regulation: The amended regulation is necessary to accurately describe the aptitude testing that is administered in order to alleviate any confusion, while also clearly defining how many times an applicant may re-take the examination.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment continues to provide for open and competitive examination as to the fitness of applicants for employment as state troopers.

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation will assist in effectuation of the statutes as it provides updated language to the applicant and appropriate Kentucky State Police personnel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State police and applicants to become state troopers.

(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; instead the revised regulation accurately reflects the terms that are currently used in administering the aptitude test.

(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 amended language now accurately reflects the type of examination that is administered, and clarifies the time in which an applicant may re-take the examination.

(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: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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 Kentucky State police and applicants to become state troopers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.050, KRS 16.080(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 Department of State Police (Amendment)

##### 502 KAR 45:075. Register.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires the State Police Personnel Board to promulgate administrative regulations which include provisions for the establishment of eligibility lists as a result of competitive examinations, from which [lists] vacancies shall be filled. This administrative regulation establishes a register for the employment of cadet troopers.

Section 1. (1) The commissioner shall determine the number of cadet trooper positions required to be filled.

(2) The commissioner shall base his determination upon:

(a) The needs of the department;

(b) Projected attrition; and

(c) Available funding [Authorized strength levels].

Section 2. (1) The commissioner shall propose a register of applicants eligible[eligibles] for appointment as a cadet trooper to the State Police Personnel Board.

(2) Upon approval by the board, the commissioner shall establish a register of applicants eligible for appointment as a

cadet trooper.

Section 3. (1) A register shall be effective for a period of twelve (12) months.

(2) If an applicant who has been placed on a register is not selected for employment within twelve (12) months of his placement on the register, ~~the applicant[he]:~~

- (a) ~~May [Shall]~~ be removed from the register; and
- (b) May reapply for employment.

Section 4. An applicant may be placed on a register if the applicant has:

- (1) Successfully completed the:
  - (a) ~~Aptitude[Written]~~ examination;
  - (b) ~~Physical Fitness[Content-Based-Task]~~ Test;
  - (c) ~~[Oral]~~ interview; and
- (2) Not been disqualified as a result of a background investigation.

~~(3) The applicants who shall undergo a background investigation shall be determined by:~~

- ~~(a) An applicant's combined Content-Based-Task Test and the oral interview scores; and~~
- ~~(b) The number of positions required to be filled.]~~

Section 5. (1) Except as provided by subsection (2) of this section, an applicant shall be placed on the register in rank order, determined by the combined score on an applicant's Physical Fitness[Content-Based-Task] Test and [oral] interview score and TAPS points. A maximum of six (6.0) Trooper Applicant Points System (TAPS) points may be earned and added to the combined score. Applicants shall receive TAPS points based upon the following:

(a) Applicants shall receive two (2.0) points for:

1. An associate degree in any discipline from an accredited college or university;
2. A copy of their DD-214 reflecting four (4) years of active military service; or
3. A notarized letter from a law enforcement employer certifying three (3) years of full-time law enforcement employment as a sworn officer.

(b) Applicants shall receive four (4.0) points for:

1. A bachelor degree in any discipline from an accredited college or university;
2. A copy of their DD-214 reflecting a minimum of five (5) and less than nine (9) years of active military service; or
3. A notarized letter from a law enforcement employer certifying a minimum of four (4) and less than seven (7) years of full-time law enforcement employment as a sworn officer.

(c) Applicants shall receive six (6) points for:

1. A master degree or above in any discipline from an accredited college or university;
2. A copy of their DD-214 reflecting nine (9) years or more of active military service; or
3. A notarized letter from a law enforcement employer certifying seven (7) years or more of full-time law enforcement employment as a sworn officer.

(d) Graduates of the KSP Apprenticeship Program shall receive up to six (6) points for the following:

1. Three (3) points upon graduation;
2. Two (2) points upon completion of the physical preparedness program; and
3. One (1) point upon completion of five (5) core classes toward the Kentucky State Police Academy Associates in Applied Sciences degree in General Occupational and Technical Studies while enrolled in the Bluegrass Community and Technical College with a grade C or higher in each class.

(2) Applicants who receive the same score shall be ranked by random draw, with military veterans receiving preference as provided by KRS 16.040(3).

Section 6. (1) Except as provided by this section, the commissioner shall select eligible applicants for appointment as cadet troopers from the register in rank order.

(2) The commissioner may deviate from the rank order of the register if he determines that it is necessary to correct a manifest imbalance of minorities or women in the department.

Section 7. The commissioner may remove a candidate from the register for the following reasons:

- (1) Upon receipt of reliable information indicating grounds for disqualification or deferral;
- (2) If the candidate cannot be located by postal authorities;
- (3) If the candidate:
  - (a) Declines an offer of employment;
  - (b) Fails to respond to an offer of employment;
  - (c) Notifies the department that he no longer wishes to be considered for employment; or
- (4) Upon the expiration of a period of twelve (12) months from the date of his placement on the register.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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: 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](mailto: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 a register for the employment of cadet troopers.

(b) The necessity of this administrative regulation: This regulation is necessary in order to establish a uniform procedure utilized by the commissioner in order to appoint cadet troopers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by establishing eligibility lists from which vacancies are filled.

(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 detailing how an applicant might be placed on the register.

(2) If 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 only clarifies the wording used, but makes no substantive changes to the text of the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to provide clarity to the regulated entities by using updated and clarified language regarding the examinations an applicant must have completed before being placed on the register.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by providing instruction on how vacancies shall be filled.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration of the statutes by clarifying the language that is used and updating it to reflect the terminology that is currently used by the regulated entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, including the State Police Personnel Board, and those who have applied to become cadet troopers.

(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 amendment requires no new actions to be taken by or 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 regulated entities can now expect applicants to maintain a better understanding of what is required by them prior to being placed on a register for employment as a cadet trooper.

(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: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 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 Kentucky State Police, including the State Police Personnel Board, and those who have applied to become cadet troopers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.050

(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. 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 Department of State Police (Amendment)

#### 502 KAR 45:085. Medical examination.

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040, 16.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 provides that officers shall[~~must~~] be in good health and directs the commissioner to prescribe minimum physical requirements for appointment as an officer[~~and~~] to conduct such tests, and to require physical examinations to determine the fitness of each applicant. This administrative regulation establishes the tests and examinations that shall[~~which are to~~] be conducted.

Section 1. Applicants selected to be cadet troopers and offered probationary employment as trainees shall be required to submit to medical examinations to determine fitness to safely perform essential job tasks with or without reasonable accommodation. The medical examination shall be conducted after an offer of employment has been[~~is~~] made but before applicants report for training. The offer of employment shall be conditioned upon successful completion of the medical examination.

Section 2. Medical examinations shall be conducted by physicians selected by the department. The examinations shall include hearing and visual examinations, and a determination as to whether the applicant is color blind. The physicians shall render opinions to the department as to whether applicants who have been offered employment are physically fit to safely perform essential job tasks, with or without reasonable accommodation, and as to whether applicants have any medical condition which, during the performance of duty as a state trooper, and with or without reasonable accommodation, would endanger the applicant or others.

Section 3. As part of the medical examination, applicants shall be required to provide complete medical history information and to answer questions related to the examination. Information and records related to the medical examinations shall be confidential and retained in a file separate from the applicants personnel file.

Section 4. The medical examination may include tests conducted by an occupational therapist under the direction of the examining physician, if necessary to determine an applicant's ability to safely perform essential job tasks with or without reasonable accommodation.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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: Katherine George, Staff Attorney, 4449 Kit

VOLUME 48, NUMBER 4– OCTOBER 1, 2021

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 tests and physical examinations which are to be conducted after an offer of employment has been made, but before a cadet trooper reports for training.

(b) The necessity of this administrative regulation: This regulation is necessary in order to appropriately advise all applicants on the medical examinations that must be completed prior to reporting for training as a cadet trooper.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by ensuring all applicants meet the minimum physical requirements for appointment, as determined by the commissioner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulations assists in the administration of the statutes by prescribing the process all applicants must complete prior to reporting for training, in an effort to ensure their fitness.

(2) If 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 only minor grammatical changes, and nothing substantive has been edited or removed.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to update language used within the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation continues to conform to the authorizing statutes by ensuring all applicants meet the minimum physical requirements for appointment, as determined by the commissioner.

(d) How the amendment will assist in the effective administration of the statutes: The amendment reflects only minor grammatical changes, and nothing substantive has been edited or removed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, applicants to become cadet troopers.

(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; the amendment reflects only minor grammatical changes, and nothing substantive has been edited or removed.

(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 reflects only minor grammatical changes, and nothing substantive has been edited or removed.

(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: Not applicable.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.040, 16.080

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

502 KAR 45:105. Appointment.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080, 16.140(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 authorizes the Commissioner of the Department of State Police to appoint persons as officers as necessary for the efficient administration of the department. KRS 16.050 directs appointments to vacancies to be made from lists of applicants eligible for appointment[eligibles]. This administrative regulation establishes the method of appointment.

Section 1. The commissioner in his discretion shall determine, based on the needs of the department, projected attrition, available funding, and [authorized strength levels]; the number of candidates to be offered employment as cadet troopers. This offer of employment shall be subject to the condition that the candidate submits to a medical and psychological examination and is found fit to perform safely the essential job tasks of a trooper [an officer], with or without reasonable accommodation.

Section 2. Candidates who are offered employment as cadet troopers shall be required to undergo training at the Kentucky State Police Academy prior to appointment as troopers [officers]. During the training period, a cadet trooper may be dismissed at any time, with or without cause.

Section 3. Cadet troopers who successfully complete academy training shall be appointed as troopers [officers] and given the constitutional oath of office. Troopers [Officers] shall be on probation for a period of one (1) year from and after the date of

appointment, and may be dismissed from employment at any time during the probationary period, with or without cause, pursuant to KRS 16.140(11).

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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:** 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 method of appointment, by the commissioner, by which cadet troopers shall be selected.

(b) The necessity of this administrative regulation: This regulation is necessary to establish a consistent method of appointment; while noting the discretion that belongs to the commissioner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by establishing what the commissioner is to consider in appointing applicants as cadets troopers.

(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 establishing how cadet troopers are appointed for efficient administration of the department.

(2) If 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 an additional statute as authority, which describes how a cadet trooper may be dismissed during the probationary period with or without cause.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to reflect the proper statutory authority that relates to the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment reflects an additional statute as authority, as it is cited within the text of the regulation.

(d) How the amendment will assist in the effective administration of the statutes: The regulation now cites to the appropriate statute(s).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, persons appointed as cadet troopers.

(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 only reflects an additional statute as authority, as it is cited within the text of the regulation.

(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: Not applicable.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.050, 16.080, 16.140(11)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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

##### Department of State Police

##### (Amendment)

#### 502 KAR 45:115. Appeals.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 directs that the State Police Personnel Board shall hear appeals from applicants. This administrative regulation establishes the procedure for appeals.

Section 1. Applicants who are disqualified or deferred during the application process and who believe that the disqualification or deferral was unlawful or that they have been discriminated against

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

because of their race, religion, sex, age, disability, ethnic origin or political affiliation may initiate an appeal to the board by filing a statement of appeal in the office of the commissioner.

Section 2. The statement of appeal shall be in writing and shall be dated, signed, and sworn. It shall set forth with particularity the specific acts or omissions that are alleged to be discriminatory or otherwise unlawful. The statement of appeal shall be filed within thirty (30) days of the date of the act or omission which forms the basis for the appeal, or, if more than thirty (30) days have elapsed, within ten (10) days of the date that the applicant received notice or first became aware of the act or omission, if no notice was given.

Section 3. Within thirty (30) days of the receipt of the statement of appeal by the commissioner, the appellant applicant shall receive confirmation their appeal was received and legal counsel for the department shall file a response which shall be served upon the applicant appellant. No later than sixty (60) days thereafter, the board shall consider the statement of appeal and the response. The board may rule upon the appeal based upon the statement of appeal and response, or in its discretion may order a hearing, with at least ten (10) days prior notice to the appellant applicant. The appellant applicant may elect to waive, in writing, the ten (10) day notice requirement.

Section 4. The board in its discretion may employ hearing officers who are attorneys to conduct the hearings and make advisory findings of fact, conclusions of law and recommendations. At the hearing, the board shall not be bound by rules of order, evidence, or procedure except as it may itself establish.

Section 5. The board shall render a decision within six (6) months of the date of filing of the statement of appeal, and shall enter an order which sets forth the appropriate relief.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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: 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 procedure applicants are required to follow to appeal their disqualification or deferral.

(b) The necessity of this administrative regulation: This regulation is necessary in order to establish the basis of an appeal and establishes the grounds that an appeal may be based upon.

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

authorizing statutes by prescribing the procedural rules that must be complied with in order for the board to hear appeals.

(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 prescribing that an appeal can only be brought if the disqualification or deferral was unlawful or the applicant believes they were discriminated against for specific reasons.

(2) If 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 the current practice of the department and establishes that a response is not issued by legal counsel within thirty (30) days of the receipt of the appeal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to reflect the current practices of the department.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by prescribing the procedural rules that must be complied with in order for the board to hear appeals.

(d) How the amendment will assist in the effective administration of the statutes: The regulation now reflects the current practices of the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, including the State Police Personnel Board, and applicants appealing their disqualification or deferral.

(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 amendment requires the Recruit Commander to notify the applicant their appeal has been received.

(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 now reflects the current practices of the department.

(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: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 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 Kentucky State Police, including the State Police Personnel Board, and applicants appealing their disqualification or deferral.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.050

(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. 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  
Department Of State Police  
(Amendment)**

**502 KAR 45:150. Physical Fitness~~[Content Based Task]~~  
Test ~~(PFT)(CBTT)~~.**

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires that persons appointed as officers be physically able to safely perform essential job tasks. This administrative regulation establishes the procedure to determine if the applicants are capable of performing the essential job tasks of an officer during basic trooper cadet training.

Section 1. An applicant shall be required to take the Physical Fitness~~[who has successfully completed the written examination shall take the Content Based Task]~~ Test.

Section 2. The Physical Fitness Test shall consist of a series of physical fitness tests used to determine if applicants can perform the essential job tasks required during basic training at the Kentucky State Police Academy.

~~(1) The Content Based Task Test shall be validated by an independent outside source with expertise in law enforcement training or employee selection.~~

~~(2) The Content Based Task Test shall consist of tasks simulating the essential job tasks troopers are required to perform.~~

Section 3. The Physical Fitness ~~[Content Based Task]~~ Test shall be structured so that all applicants are required to perform the same tasks and be rated in the same manner.

Section 4. The Physical Fitness ~~[Content Based Task]~~ Test score shall constitute forty (40) percent of an applicant's score before TAPS points are applied.

Section 5. As soon as practical after the Physical Fitness~~[Content Based Task]~~ Test, an applicant shall be advised of:

~~(1) his or her score;~~ and

~~(2) Whether he is eligible for the oral interview.~~

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on 2:00 p.m. on November 23, 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 November 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:** 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 procedure to determine if the applicants are capable of performing the essential tasks of an officer during basic cadet training.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the criteria of the Physical Fitness Test that applicants must be administered during basic cadet training.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by establishing what the commissioner is to consider in appointing applicants as cadets troopers.

(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 statute by establishing what tests are conducted and administered to applicants to become cadet troopers.

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

(a) How the amendment will change this existing administrative regulation: This amendment reflects a change to the test administered, and replaces the Content Based Task Test (CBTT) with the Physical Fitness Test (PFT).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately list the correct test that is administered to applicants to become police recruits.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation continues to conform to the authorizing statute by establishing what tests are conducted and administered to applicants to become cadet troopers.

(d) How the amendment will assist in the effective administration of the statutes: This regulation continues to assist in the administration of the statute by establishing what tests are conducted and administered to applicants to become cadet troopers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, applicants to become cadet troopers.

(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 only supplants one test for another and does not result in any substantive changes to the agency.

(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: Not applicable.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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)

##### 502 KAR 47:010. Methamphetamine.

RELATES TO: KRS 218A.1431, 224.1-010-410 [224.01-410], 224.99-010

STATUTORY AUTHORITY: KRS 16.080, 224.1-010-410 [224.01-410]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-010-410 [224.01-410] requires the Department of Kentucky State Police to promulgate administrative regulations establishing a method for assessing properties when an officer has evidence that methamphetamine has been manufactured at a property [in the property]. This administrative regulation establishes the method by which the Kentucky State Police shall notify the Energy and

Environment Cabinet and the Cabinet for Health and Family Services that a property contains potentially hazardous materials resulting from the manufacture of methamphetamine.

Section 1. Reporting. Officers conducting a criminal investigation occurring at a property in which a suspect has manufactured methamphetamine shall complete and submit the Energy and Environment Cabinet's Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria form DEP 1016, incorporated by reference in 401 KAR 101:030.

(1) This form shall not be part of the officer's criminal investigation file and is not a Department of Kentucky State Police form.

(2) Neither the form nor information derived solely from the form shall be used for investigative purposes.

Section 2. Distribution. Officers shall complete Energy and Environment Cabinet form, Clandestine Drug Lab Preliminary Assessment Tier Selection Criteria form DEP 1016, incorporated by reference in 401 KAR 101:030, and submit a copy to the Local Health Department, the Energy and Environment Cabinet, and the Department of Public Health.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 3:00 p.m. on November 23, 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 November 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: 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 administrative regulation establishes the method by which the Kentucky State Police shall notify the Energy and Environment Cabinet and the Cabinet for Health and Family Services that a property contains potentially hazardous materials resulting from the manufacture of methamphetamine.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the method by which the Kentucky State Police shall notify the Energy and Environment Cabinet and the Cabinet for Health and Family Services that a property contains potentially hazardous materials resulting from the manufacture of methamphetamine.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the reporting system necessary to assess properties involved in the manufacturing of methamphetamine.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation details the duties of reporting and distributing relevant information.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the method by which the Kentucky State Police shall notify the Energy and Environment Cabinet and the Cabinet for Health and Family Services that a property contains potentially hazardous materials resulting from the manufacture of methamphetamine.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order for the regulation to reflect current procedures implemented by the Department.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation allows for the reporting procedures to be more effectively understood by the Department and reporting agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the existing language, which results in a more concise, and clear regulation; the amendment also removed outdated terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and criminal justice agencies.

(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 or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(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 Department and criminal justice agencies will benefit from more clearly defined procedures, which will assist in the administration of the procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly 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? The Department of Kentucky State Police, and criminal justice agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 17.110, 17.115, 17.150

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department of State Police (Amendment)

#### 502 KAR 50:010. Admissibility of evidence.

RELATES TO: KRS 16.140

STATUTORY AUTHORITY: KRS 16.140(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.140

establishes a trial board within the Department of State Police to hear charges against officers. KRS 16.140(8) provides that the commissioner may promulgate reasonable rules and administrative regulations governing the procedure before the trial board. This administrative regulation is necessary to define the standards for the admissibility of evidence in proceedings before the trial board.

Section 1. Presiding Officer. The designated members of the trial board will, prior to the beginning of a trial, select one (1) of its members as the presiding officer. The presiding officer may~~[-if desired,]~~ have the assistance of counsel in order to rule on evidentiary or procedural matters. The presiding officer shall not vote or otherwise participate in the trial board's determination of guilt or innocence or in the setting of the punishment, if any.

Section 2. Strict Rules of Evidence Not to Apply. Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky shall be admitted in hearings before the trial board; however, the presiding officer may admit evidence that would be inadmissible in the courts if the evidence is of the type commonly relied upon by a reasonable, prudent person ~~[men]~~ in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded and the presiding officer shall give effect to the rules of privilege recognized by the laws of the Commonwealth of Kentucky.

Section 3. Discovery. Any officer against whom trial board charges have been filed may discover evidence. Discovery may be accomplished by use of the Open Records Law. Requests for documents shall be directed to the official custodian of records for the Kentucky State Police. Accused officers may also request the commissioner or presiding officer issue a subpoena for documents held by the agency that are relevant to an accused officer's defense. Discovery privileges, including the deliberation process and work product rule, shall be observed.

Section 4. Judicial Notice. The presiding officer may take judicial notice of matters of common knowledge that are beyond reasonable dispute, statutes, and official court records.

Section 5. Interrogation of Witnesses. The rules of law that apply to state court proceedings concerning the manner and scope of examination and cross-examination of witnesses shall apply to

trial board proceedings.

Section 6. Impeachment of Witnesses. The rules of law concerning the impeachment of witnesses that apply to state court proceedings shall apply to trial board proceedings.

Section 7. Continuances. (1) A continuance of a scheduled hearing may be granted by the commissioner for good cause.

(2) A request for a continuance shall:

(a) Be made in writing;

(b) State the reason for the request;

(c) Include proposed dates for rescheduling the hearing;

(d) Be filed with the commissioner; and

(e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.

(3) An objection to a request for a continuance shall:

(a) Be made in writing;

(b) State the reason for the objection to the request for continuance;

(c) Be filed with the commissioner; and

(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.

(4)(a) The commissioner shall transmit to all parties an order either granting or denying the request for continuance.

(b) If the continuance is granted, the order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 23, 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 November 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: 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 administrative regulation establishes the necessary and appropriate procedures to be utilized before the trial board.

(b) The necessity of this administrative regulation: This regulation is necessary to define the standards for the admissibility of evidence in proceedings before the trial board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the authorizing statute by establishing the procedural requirements necessary for the discipline and removal of officers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clearly outlines the evidentiary and discovery processes used to effectuate trial board proceedings.

(2) If 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 the procedure to follow in order to request the continuance of a proceeding before the trial board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to streamline the trial board proceeding process and remove the existing ambiguity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by more clearly defining the procedural requirements necessary for the discipline and removal of officers.

(d) How the amendment will assist in the effective administration of the statutes: The revised text within the regulation will remove the existing ambiguity as to when a continuance may be requested.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, the trial board established within the Kentucky State Police, those involved in proceedings with the trial board.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities can now effectively ascertain when a continuance may be granted.

(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 process is now more clearly defined.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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 administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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 Kentucky State Police, the trial board established within the Kentucky State Police, those involved in proceedings with the trial board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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  
Department of Criminal Justice Training  
(Amendment)**

**503 KAR 3:020. Law enforcement training course trainee requirements; misconduct; penalties; discipline procedures.**

RELATES TO: KRS 15A.070(1), 15.440

STATUTORY AUTHORITY: KRS 15A.070[(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes conduct requirements for trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Removing a Trainee from the Course. (1) Unqualified trainee. If a trainee is not qualified to participate in training, he shall:

(a) Be removed from training by the:

1. Director;
2. Branch manager; or
3. Section supervisor; and

(b) Not receive credit for completed portions of training.

(2) A trainee shall be considered unqualified if:

(a) He or his agency files an incomplete or fraudulent application to attend the training course;

(b) He is not presently employed as a law enforcement officer and has not received special permission to attend;

(c) He arrives at the beginning of training physically unable to participate because of:

1. Physical injury; or
2. Being under the influence of alcohol or drugs (prescription or illegal);

(d) He has had prior disciplinary action while at DOCJT which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous DOCJT training course;

(e) He is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;

(f) He failed to complete a prerequisite law enforcement training course; or

(g) He is not employed in a capacity for which the course is designed and has not received special permission to attend.

(3) If a trainee is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(4) Agency request. The department shall remove a trainee from training upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of the course.

Section 2. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS 11A.040.

Section 3. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the course, [and] all privileges are terminated, no credit shall be awarded for the completed portion of the course, and the trainee may not return to the same course for a period of two (2) years unless he or she obtains permission from the commissioner.

(b) Suspension. The trainee is suspended from the course and no credit shall be awarded for the completed portion of the course. The trainee may not return to the same course for a period of two (2) years unless he or she obtains permission from the commissioner.

(b) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in training activities is not affected.]

(c) Written reprimand. The trainee is reprimanded in writing for violating a conduct requirement.

(d) Verbal warning. The trainee is warned verbally that he has violated a conduct requirement.

(2) First violation. Depending upon the severity and egregiousness of the violative action, any penalty listed in Section 3 of this administrative regulation may be imposed.

(3)[(2)] Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct requirement, upon a second violation of any conduct requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct requirements, upon a third or subsequent violation of any conduct requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(4) Actions held in abeyance. If a trainee voluntarily withdraws from a training course while a disciplinary action is pending, the department may hold the action in abeyance and resume prosecution of the disciplinary proceeding if the trainee returns to any training at the department within two (2) years.

(5)[(3)] Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct requirement and has requested a hearing.

(6)[(4)] Penalty records.

(a) The department shall keep a written record of any penalty imposed on a trainee.

(b) A copy of any penalty imposed on a trainee shall be placed in his training file.

(c) Only the department, the trainee, and the trainee's agency head shall have access to the penalty records in a trainee's training file unless broader access is required by law.

(d) Original disciplinary action documents shall be stored with the department's official records custodian in accordance with the department's records retention schedule.

Section 4. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee 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 a department activity, a department staff member may take all reasonable steps necessary to terminate the situation, including removal of the trainee from the training course pending initiation of disciplinary action.

Section 5. Conduct Requirements. A trainee attending a training course shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint

VOLUME 48, NUMBER 4– OCTOBER 1, 2021

regarding a supervisor. [~~Penalty: verbal warning or written reprimand.~~]

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. [~~Penalty: verbal warning, written reprimand, loss of privileges.~~]

(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. [~~Penalty: verbal warning, written reprimand.~~]

(3) General conduct - grooming. The trainee shall maintain a professional personal appearance in accordance with the department's dress code policy, which reflects favorably upon the trainee, the department, and the trainee's agency. [~~Penalty: verbal warning or written reprimand.~~]

(4) General conduct - alcoholic beverages and other intoxicants. A trainee 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 attending a training course or bring alcoholic beverages into the Thompson Residence Hall. [~~Penalty: written reprimand, loss of privileges, or expulsion.~~]

(a) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. [~~Penalty: verbal warning, written reprimand.~~]

(b) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct - weapons and other dangerous devices.

(a) A trainee may possess his regular service weapon or authorized off-duty weapon, including ammunition, on property used by the department. A trainee shall not possess any other deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS Chapter 224[.04–400]), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. [~~Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.~~]

(b) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not negligently or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. [~~Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.~~]

(b) A trainee shall not have successfully completed training until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a training class. [~~Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion. Additionally, In addition to any disciplinary action imposed by the department, the appropriate prosecutorial authority shall [may] be notified of the activity.~~]

(b) Engage in conduct which creates a danger or risk of danger

to the trainee or another, possess obscene material or private erotic matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. [~~Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.~~]

(8) Training activities - absences.

(a) A trainee is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall give advance notice of an absence if possible. [~~Penalty for an unexcused absence: verbal warning or written reprimand; penalty for an unexcused tardiness: verbal warning or written reprimand.~~]

(b) All absences from training shall be approved by the section supervisor or branch manager. Absences shall only be excused for legitimate reasons including sickness, court appearances, and emergencies. Written notice shall be given prior to the absence, or if an unexpected absence, on the first day upon returning.

(c) If a trainee is absent less than ten (10) percent of a subject area, excused or unexcused, he shall make up for the absence by completing a special assignment. The assignment shall be provided by the instructor who taught the missed subject area and shall be approved by the section supervisor. Failure to complete the assignment shall be deemed a failure for that subject area.

(d) A trainee shall repeat a subject area in which he has had an absence of ten (10) percent or more, excused or unexcused.

(e) A trainee shall not be allowed to repeat a test that occurs during the trainee's unexcused absence.

(9) Training activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. [~~Penalty: verbal warning or written reprimand.~~]

(10) Training activities - general conduct.

(a) A trainee shall be attentive during training activities. [~~Penalty: verbal warning or written reprimand.~~]

(b) A trainee shall not use tobacco products during, or bring food or drink into, any department training activity, regardless of location, unless permitted by the branch manager. [~~Penalty: verbal warning or written reprimand.~~]

(c) A trainee shall not negligently or intentionally engage in conduct which creates or may create a risk of injury to others during a training session. [~~Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.~~]

(11) Training activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. [~~Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.~~]

(12) Residence hall.

(a) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. [~~Penalty: verbal warning, written reprimand, loss of privileges.~~]

(b) Doors shall be locked whenever a room is unoccupied. [~~Penalty: verbal warning or written reprimand.~~]

(c) The use of cooking appliances or space heaters is prohibited. [~~Penalty: verbal warning, written reprimand, loss of privileges.~~]

(d) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(e) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. [~~Penalty: verbal warning, written reprimand, loss of privileges.~~]

2. Keep pets, animals, or birds of any kind in his room. [~~Penalty: verbal warning, written reprimand, loss of privileges.~~]

3. Engage in dangerous, disruptive, immoral or obscene behavior. [~~Penalty: verbal warning, written reprimand, loss of privileges.~~]

Section 6. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 8 through 12 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning or written reprimand.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 7. Removal from Training Pending an Initial Appearance Before the Commissioner.

(1) When a charge is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee has been charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 8. Complaint. Anyone having reasonable grounds for believing that a trainee has violated any of the conduct requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 9. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 10. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner. The copy shall be served upon the trainee either in person or by mail.

Section 11. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to an administrative hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive an administrative hearing, or deny the charges are true and ask for an administrative hearing.

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives an administrative hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives an administrative hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests an administrative hearing, or refuses to answer the charges, the commissioner shall set a date for the administrative hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the administrative hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 12. Hearing. The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 1:00 p.m. at the Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk

Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deadra.douglas@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deadra Douglas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides parameters for supervision and coordination of training programs and schools for law enforcement personnel. This administrative regulation establishes conduct requirements for trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

(b) The necessity of this administrative regulation: KRS 15.440 requires officers participating in KLEFPF to meet training requirements established by the Kentucky Law Enforcement Council (KLEC). KRS 15A.070(1) states, "The Department of Criminal Justice Training shall establish, supervise and coordinate training programs and schools for law enforcement personnel, subject to the limitations of KRS 15.440(1)(d) and (e) and 15.560, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary." KRS 15A.070(5) allows the commissioner of the Department of Criminal Justice Training to promulgate regulations necessary to carry out the responsibilities of supervision and coordination of those training requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) states, "The Department of Criminal Justice Training shall establish, supervise and coordinate training programs and schools for law enforcement personnel, subject to the limitations of KRS 15.440(1)(d) and (e) and 15.560, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.440 and 15A.070, acting in concert, require the Department of Criminal Justice training to establish, supervise, and coordinate KLEC approved training programs required for participation in KLEFPF. This administrative regulation provides conduct standards along with disciplinary penalties and procedures for individuals participating in in-service training at the Department of Criminal Justice 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 modifies the penalty range for disciplinary actions. The amendment also adds "private erotic matter" to the description of prohibited obscene materials, bringing the language up to date with changes to KRS 531.010.

(b) The necessity of the amendment to this administrative regulation: The amendment will modify the penalty range to eliminate "loss of privileges." This penalty is no longer practical given changes to course structure and meal arrangements in recent years. This penalty was rarely used in general. This amendment adds the penalty of "suspension" from in-service courses. This penalty removes a trainee from the remainder of the immediate course but allows the trainee to return within two years. This amendment modifies the language of the section addressing possession of obscene materials on DOCJT's campus, bringing the language in line with changes made to KRS 531.010.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes requires that the Department of Criminal Justice Training supervise and coordinate in-service courses. This necessarily includes supervision and coordination in the areas of trainee conduct and discipline.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the regulation up to date with a more practical penalty range and will incorporate changes to KRS 531.010.

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

administrative regulation: All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of a more practical penalty range and up to date statutory references.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each agency's officers agree to abide by DOCJT's conduct requirements upon entering an in-service course.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the individual law enforcement agencies will not be affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of a more practical penalty range and up to date statutory references

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

(a) Initially: The result should be no fiscal impact.

(b) On a continuing basis: The result should be no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds, flowing from the Kentucky Law Enforcement Foundation Program Fund, will be the ongoing source of 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 are no increased fees associated with this amendment. No increased funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is 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? Law enforcement agencies and the Department of Criminal Justice Training 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 15.440; KRS 15A.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. Expenditures are anticipated to be the same as expenditures under the current version of the regulation.

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

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

(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? The cost is expected to be the same as prior to the amendment.

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



Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Criminal Justice Training**  
**(Amendment)**

**503 KAR 3:030. Training charges.**

RELATES TO: KRS 15.340

STATUTORY AUTHORITY: KRS 15A.070, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.340 authorizes the Department of Criminal Justice Training to determine whether certain persons to whom it offers training or agencies employing such persons must bear any of all costs of training. This administrative regulation prescribes training charges and identifies those who must pay for training.

Section 1. Definition. As used in this administrative regulation "eligible category" includes:

- (1) City police departments;
- (2) County police departments;
- (3) Urban-county police departments;
- (4) Public airport authority police departments established pursuant to KRS 183.880;
- (5) Department of Kentucky State Police;
- (6) State or public university departments of safety established pursuant to KRS 164.950;
- (7) Local boards of education employing school resource officers [~~limited to school security officers~~] who are special law enforcement officers appointed pursuant to KRS 61.902;
- (8) Sheriffs' departments, except for those deputy sheriffs identified in KRS 70.045 and 70.263(3);
- (9) Constables;
- (10) Coroners;
- (11) Department of Alcoholic Beverage Control, limited to field representatives and investigators appointed pursuant to KRS 241.090;
- (12) Department of Insurance - Division of Insurance Fraud Investigation, limited to insurance fraud investigators appointed pursuant to KRS 304.47-040;
- (13) State agencies that have adopted certification pursuant to KRS 15.380(2), limited to those peace officers for whom the certification requirements of KRS 15.380 to 15.402 have been incorporated into their job specifications;
- (14) Officers who are certified by the Kentucky Law Enforcement Council pursuant to KRS 15.380(4) or (5), and are presently employed in the capacity for which certification was obtained;
- (15) Persons participating in courses offered under the KRS 15.518 Law Enforcement Professional Development and Wellness Program.

Section 2. Basic Training. While participating in a basic training course conducted by the department: [

- (4)] Persons employed [full time] as sworn law enforcement officers in an eligible category, shall be eligible to receive free tuition, housing at facilities to be provided by the department, and meals, not to exceed the amounts established in Section 7 of this administrative regulation: [
- (2) ~~Persons employed part time in an eligible category, whether sworn or unsworn, shall be eligible to receive free tuition.~~]

Section 3. In-service Training. Persons employed in an eligible category, whether sworn or unsworn, while participating in in-service training courses conducted by the department shall be eligible for free tuition, limited to a maximum of eighty (80) hours during a calendar year. ~~When calculating the maximum number of free training hours to which the person is eligible:~~

- (1) ~~The hours associated with an in-service training course that is substituted for a failed in-service training course, shall not be~~

included;

- (2)] If a person has accumulated fewer than eighty (80) hours of in-service training at the time of registration for an additional in-service training course, and subsequently completes the course, which brings the in-service training total to more than eighty (80) hours, the person shall not be required to pay fees for the training which exceeds eighty (80) hours.

Section 4. Telecommunications. (1) Persons employed [full-time] in an eligible category to dispatch law enforcement units by means of radio communications or to operate teleprocessing equipment associated with the law information network of Kentucky (LINK), shall be eligible to receive:

- (a) Free tuition, housing at facilities to be provided by the department, and meals, not to exceed the amounts established in Section 7 of this administrative regulation, while participating in the Telecommunications Academy conducted by the department; [

~~(b) Free tuition and housing at facilities to be provided by the department, while participating in the telecommunications basic course, Criminal Justice Information Systems (CJIS) full access course, or CJIS - inquiry only course, conducted by the department;]~~

- ~~(b)]~~(c)] Free tuition while participating in other telecommunications courses conducted by the department, limited to a maximum of eighty (80) hours during a calendar year. When calculating the maximum number of free training hours to which the person is eligible:

1. The hours associated with the Telecommunications Academy, telecommunications basic course, CJIS - full access course, or CJIS - inquiry only course shall not be added;

2. The hours associated with a telecommunications course that is substituted for a failed tele-communications course, shall not be added;

3. If a person has accumulated fewer than eighty (80) hours of telecommunications training at the time of registration for an additional telecommunications course, and subsequently completes the course, which brings the telecommunications training total to more than eighty (80), the person shall not be required to pay fees for the training which exceeds eighty (80) hours; [

- ~~(2) Persons employed part time in an eligible category to dispatch law enforcement units by means of radio communications or to operate teleprocessing equipment associated with the law information network of Kentucky (LINK), shall be eligible to receive free tuition while participating in telecommunications courses conducted by the department, limited to a maximum of eighty (80) hours during a calendar year. The calculation of the maximum number of free training hours to which the person is eligible, shall be made as established in this administrative regulation in sub-section (1)(c)1 through 3 of this section.]~~

Section 5. Fees in Reciprocation. If an agency or person has provided training services to the department, the commissioner may waive some or all fees for training provided by the department, when requested by the agency or person. The commissioner shall advise in writing, prior to the start date of the requested training, of the specific training which shall be provided and the fees which shall be waived. The waiver of fees shall be limited to the terms as described in writing by the commissioner.

Section 6. Payment of Fees Required. (1) The enrolling agency or a [A] person who is not eligible for free fees as determined in Sections 2 through 5 of this administrative regulation, shall be required to pay all applicable fees as established in Section 7 of this administrative regulation.

(2) A person who repeats a training course conducted by the department, within three (3) years from the start date of the original course, whether the first course was passed or failed, shall be required to pay all applicable fees as established in Section 7 of this administrative regulation for the repeated course. A training course that is substituted for a failed training course shall be considered retraining, for which all applicable fees must be paid.

(3) If a person participates in a training course, for which it is determined prior to participation that fees are required, but fails the

course, full fees are due.

(4) If a person participates in a training course, for which it is determined prior to participation that fees are required, but withdraws from training for reasons other than those which constitute extenuating circumstances as defined in 503 KAR 1:110 or 503 KAR 5:090, training fees shall be assessed based upon that training which was received. If payment has been received by the department, the person, or the agency responsible for the payment of training fees, shall be reimbursed the amount in excess of the actual training fees which were incurred.

(5) If a person exits a course owing fees, he or she shall not be allowed to return the same or a substitute course until the outstanding course balance is paid in full. [If a person participates in a training course, for which he is eligible for free fees, but withdraws from training for reasons other than those which constitute extenuating circumstances as defined in 503 KAR 1:110 or 503 KAR 5:090, full fees shall be required for that portion of training received prior to the withdrawal if the person repeats the training course within three (3) years from the start date of the original course. But for the provisions of this subsection, if the person would otherwise not be eligible for free fees when repeating the course, full fees shall be due for the entire course.]

(6) Fees may be required as a result of a disciplinary suspension or expulsion, pursuant to 503 KAR 3:010, which are made part of the commissioner's final order.

Section 7. Fees. (1) Tuition per person shall be:

- (a) \$600 per week.
- (b) \$120 per day for training of less than one (1) week.
- (c) \$120 for training which involves more than four (4) hours but less than eight (8) hours.
- (d) Sixty (60) dollars for training which involves less than four (4) hours.

(2) Housing charges per person, for accommodations provided by the department, shall be:

- (a) Seventy-five (75) dollars per five (5) day training week, which shall include Sunday night through Thursday night; or
- (b) Fifteen (15) dollars per day.

(3) Meals. A person in an eligible category shall be allotted a meal allowance for breakfast, lunch and dinner on Monday through Friday of each training week. The meal allowance for each training session shall be based upon the actual meal costs as determined by the Department.

(a) A person shall be allotted eighty-five (85) dollars per week for meals. Each person shall be provided a meal card which may be used no earlier than the evening meal on Sunday, but no later than the lunch meal on Friday. Use of the meal card shall be limited to those food service providers approved and designated by the department.

(b) A person provided with a meal card shall not be restricted to a specific amount per meal. Purchases in excess of eighty-five (85) dollars per week, or those incurred at a food service provider which is not approved and designated by the department, shall be paid by the person.

(4) Supplemental charges may be imposed for supplies and materials which have been furnished by the department, including ammunition provided by the department in a firearms training course.

Section 8. Procedures. (1) When an enrolling agency is [a person shall be] required to pay fees for training, the [person or their] authorized agency head [who] shall be responsible for payment of fees, [shall enter into a written agreement particularly describing the required charges, by executing DOCJT Form 60, prior to the start date of the course. If DOCJT Form 60 is not received by the department prior to the start date of the course, the person shall be ineligible to participate in the course.]

(2) Payment of required fees for training shall be made prior to the start date of the course. If payment is not received by the department prior to the start date of the course, the person shall be ineligible to participate in the course.

(3) Payments shall be made by a check of the employing agency, or cashier's check of the person, payable to the Kentucky State Treasurer.]

(4) Payment arrangements:

(a) When fees are required for training, an employing agency may request that they be allowed to satisfy the payment obligation through a schedule of payments. Prior to the start date of the requested training, the agency shall submit to the department:

- 1. A list of each officer within the agency, and their required training for the current and preceding year;
- 2. The actual approved budget of the governmental unit for the current and the preceding year;
- 3. The actual revenue receipts of the governmental unit for the current and the preceding year;
- 4. A detailed explanation of why the governmental unit requires a payment arrangement to meet the costs of the training, including the reason that sufficient funding was not budgeted; and
- 5. A proposed schedule of payments.

(b) The commissioner shall notify the agency in writing, prior to the start date of the course, as to whether the agency's request has been approved, and if so, the specific terms of the schedule of payments.

(c) If the agency fails to abide by the terms as established by the commissioner, the person who is receiving training may be removed from training. Additionally, the agency may be denied future requests for payment arrangements.

Section 9. Incorporation by Reference. (1) Department of Criminal Justice Training Form 60 -- Contract for Training Fees, Revised 5/15/00.

(2) This material may be inspected, copied, or obtained at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.]

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 2:30 p.m. at the Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deaidra Douglas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides parameters for supervision and coordination of training programs and schools for law enforcement personnel. This administrative regulation establishes conduct requirements for trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

(b) The necessity of this administrative regulation: KRS 15.340 authorizes the Department of Criminal Justice Training to determine whether certain persons to whom it offers training or agencies employing

such persons must bear any of all costs of training. This administrative regulation prescribes training charges, identifies those who must pay for training, and establishes procedures for payment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation describes categories of individuals and agencies that are eligible for free tuition, housing, and meals while attending training at the department, sets forth circumstances whereby otherwise eligible individuals may be required to pay fees, and prescribes procedures for payment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides criteria for assessment of training fees as well as mechanism for waivers and collection.

(2) If 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 language applicable to local boards of education, as references to "school security officers" were eliminated in recent legislation. The amendment brings part time officers and dispatchers into the "eligible" category for free tuition, housing, and meals. The amendment eliminates previously confusing and redundant language.

(b) The necessity of the amendment to this administrative regulation: The amendment will modify the language to reflect recent school resource officer legislation. The amendment is further necessary to meet the demand for training of part time officers and dispatchers, and to clarify the fee obligation for failures and withdrawals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.340 authorizes the Department of Criminal Justice Training to determine whether certain persons to whom it offers training or agencies employing such persons must bear any of all costs of training. This administrative regulation prescribes training charges, identifies those who must pay for training, and establishes procedures for payment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the regulation up to date with school resource officer definitions and will meet the need to train part time officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of a more practical fee schedule.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each agency will be required to pay fees for failures or non-extenuating withdrawals of eligible individuals, as well as fees for non-eligible individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We anticipate costs to agencies will be lower than in the past due to inclusion of part time individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of a more practical fee schedule and fee waivers for part time individuals.

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

(a) Initially: The result should be no or minimal fiscal impact.

(b) On a continuing basis: The result should be no or minimal fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds, flowing from the Kentucky Law Enforcement Foundation Program Fund, will be the ongoing source of 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 are no increased fees associated with this amendment. No increased funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is 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? Law enforcement agencies and the Department of Criminal Justice Training 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 15.340, 15A.160, 15A.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. Expenditures are anticipated to be the same or lower than expenditures under the current version of the regulation.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (Amendment)

#### 503 KAR 3:050. Telecommunications (Public Safety Dispatch) Academy[CJIS] graduation requirements; records.

RELATES TO: KRS 15.530, 15.550, 15.560[+], 15.565

STATUTORY AUTHORITY: KRS 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 authorizes the Kentucky Law Enforcement Council to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications (Public Safety Dispatch) Academy[CJIS.]

Section 1. Definitions. (1) "Academy" means the minimum 160 [205] hour Telecommunications (Public Safety Dispatch) Academy[CJIS] course conducted by the department of Criminal Justice Training.

(2) "CJIS" is defined by KRS 15.530(1).

Section 2. Academy Content. The academy shall consist of the following eight (8) areas:

(1) Introduction to Dispatching;

(2) Duties and Responsibilities;

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

- (3) Phone procedures;
- (4) Radio procedures;
- (5) Calls for service;
- (6) Emergency medical dispatch;
- (7) Criminal justice information system (CJIS); and
- (8) Final Exam and Graduation.

Section 3. Academy Graduation Requirements. (1) To graduate from the academy, a trainee shall:

(a) Successfully complete a minimum of 160 [205] hours of Kentucky Law Enforcement Council (KLEC)-approved training;

(b) Attain a passing score on all examinations for which a numerical score is assigned, as follows:

1. Minimum score on the Emergency Medical Dispatch written examination [as set by the Emergency Medical Dispatch provider;]

2. Minimum score on the CPR written examination [as set by the CPR provider]; and

3. Seventy (70) percent on all other examinations for which a numerical score is assigned;

(c) Pass all examinations for which a pass-or-fail designation is assigned; and

(d) Successfully complete all other assignments, exercises, and projects included in the academy. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

(2) A trainee shall be considered to have failed the academy if the trainee does not meet the requirements established in subsection (1) of this section.

Section 4. Reexaminations. (1) A trainee shall be permitted one (1) reexamination.

(2) A trainee who fails an examination shall not be reexamined:

(a) Earlier than twenty-four (24) hours from the original examination; or

(b) Later than the last scheduled day before the academy graduation.

(3) A trainee shall be considered to have failed the academy if the trainee fails a reexamination.

Section 5. Failure and Repetition of Academy. (1) A trainee who has failed an academy shall be permitted to repeat one (1) academy in its entirety during the following twelve (12) months.

(2) The trainee or his agency shall pay all fees for the repeated academy.

Section 6. Absence. (1) A trainee may have excused absences from the academy with approval of the Branch Manager or Telecommunications Training Section Supervisor.

(2) An excused absence from the academy which causes a trainee to miss any of the 205 hours of training shall be made up through an approved [additional] training assignment. Make up training assignments shall be approved by the course instructor.

(3) If a trainee misses more than ten (10) percent of the total hours of the academy and all absences were excused and all work was made up, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point of the trainee's withdrawal. [If a trainee's absence is excused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point at which the trainee was absent.] The time period for reenrollment in a subsequent class shall not exceed six (6) months from the date of the class from which the trainee was withdrawn.

(4) If a trainee's absence is unexcused and he or she misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and receive no credit for completed training.

Section 7. Circumstances Preventing Completion of the Academy. If a trainee is prevented from completing the academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas

of the academy within 180 days immediately following the termination of the extenuating circumstance, if the:

(1) Extenuating circumstance preventing completion of the academy does not last for a period of longer than one (1) year; and

(2) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment While Enrolled. If while enrolled in the academy, a trainee's employment as a dispatcher is terminated by resignation or dismissal and he is unable to complete the academy, he may complete the remaining training within one (1) year of reemployment as a dispatcher. The trainee shall repeat the academy 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 trainee while enrolled in the academy.

Section 9. Maintenance of Records. All training records shall be:

(1) Available to the council and the secretary for inspection or other appropriate purposes; and

(2) Maintained in accordance with applicable standards in KRS Chapter 171.

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2021, at 9:00 a.m. at the Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides parameters for participation in and graduation from the Department of Criminal Justice Training telecommunications (public safety dispatch) academy.

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15. 530, 15.540, 15.550, 15.560, and 15.565, read in concert, require that all persons employed as telecommunications (public safety dispatchers) in the Commonwealth complete mandatory minimum training and maintain continuing education. This administrative regulation defines the content and administration of that training.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 15.590 authorizes the Kentucky Law Enforcement Council to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications (Public Safety Dispatch) 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 combines the "CJIS" academy with the "Non-CJIS" academy, offering the full content to each academy graduate.

(b) The necessity of the amendment to this administrative regulation: The amendment will combine the content of both academies into one. The evolution of the role of the public safety dispatcher has led to a need for the higher level of content to be offered to all participants.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.590 authorizes the Kentucky Law Enforcement Council to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications (Public Safety Dispatch) Academy.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will eliminate the need to split the academy content into two separate academies. The amendment will ensure a higher level of training for all dispatchers, while adding minimal additional cost or down time for law enforcement agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies and telecommunications centers that employ public safety dispatchers in the Commonwealth will have the benefit of a more practical and thorough academy.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each agency's dispatchers will continue to be required to attend a KLEC approved academy and maintain required continuing education (in-service training).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the individual law enforcement and telecommunications agencies will be minimal or non-existent.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All law enforcement agencies and telecommunications centers that employ public safety dispatchers in the Commonwealth will have the benefit of a more efficient and comprehensive academy.

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

(a) Initially: The result should be minimal or no fiscal impact.

(b) On a continuing basis: The result should be minimal or no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds, flowing from the Kentucky Law Enforcement Foundation Program Fund, will be the ongoing source of 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 are no increased fees associated with this amendment. No increased funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is 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? Law enforcement agencies and the Department of Criminal Justice Training 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 15.530, 15.550, 15.560, 15.565, and 15.590.

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

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

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

(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? The cost is expected to be the same or lower than prior to the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (Amendment)

#### 503 KAR 4:010. Definitions for 503 KAR Chapter 4.

RELATES TO: KRS 237.110(4)(i) [(2)(f)]

STATUTORY AUTHORITY: KRS 237.110(4)(i) [(2)(f)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(4)(i) [(2)(f)], 237.120(1), and 237.122(1) require the department to operate and maintain a program for firearms instructor trainers and firearms instructors for the concealed deadly weapon training program; and to offer or approve firearms safety courses under the following criteria: 1. Be not more than eight (8) hours in length; 2. Include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, and handgun marksmanship principles; 3. Include actual range firing of a handgun in a safe manner, and the firing of not more than twenty (20) rounds at a full-size silhouette target, during which firing, not less than eleven (11) rounds must hit the silhouette portion of the target; and 4. Include information on and a copy of laws relating to possession and carrying of firearms, as set forth in KRS Chapters 237 and 527, and the laws relating to the use of force, as set forth in KRS Chapter 503. This administrative regulation establishes the definitions for administrative regulations relating to: (1) the certification of firearms instructors; and (2) firearms safety and training courses or classes. requires the department to promulgate administrative regulations concerning the: (1) certification and decertification of firearms instructors practicing in Kentucky; and (2) firearms safety and training courses or classes that are: (a) approved by the department; or (b) conducted by the department or by a firearms instructor certified by the department. This administrative regulation establishes the definitions for administrative regulations relating to: (1) the certification of firearms instructors; and (2) firearms safety and training courses or classes.]

Section 1. Definitions. (1) "Applicant training course" means a firearms safety or training course or class required by KRS 237.110(4)(i) [(2)(f)] that:

(a) The department:

1. Conducts; or

2. Has approved; or  
(b) Is conducted by firearms instructors certified by the department.

(2) "Certifying agency" means the Department of Criminal Justice Training or federal agency that qualifies students as competent with firearms.

(3) "Department" means the Department of Criminal Justice Training.

(4) "Instructor candidate" means a person who is taking a firearms safety or training course or class in order to qualify as a firearms instructor.

(5) "Instructor trainer" means a firearms instructor who has been certified by the department to train qualified firearms instructors.

(6) "Certified firearms instructor" means a person who has been certified by the department to teach applicant training courses.

(7) "Student" means a person taking an applicant training course.

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 11:00 a.m. at the Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Deidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deidra.douglas@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deidra Douglas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides definition for KAR Title 503 Chapter 4

(b) The necessity of this administrative regulation: This administrative regulation establishes the definitions for training programs the Department of Criminal Justice Training is required to provide or approve under KRS 237.110(4)(i), KRS 237.120(1) and 237.122(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 237.110(4)(i), KRS 237.120(1) and 237.122(1) require the department to operate and approve programs for concealed deadly weapons licensing as well as for firearms instructor trainers and firearms instructors for the concealed deadly weapon training program. This administrative regulation establishes the definitions for those programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation updates statutory references for concealed carry of deadly weapons (CCDW) 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 updates statutory references for concealed carry of deadly weapons (CCDW) training.

(b) The necessity of the amendment to this administrative regulation: The amendment updates statutory references for concealed carry of deadly weapons (CCDW) training.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes requires that the Department of Criminal Justice Training supervise and coordinate concealed deadly weapon firearms instructor courses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates statutory references for concealed carry of deadly weapons (CCDW) training.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department and Carry Concealed Deadly Weapons (CCDW) instructor trainees and license course participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not affect current practices.

(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 anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The department and course participants will have accurate statutory references.

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

(a) Initially: The result should be no fiscal impact.

(b) On a continuing basis: The result should be no fiscal impact.

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

(7) Provide an assessment of whether an 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 increased fees associated with this amendment. No increased funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is 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 of Criminal Justice Training 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 237.110(4)(i), KRS 237.120 and 237.122.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated impact.

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

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

(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? The cost is expected to be the same as prior to the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Criminal Justice Training  
(Amendment)**

**503 KAR 4:040. Required instructor training.**

RELATES TO: KRS 237.110, 237.120, 237.122, 237.124, ~~237.126, 237.136~~

STATUTORY AUTHORITY: KRS 237.120(1), 237.122(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.120(1) and 237.122(1) require the department to operate and maintain a program for firearms instructor trainers and firearms instructors for the concealed deadly weapon training program. This administrative regulation establishes the training required for certification as a firearms instructor or firearms instructor trainer.

Section 1. An applicant training course student shall complete an "Applicant Request for Training for License to Carry Concealed Deadly Weapons", Form #126-A, which shall include a statement acknowledging receipt of copies of pertinent sections of KRS Chapters 237, 527, and 503.

Section 2. A firearms instructor or instructor trainer course shall include:

(1) Fourteen (14) hours of classroom instruction covering at least the following topics:

(a) By means of a videotape produced by the department:

1. The requirements for obtaining a concealed deadly weapons license in Kentucky;

2. Sections of KRS Chapters 237 and 527 that relate to firearms; and

3. Sections of KRS Chapter 503 relating to the justifiable use of force;

(b) The conduct of applicant training courses;

(c) Recordkeeping requirements of this administrative regulation;

(d) The basic nomenclature of handguns;

(e) The basic principles of marksmanship; and

(f) The safe handling of handguns;

(2) A classroom demonstration, during which the instructor candidate shall receive instruction on and demonstrate competency in the ability to prepare and deliver a classroom presentation using materials from the applicant curriculum; and

(3) Range instruction and firing of live ammunition, during which the instructor candidate shall receive instruction on and demonstrate competency in the ability to:

(a) Handle and fire a handgun safely and accurately;

(b) Conduct a function test and safety inspection of common types of handguns;

(c) Clean and care for common types of handguns; and

(d) Supervise and conduct live firing exercises in a safe and efficient manner.

Section 3. To qualify as a certified firearms instructor or an instructor trainer, the instructor candidate shall achieve:

(1) A minimum score of seventy (70) percent on a written examination covering the material taught during the classroom portion of the course;

(2) A minimum score of eighty (80) percent on range firing of a handgun, without receiving any assistance in holding, aiming, or firing by any other person, from a safe position while aiming at a full size silhouette target approved by the department [B-24-PC silhouette target or an equivalent target approved by the department], with a minimum of:

(a) Ten (10) rounds from seven (7) yards; and

(b) Ten (10) rounds from fifteen (15) yards; and

(3) A score of "passing" from the course instructor for demonstrating competency in each of the following:

(a) Supervising and conducting live fire;

(b) Cleaning and inspecting handguns; and

(c) Preparing and delivering the classroom lecture. The lecture shall be graded by using the "CCDW Instructor and Instructor Trainer Five (5)-Minute Presentation" Form. The form shall be submitted to the department as a part of the class record.

Section 4. A In order to avoid unnecessary repetition of the course work in the CCDW applicant course, a person who desires to be certified as a CCDW firearms instructor or instructor trainer, but does not possess a CCDW license, shall be permitted to complete the appropriate CCDW firearms instructor training course and shall be issued an applicant certificate which can be used to apply for a CCDW license. Upon showing proof to the Department of Criminal Justice Training that the person has obtained a license, the person shall be certified as an instructor or instructor trainer.

Section 5. (1) An instructor candidate who fails to meet the requirements of Section 3 of this administrative regulation may retake the examination, range work or classroom demonstration one (1) time without having to repeat the course.

(2) An instructor candidate shall retake the examination, range work, or classroom demonstration within thirty (30) days of the date of failure to meet the requirements of Section 3 of this administrative regulation.

(3) A certified firearms instructor trainer may use a CCDW "Training Class Roster Form," CCDW #5 to comply with the class roster requirements of KRS 237.110(22)(d).

Section 6. (1) A course participant shall provide a safe, functional handgun and factory-loaded ammunition.

(2) Prior to conducting range firing, the course instructor shall:

(a) Inspect each/applicant's firearm; and

(b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Applicant Request for Training for License to Carry Concealed Deadly Weapons", Form #126-A (07/12/06 edition), Department of Criminal Justice Training;

(b) "CCDW Instructor and Instructor Trainer Five (5)-Minute Presentation," (6/02 edition), Department of Criminal Justice Training; and

(c) "CCDW Training Class Roster Form (CCDW #5)," (July 15, 2006 edition), Department of Criminal Justice Training;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:00 a.m. at the Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deaidra Douglas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides parameters for content and administration of concealed deadly weapons training program firearms instructors

(b) The necessity of this administrative regulation: This administrative regulation establishes the training required for certification as a firearms instructor or firearms instructor trainer as well as the parameter for the administration of that program at the Department of Criminal Justice Training.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 237.120(1) and 237.122(1) require the department to operate and maintain a program for firearms instructor trainers and firearms instructors for the concealed deadly weapon training program. This administrative regulation establishes the training required for certification as a firearms instructor or firearms instructor trainer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administration delineates the content of instructor training courses as well as the requirements for successful completion of those courses.

(2) If 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 language that seems to restrict the department to a specific commercially produced target, thereby eliminating complications that may arise if that target is not available.

(b) The necessity of the amendment to this administrative regulation: The amendment clarifies language allowing the department to approve firing range targets rather than relying upon one type of target alone.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes requires that the Department of Criminal Justice Training supervise and coordinate concealed deadly weapon firearms instructor courses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will more clearly allow the department to approve alternate firing range targets if the previously named target is not available or practical.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department and Carry Concealed Deadly Weapons (CCDW) instructor trainees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The department and instructor trainees will use department approved targets

(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 anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The department will not be restricted to a single type of target.

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

(a) Initially: The result should be no fiscal impact.

(b) On a continuing basis: The result should be no fiscal impact.

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

(7) Provide an assessment of whether an 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 increased fees associated with this amendment. No increased funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is 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 of Criminal Justice Training 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 237.120(1) and 237.122(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 anticipated impact.

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

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

(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? The cost is expected to be the same as prior to the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (Amendment)

**503 KAR 4:050. Required content and conduct of [the] applicant training course.**

RELATES TO: KRS 237.110, 237.124

STATUTORY AUTHORITY: KRS 237.124

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.124 requires the department to operate ~~[promulgate administrative regulations concerning the operation of]~~a program for the training of applicants for a concealed deadly weapons license. This administrative regulation establishes that program.

Section 1. An applicant training course shall be:

(1) The standardized training course furnished by the department; and

(2) Taught by a certified firearms instructor.

Section 2. Applicant Training Course Content. (1) Classroom



instruction. An applicant training course shall include at least six (6) hours, but not more than eight (8) hours, of classroom instruction, covering the following topics:

- (a) Handgun safety in the classroom, at home, on the firing range or while carrying the firearm;
- (b) The basic principles of marksmanship;
- (c) Care and cleaning of handguns; and
- (d) By means of a videotape produced by the department:

1. The requirements for obtaining a concealed deadly weapons license in Kentucky;

2. Sections of KRS Chapters 237 and 527 relating to firearms; and

3. Sections of KRS Chapter 503 relating to the justifiable use of force.

(2) Live firing exercises. An applicant training course shall include live firing exercises of sufficient duration for an applicant to fire a handgun:

- (a) From a safe position;
- (b) Without receiving any assistance in holding, aiming, or firing from the instructor or any other person;
- (c) Twenty (20) rounds observed by the instructor. The instructor shall observe the applicant for each round fired, including those fired after the applicant has hit the silhouette portion of the target~~[as required by KRS 237.110(4)(i)(3)]~~; and
- (d) At a distance from a department approved, full-size [a-B-24] silhouette target, ~~for an equivalent as approved by the department,~~ of seven (7) yards.

(3) If range firing is conducted at a facility or range that requires a training instructor or range officer to clear or directly supervise and assist in the clearing of all firearm jams or malfunctions, the clearing of a firearm jam or malfunction by a certified firearms instructor or facility range officer in accordance with that policy shall not constitute prohibited assistance to a student for the purposes of subsection (2)(b) of this section.

Section 3. The classroom portion of the course shall be taught, at the certified firearms instructor's discretion, in one (1) six (6) hour block or divided into segments of not less than one (1) hour each.

Section 4. (1) An applicant training course shall not be open to persons who are less than twenty-one (21) years of age.

(2) An applicant training course student shall complete:

(a) An "Applicant Request for Training for License to Carry Concealed Deadly Weapons", Form #126-A, which shall include a statement acknowledging receipt of copies of pertinent sections of KRS Chapters 237, 527, and 503; and

(b) A "Release of Liability, Agreement to Waive Claims, Express Assumption of Risks, and Indemnity Agreement," Form #126-B.

Section 5. A certified firearms instructor shall not discuss the videotape or KRS Chapters 237, 503, or 527 with students, either individually or as a class.

Section 6. (1) At the conclusion of the classroom portion of an applicant training course, a certified firearms instructor shall:

- (a) Distribute a standard course examination to the students;
- (b) Not leave the room in which the examination is being held while the examination is in progress, unless another certified firearms instructor is physically present in the room to supervise the examination; and
- (c) Collect examination booklets and answer sheets from each student at the end of the examination period.

(2) At the conclusion of the classroom portion of an applicant training course, a certified firearms instructor may:

- (a) Grade the applicant's examination; and
- (b) Provide the applicant with his or her score.

Section 7. Except for an instructor, a person shall not:

- (1) Make a copy of the applicant training course examination, in whole or in part;
- (2) Possess an applicant training course examination, or

questions from an examination, unless authorized by the department; or

(3) Divulge the contents of applicant training course examination questions to another person.

Section 8. (1) A student shall use a safe, functional handgun and factory-loaded ammunition.

(a) An instructor or instructor trainer may choose to provide a safe, functional handgun at the request of the student for use during the class.

(b) An instructor or an instructor trainer shall not advertise that students will be furnished a handgun for use in the class.

(c) A handgun shall not be furnished unless special circumstances dictate the need to do so and the student requests it.

(d) An instructor or instructor trainer shall not charge a fee for furnishing a handgun, but may recover the actual cost of ammunition that is provided at the request of the student.

(2) Prior to conducting range firing, a certified firearms instructor shall:

- (a) Inspect each applicant's firearm; and
- (b) Not allow the firing of a handgun that the instructor has reason to believe is not in sound mechanical condition or otherwise may pose a safety hazard.

Section 9. A passing grade shall not be given on range work to an applicant who:

- (1) Does not follow the orders of a certified firearms instructor;
- (2) In the judgment of a certified firearms instructor, handles a firearm in a manner that poses a danger to the applicant or to others; or
- (3) Fails to hit the silhouette portion of a target with not less than eleven (11) [a majority of the twenty (20)] rounds without assistance in holding, aiming, or firing the firearm from the instructor or another person.

Section 10. In accordance with the requirements of KRS 237.110(22)(g), if the department believes that an instructor has not complied with the requirements for teaching a certified firearms instructor or applicant class, it shall send a "VF-1 Verification Form" to each student who has been listed by the instructor as having successfully completed the class taught by that instructor.

Section 11. (1) The "Applicant Request for Training for License to Carry Concealed Deadly Weapons" and course fee required by KRS 237.122 shall be sent to the department at the same time as the class roster required by KRS 237.110(22)(d).

(2) A certified firearms instructor may use a "CCDW Training Class Roster Form," CCDW #5, to comply with the class roster requirements of KRS 237.110(22)(d).

Section 12. An applicant training course shall not have more than:

- (1) Forty (40) students in the classroom portion; or
- (2) Five (5) students per range officer engaged in range firing. Students in a waiting area at a range facility who are not actively engaged in loading, unloading or firing handguns shall not be considered to be engaged in range firing for the purposes of this subsection.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Applicant Request for Training for License to Carry Concealed Deadly Weapons", Form #126-A, (07/12/06 edition), Department of Criminal Justice Training;

(b) "Release of Liability, Agreement to Waive Claims, Express Assumption of Risks, and Indemnity Agreement," Form #126-B, (07/12/06 edition), Department of Criminal Justice Training;

(c) VF-1 "Verification Form", (6/02 edition), Department of Criminal Justice Training; and

(d) CCDW #5 "CCDW Training Class Roster Form", (July 15, 2006 edition), Department of Criminal Justice Training.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3137, Monday through Friday, 8 a.m. to 4:30 p.m.

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on November 23, 2021, at 2:00 p.m. at the Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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:** Deaidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deaidra.douglas@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deaidra Douglas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the content and administration of concealed carry of a deadly weapon (CCDW) courses at the Department of Criminal Justice Training.

(b) The necessity of this administrative regulation: KRS 237.110 requires that the department offer CCDW courses within statutory parameters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 237.110 requires that CCDW courses offer specific content and hold certain graduation standards

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the parameters required by statute and defines the administrative processes for the courses.

(2) If 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 brings the language used in the definitions up to date with recent statutory changes.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the language used in the definitions up to date with recent statutory changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the language used in the administration of the fund to match current statutory parameters

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the regulation up to date with current statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of criminal Justice Training and CCDW course participants.

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

(a) List 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 changes will be necessary for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the individuals and the agency will not be affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The department and course participants will have the benefit of statutorily compliant language.

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

(a) Initially: The result should be no fiscal impact.

(b) On a continuing basis: The result should be no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be required.

(7) Provide an assessment of whether an 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 increased fees associated with this amendment. No increased funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is 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? Law enforcement agencies and the Department of Criminal Justice Training 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 237.110, 237.124.

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

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

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

(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? The cost is expected to be the same as prior to the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (Amendment)

#### 503 KAR 5:080. Definitions.

RELATES TO: KRS 15.410 - 15.510

STATUTORY AUTHORITY: KRS 15.450(1)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides definitions of certain terms as used in 503 KAR Chapter 5, which pertains to the Law Enforcement Program Foundation Fund. This administrative regulation also repeals the administrative regulations previously in this chapter.

Section 1. Definitions. The following definitions shall apply in this chapter:

- (1) "Cabinet" means the Kentucky Justice Cabinet.
- (2) "Secretary" means the Secretary of the Kentucky Justice Cabinet.
- (3) "Council" means the Kentucky Law Enforcement Council as established in KRS 15.315.
- (4) "Fund" means the Law Enforcement Foundation Program Fund of the Kentucky Justice Cabinet as established in KRS 15.430.
- (5) "Fund administrator" means the person responsible for administering the fund. KRS 15.450(1) provides that the fund shall be administered by the secretary or his designated representative.
- (6) "Salary supplement funds" means money disbursed from the fund to local units of government for salary supplement purposes. A "salary supplement" is the fund money disbursed by a local unit of government to an individual police officer.
- (7) "Local unit" has the same meaning as "unit of government" as defined in KRS 15.420 [means the local unit of government of any city or county, or any combination of cities and counties of the Commonwealth].
- (8) "Police officer" means a "full-time member" (defined in subsection (9) of this section) of a "lawfully organized police department" (defined in subsection (11) of this section) of county, urban-county, or city government who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but does not include Kentucky State Police, any elected officer, sheriff, deputy sheriff, constable, deputy constable, district detective, deputy district detective, special local peace officer, auxiliary police officer or any other peace officer not specifically authorized in KRS 15.410 to 15.510.
- (9) "Full-time member" means a sworn police officer who is paid a salary by the local unit for "working regularly" (defined in subsection (10) of this section) as a law enforcement officer.
- (10) "Working regularly" means the officer is working a minimum of forty (40) hours a week according to a uniform weekly schedule that is standard for police officers employed by that employing agency. No local unit shall arrange, by reduction of weekly hours or otherwise, the employment of a person who is otherwise considered a police officer so as to subvert the intent and purpose of KRS 15.410 to 15.510 or these administrative regulations.
- (11) "Lawfully organized police department" means a law enforcement unit organized in accordance with statutory authority, and one which has a separate and identifiable physical and management identity from other law enforcement units, including a separate chief.

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2021, at 11:00 a.m. at the Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Deidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deidra.douglas@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deidra Douglas

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This regulation provides definitions for KAR Title 503 Chapter 5
  - (b) The necessity of this administrative regulation: KRS 15.450 requires the secretary of the Justice and Public Safety Cabinet or his or her designee to administer the Kentucky Law Enforcement Foundation Program Fund. This administration provides definitions for the regulations governing that process.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.450(1) allows the secretary or his or her designated representative to promulgate administrative regulation as necessary to carry out the responsibilities delineated under KRS 15.410 to 15.510.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulations defines terms used in the administration of the 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: The amendment brings the language used in the definitions up to date with recent statutory changes.
  - (b) The necessity of the amendment to this administrative regulation: The amendment brings the language used in the definitions up to date with recent statutory changes.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the language used in the administration of the fund to match current statutory definitions and modifies the amount of the stipend to match the statutory allowance.
  - (d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the regulation up to date with current statutes
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of regulations updated to match the statutory changes.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List 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 changes will be necessary for compliance.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the individual law enforcement agencies will not be affected.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of updated regulatory language.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
  - (a) Initially: The result should be no fiscal impact.
  - (b) On a continuing basis: The result should be no fiscal impact.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds, flowing from the Kentucky Law Enforcement Foundation Program Fund, will be the ongoing source of 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 are no increased fees associated with this amendment. No increased funding is anticipated.
- (8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: No  
(9) TIERING: Is tiering applied? Tiering is 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? Law enforcement agencies and the Department of Criminal Justice Training 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 15.410 – 15.510, KRS 15.450.

(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. Expenditures are anticipated to be the same as prior to amendment.

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

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

(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? The cost is expected to be the same as prior to the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Criminal Justice Training  
(Amendment)

**503 KAR 5:100. Disbursement of salary supplement funds; audits.**

RELATES TO: KRS 15.460, 15.470, 15.490, 15.500(1)

STATUTORY AUTHORITY: KRS 15.450(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.460, 15.470 and 15.500(1) pertain to disbursements from the Law Enforcement Foundation Program Fund; KRS 15.490(1) pertains to reports from local units to the Justice Cabinet; and KRS 15.490(2) pertains to payroll deductions. This administrative regulation expands on these disbursement, reporting, and recordkeeping provisions.

Section 1. Disbursement from Fund to Local Unit. (1) Local unit's entitlement. Upon becoming eligible to participate in the fund, a local unit is entitled to receive annually, from the fund, salary supplement funds of \$4,000 [~~\$2,500~~] for each qualified police officer it employs. If the fund is insufficient to provide funds at this rate, the cabinet shall establish the rate to be paid to the local units.

(2) Procedural requirements.

(a) A participating local unit shall submit to the fund administrator, within five (5) working days of the action, personnel action forms containing the information (hirings, firings, etc.) required by the fund administrator or his designee in order to determine the amount of salary supplement funds to be disbursed to the local unit.

(b) The fund administrator or his designee shall mail fund checks

promptly to all eligible local units which have submitted timely personnel action forms.

(c) The local unit shall be required to acknowledge, to the fund administrator, receipt of funds on a form provided for this purpose. (These forms are available from the Kentucky Law Enforcement Foundation Program Fund, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building [407 Stratton Building, Eastern Kentucky University], Richmond, Kentucky 40475.)

(d) Local units shall provide such other information and reports as the fund administrator or his designee reasonably deems necessary.

Section 2. Disbursement from Local Unit to Police Officer. (1) Purposes for which local unit may use funds. The funds shall be used only as a cash salary supplement to police officers who meet the qualifications established by statute and by this administrative regulation. The funds shall not be used to supplant existing salaries or as a substitute for normal salary increases. The funds shall be received, held, and expended only in accordance with the law.

(2) Qualifications for receiving a salary supplement. In order to be entitled to receive a salary supplement from a local unit, a person must be:

(a) A "police officer" - that is, a "full-time member" of a "lawfully organized department" of county, urban-county, or city government (for definitions, see 503 KAR 5:080); and

(b) Employed by a local unit of government which is eligible to participate in the fund. (For participation requirements for local units, see 503 KAR 5:090.)

(3) Determining the amount of the salary supplement.

(a) Each police officer shall be paid by his local unit that amount of money which is paid from the fund to the local unit because of his qualifications. Thus a qualified officer who is employed "full time" for an entire year shall entitle his local unit to receive \$4,000 [~~\$2,500~~] (or, if the fund is insufficient to provide funds at this rate, the amount established by the cabinet), and he shall be paid this same amount by his local unit.

(b) Funds shall be disbursed from the fund to local units on a monthly basis, and a police officer's salary supplement shall be determined on a monthly basis, [~~for example, \$208.33 per month if the annual supplement is \$2,500.~~] If an officer works less than a full month, his salary supplement shall be determined on an hourly basis. The hourly rate shall be determined by dividing the annual supplement by 2,080 (fifty-two (52) weeks multiplied by forty (40) hours per week); ~~therefore, if the annual supplement is \$2,500, the hourly supplemental rate shall be one (1) dollar and twenty (20) cents for each hour he receives salary from his local unit.~~

(c) Salary, for salary supplement purposes, shall include pay for leave (such as annual, sick, compensatory, military, civil or educational leave). Leave without pay shall not be included.

(d) A police officer shall be paid a salary supplement while suspended from duty with pay, but shall not be paid one while suspended without pay.

(e) A police officer shall not be paid a salary supplement for pay for overtime work (hours over forty (40) per week).

(f) A police officer, provided he is qualified to participate in the fund during the period, shall be paid a salary supplement for that period of time during which he is not receiving a salary but is receiving workers' compensation benefits. This salary supplement shall be determined at the same monthly rate and, if a time period of less than a month is involved, hourly rate as is provided for in subsection (3)(b) of this section.

(g) The local unit shall keep hourly-employment records to document:

1. That a police officer is "full time" and thus qualifies for a salary supplement, and;

2. The salaried hours (work, leave with pay, suspension with pay, etc.) of each officer receiving a salary supplement.

(4) Payroll deductions. Under KRS 15.490(2), local units shall include the salary supplement paid to a police officer from the fund as a part of the officer's salary in determining all payroll deductions.

Section 3. Audit of Local Unit. (1) The cabinet shall have the authority to audit, or to authorize an audit of, local units receiving salary supplement funds.

(2) For audit purposes, the local unit shall maintain accurate financial records which shall include, but not be limited to, books of original entry, source documents supporting accounting transactions, a general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records.

(3) These records shall be retained by the local unit until destruction is authorized by the cabinet.

NICOLAI JILEK, Commissioner

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2021, at 1:00 p.m. at the Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Eastern Kentucky University Campus, 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 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: Deidra C. Douglas, Assistant General Counsel, Justice and Public Safety Cabinet, Department of Criminal Justice Training, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-8229, cell (606) 224-3080, fax (502) 564-6686, email deidra.douglas@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deidra Douglas

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides definitions for KAR Title 503 Chapter 5.

(b) The necessity of this administrative regulation: KRS 15.450 requires the secretary of the Justice and Public Safety Cabinet or his or her designee to administer the Kentucky Law Enforcement Foundation Program Fund. This administration provides definitions for the regulations governing that process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.450(1) allows the secretary or his or her designated representative to promulgate administrative regulation as necessary to carry out the responsibilities delineated under KRS 15.410 to 15.510.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terms used in the administration of the 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: The amendment brings the language used in the definitions up to date with recent statutory changes.

(b) The necessity of the amendment to this administrative regulation: The amendment brings the language used in the definitions up to date with recent statutory changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the language used in the administration of the fund to match current statutory definitions and modifies the amount of the stipend to match the statutory allowance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the regulation up to date with current statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of regulations updated to match the statutory changes.

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

(a) List 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 changes will be necessary for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the individual law enforcement agencies will not be affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All law enforcement agencies that employ certified peace officers in the Commonwealth will have the benefit of updated regulatory language.

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

(a) Initially: The result should be no fiscal impact.

(b) On a continuing basis: The result should be no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current source of funds, flowing from the Kentucky Law Enforcement Foundation Program Fund, will be the ongoing source of 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 are no increased fees associated with this amendment. No increased funding is anticipated.

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

(9) TIERING: Is tiering applied? Tiering is 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? Law enforcement agencies and the Department of Criminal Justice Training 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 15.410 – 15.510, KRS 15.450.

(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. Expenditures are anticipated to be the same as prior to amendment.

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

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

(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? The cost is expected to be the same as prior to the amendment.

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

regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**TRANSPORTATION CABINET  
Department of Highways  
Division of Traffic Operations  
(Amendment)**

**603 KAR 4:035. Logo sign panels[signs]; placement along fully controlled and partially controlled access highways.**

RELATES TO: KRS Chapter 45A, 177.0734 - 177.0738

STATUTORY AUTHORITY: KRS 177.0736, 177.0738, 177.0739

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.0736 and 177.0738 require the Commissioner of the Department of Highways to promulgate administrative regulations for the erection of specific service signs on fully controlled access highways and at interchanges on partially controlled access highways. This administrative regulation establishes the criteria to be followed in the erection and maintenance of specific service signs and attached logo sign[s] panels.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Highways. ["Clear zone" means the area beginning at the edge of the traveled way that is available for safe use by errant vehicles.]

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A [and 600-KAR-6:070] to administer the specific service signing program in Kentucky. The activities of a contractor include:

- (a) Marketing;
- (b) Determining business eligibility;
- (c) Maintenance, erection, and removal of the specific service signs; and
- (d) Installation and removal of logo sign[s] panels.

(3) "Contract year" means a fiscal year that is July 1 through the following June 30.

(4) "Cover" means to place a protective shield over a logo sign panel to prohibit viewing of the sign.

(5) "Department" is defined by KRS 189.010(1). ["Fully controlled access highway" is defined by KRS 177.0734(1).]

(6) "Fully controlled access highway" is defined by KRS 177.0734(1). ["Highway guide sign" means an official highway sign that is erected by the Department of Highways to:

- (a) Give directions;
- (b) Furnish advance notice of the approach to an intersection or interchange;
- (c) Direct drivers into appropriate lanes;
- (d) Identify a route;
- (e) Indicate the distance to a destination; or
- (f) Provide information or assistance to the traveling public

including:

- 1. Motorist services;
- 2. Rest areas;
- 3. Scenic areas; or
- 4. Recreational areas.]

(7) "Interchange" means a system of interconnecting roadways providing for traffic movement between two (2) or more highways that do not intersect at grade.

(8) "Logo signs" or "logo sign panels" is defined by KRS 177.0734(2).

(9) "MUTCD" means Manual on Uniform Traffic Control Devices for Streets and Highways incorporated by reference in 603 KAR 5:050. ["Motorist service" means a place of business providing one (1) or more MUTCD eligible service such as gas, food, lodging, tourist attractions, or camping facilities.]

(10) "Partially controlled access highway" is defined by KRS 177.0734(4). ["MUTCD" means Manual on Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.]

(11) "Specific service signs" is defined by KRS 177.0734(3). ["Partially controlled access highway" is defined by KRS 177.0734(4).]

(12) "Specific service trailblazer" means a sign installed along a crossroad to give additional guidance to facilities that have logo sign panels displayed at an interchange. ["Specific service signs" is defined by KRS 177.0734(3).]

(13) "Trailblazing sign" means a sign that provides directional guidance to a particular cultural or recreational site from other highways in the vicinity.]

Section 2. General Provisions. (1) The commissioner [Commissioner of the Department of Highways] shall authorize the placement of specific service signs with logo sign[s] panels within the right-of-way of fully controlled and partially controlled access highways.

(2) The Department [of Highways] shall control the erection and maintenance of specific service and logo sign[s] panels in accordance with the MUTCD.

Section 3. Application for[and] Contracts for Specific Service Signs. (1) A business or facility shall apply with the [cabinet's] contractor for a logo or specific service sign panel using the Application to Participate, incorporated by reference, that is provided by the contractor.

(2) The contractor shall process an Application to Participate as established in Section 5 of this administrative regulation.

Section 4. Location and Erection of Specific Service Signs. (1) At an interchange with a request for more types of services than signs permitted by the MUTCD, service signing priority shall be in the order "gas", "food", and "lodging", with the remaining services and attractions determined by distance from the interchange. [A specific service sign shall be located and erected according to the MUTCD in Section 2J]

(2) If there is sufficient space available in a single direction for the maximum number of specific service signs allowed by the MUTCD, the signs closest to the interchange shall be for "gas", "food", and "lodging." [At an interchange with a request for more types of services other than signs permitted by the MUTCD, service signing priority shall be in the order of "gas", "food", and "lodging", with the remaining services and attractions determined by distance from the interchange.]

(3) If a business ceases to exist or is not in operation for thirty (30) days, the logo sign panel shall be immediately covered or removed by the contractor. [If there is sufficient space available in a single direction for the maximum number of specific signs permitted by the MUTCD, the signs closest to the interchange shall be for "gas", "food", and "lodging".]

(4) A business that operates on a seasonal basis shall notify the contractor in writing at least thirty (30) days before the closing occurs so the contractor can remove or cover logo sign[s] panels during the off season. [A specific service sign shall be located to avoid visual conflict with other signs within the highway right-of-way.]

(5) Specific service signs that have unprotected sign supports located within the clear zone shall be of a breakaway design.

(6) If a business ceases to exist or is not in operation for thirty (30) days, the logo sign shall be immediately covered or removed by the contractor.

(7) A business that operates on a seasonal basis shall remove or cover a permitted logo sign during the off season and shall notify the Department of Highways' contractor in writing thirty (30) days before the opening or closing occurs.]

Section 5. Business Criteria, Eligibility, and Priority. (1) A business or facility that applies with the [cabinet's] contractor for a logo or specific service sign panel as established in Section 3 of this administrative regulation shall be eligible, as established by the MUTCD guidance, for placement of a logo sign panel on a specific service sign. [A motorist service business shall be eligible for placement of a logo sign on a specific service sign as established in the MUTCD, Section 2J.]

(2) An applicant that applies for a FOOD logo sign panel and

that meets MUTCD requirements shall be designated a tier two (2) applicant.

(3) In an urban area where space for a logo sign panel is limited or where specific service [logo] signs are full, an applicant for a logo sign panel that meets all of the [following] requirements established in paragraphs (a) through (c) of this subsection shall be designated a tier one (1) applicant.[:]

(a) The applicant shall be [is] in continuous operation for fourteen (14) hours a day, six (6) days a week.[:]

(b) The establishment shall have [Has] a seating capacity for a minimum of fifty (50) guests at sit-down, eat-in service.[:and]

(c) The establishment shall be [Is] located within three (3) miles of the interchange.

(4)(a) A business or facility that applies for a logo sign panel as established in Section 3 of this administrative regulation [An application for a logo] shall be processed in the order received if space is available on the specific service sign.

(b) If specific service signs are [a logo sign is] full, an applicant shall be placed on a waiting list.

(c) A business that is fifteen (15) miles [(24.15 kilometers)] or more from the interchange shall not qualify for placement of a logo sign panel.[:]

(d) ~~A business that is fifteen (15) miles (24.15 kilometers) or more from the interchange with a logo sign in place on January 1, 1994, may continue to display the logo sign until the business fails to meet MUTCD criteria.[:]~~

(5) A business offering more than one (1) specific [motorist] service may display a LOGO on more than one (1) specific service sign if space is available.

Section 6. Duration. (1) A motor service vendor, except for a food[food] vendor, that obtains a logo sign panel shall retain that logo sign panel until the motor service vendor no longer pays its annual fee or no longer meets eligibility [MUTCD] requirements.

(2) An eligible food business with a higher tier pursuant to Section 5 of this administrative regulation, may [shall be permitted to] display its sign at the beginning of the next contract year, in the place of a currently displayed, lower tiered business if:

(a) The specific service sign is fully utilized; and

(b) It files an application by April 1. [:]

(3) The food business with the lower tier that is the greatest distance from the interchange shall have its logo sign panel removed at the end of the current contract year.

(4) If more than one (1) tier one (1) applicant applies for an available space for a food logo sign panel, the applicant who applied first shall receive the logo sign panel.

Section 7. Fees. (1)(a) The qualifying business shall pay to the [cabinet's] contractor an annual fee of \$1,200 [\$600] per sign [direction], in advance for each logo sign panel placed for gas, food, lodging, and tourist attractions [on the fully controlled access highway for gas, food, and lodging] and \$600 per sign [\$300] for camping [and tourist] attractions.

(b) The annual fee for the first year shall accompany the initial application.

(c) If the first contract is for less than one (1) year, the first year's annual fee shall be prorated on a monthly basis, with each portion of a month the logo sign panel is up requiring payment of one-twelfth (1/12) of the fee.

(d) The annual fee and application for renewal shall be due no later than forty-five (45) days prior to the annual renewal date.

(e) The payment of this fee shall guaranty that the logo sign panel shall be displayed for one (1) contract year or portion of the first contract year if [as long as] the business is not in violation of its agreement with the [Department of Highways'] contractor or the eligibility criteria established in the MUTCD.

(2) If a logo sign panel for a business is removed or covered by the contractor, a fee of \$300 [\$400] shall be charged for the reinstallation or uncovering of each logo sign panel [the sign for each business at each interchange].

(3) The qualifying business shall be responsible for damage to its logo sign panel caused by an act of vandalism or natural causes requiring repair or replacement of a logo sign panel.

(4) The qualifying business shall provide a new or redesigned [renovated] logo sign panel if the displayed sign:

(a) Would misinform the traveling public;

(b) Is badly faded or in a state of dilapidation; or

(c) Is in need of repair or replacement due to natural causes or an act of vandalism.

Section 8. Specific Service Trailblazers [Trailblazing Signs for Campgrounds]. (1) The department shall review any requests from the contractor for the addition of trailblazers and make a determination based on the standards identified in the MUTCD. If the department approves the contractor's request, the contractor may install specific service trailblazers on the crossroads and highways within the vicinity of an interchange if additional guidance is necessary for motorists to locate a business or facility with a logo sign panel. [A campground fifteen (15) miles (24.15 kilometers) or less from the centerline of a fully controlled access highway shall be eligible for a new trailblazing sign.]

(2) Specific service trailblazers shall be located a maximum of 500 feet in advance of intersections where motorists are required to turn in order to arrive at an eligible business or facility. [One (4) specific service trailblazing sign with a logo may be erected for each business, and the sign shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.]

(3) A specific service trailblazer [trailblazing sign] shall not be erected or displayed if the eligible business or facility [applicant business] is clearly visible from the roadway or if its access is readily apparent [within 300 feet (91.5 meters) of the intersection on the fully controlled access highway].

(4) Other traffic control devices shall take precedence over the location and installation of specific service trailblazers.

Section 9. Measurements. Measurements shall be taken from the end of the exit ramp to the main entrance of the business or facility for evaluating eligibility [in the selection of a qualified business] for a logo sign panel.

Section 10. Logo Sign Panel Contract.

(1)(a) A logo sign panel and contract shall be subject to review by the department [Transportation Cabinet].

(b) A contract shall be revoked for a failure to comply with the requirements established in the MUTCD or in this administrative regulation, including nonpayment by a participating business.

(c) If a contract is revoked for cause, the prepaid fees or[for] a contract year or a portion thereof shall not be refunded.

(2) The [Department of Highways'] contractor shall notify the business in writing of a violation.

(3) The [Department of Highways] contractor shall take immediate action to cancel the contract and remove, replace, or cover the logo sign[s] panels if a business has been issued a second notice of noncompliance within a single contract year.

Section 11. Appeal to the commissioner [Commissioner of Highways] for Exemption. (1) The commissioner [Commissioner of Highways] may, pursuant to this administrative regulation and KRS 177.0736 and 177.0738, [shall] grant an exemption to a business from the necessity of complying with a requirement established in this administrative regulation if:

(a) The exemption is in the public interest; and

(b) The business conforms to MUTCD [the Federal Highway Administration] standards for specific service signs.

(2) In qualifying for a logo sign panel, a business that conforms to MUTCD requirements and the requirements established in this administrative regulation shall be given priority [a preference] over a business not conforming to the requirements.

(3) An appeal by a business of the denial of a request for an exemption shall be filed as established in Section 13 of this administrative regulation.

Section 12. Encroachment Permits. The [Department of Highways'] contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for a specific service sign proposed to

be erected, modified, or removed from state-owned right-of-way.

Section 13. Appeal of Department's ~~[of Highways]~~ Action. (1) A business or person aggrieved by the action taken by the ~~department [Department of Highways]~~ or its contractor in administering this administrative regulation may request a ~~formal~~ hearing before the ~~commissioner [Commissioner of the Department of Highways]~~.

(2) The request for a formal hearing shall:

(a) Be filed in writing to the Commissioner, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622; and

(b) State the nature of the complaint and the grounds for the appeal.

(3)(a) The Office of Legal Services for the Kentucky Transportation Cabinet shall assign the matter to a hearing officer.

(b) The hearing officer shall issue a recommended order to the ~~commissioner [Commissioner of the Department of Highways]~~.

(c) The ~~commissioner [Commissioner of the Department of Highways]~~ shall issue a final order in the matter.

(4) A party aggrieved by the final order of the ~~commissioner [Department of Highways]~~ may appeal. The appeal shall be in accordance with the provisions of KRS 13B.140.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application to Participate" by Kentucky Interstate Logos, available electronically at <https://kentucky.interstatelogos.com/state/application.aspx>.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Administrative Regulations Filings Web site at <https://transportation.ky.gov/LegalServices/Pages/Filings.aspx>.

JIM GRAY, Secretary

JAMES E. BALLINGER, State Highway Engineer

APPROVED BY AGENCY: September 14, 2021

FILED WITH LRC: September 15, 2021 at 9:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 p.m. EST on November 22, 2021 via video teleconference. Members of the public wishing to attend may utilize the following link:

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

<https://bluejeans.com/380336140/7862>

Or Telephone:

+1.408.419.1715 (United States (San Jose))

+1.408.915.6290 (United States (San Jose))

Meeting ID: 380 336 140

Participant Passcode: 7862

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria to be followed in the erection and maintenance of specific service signs and attached logo signs on fully controlled access highways and at interchanges on partially controlled access highways.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 177.0736 and 177.0738 require the Commissioner of the Department of Highways to promulgate administrative regulations for the erection of specific service signs on fully controlled access highways and at interchanges on partially controlled access highways.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the criteria to be followed in the erection and maintenance of specific service signs and attached logo signs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria to be followed in the erection and maintenance of specific service signs and attached logo signs as it relates to KRS 177.0736 and 177.0738.

(2) If 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 fees, definitions, the reliance on the MUTCD for standards, and the requirements for specific service trailblazers. It also brings some language into compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment updates certain language for KRS Chapter 13A compliance, but it also raises the fees so that the signs to be more on par with neighboring states.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing and updating the criteria to be followed in the erection and maintenance of specific service signs and attached logo signs in satisfaction of KRS 177.0736 and 177.0738.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will establish the criteria to be followed in the erection and maintenance of specific service signs and attached logo signs in satisfaction of KRS 177.0736 and 177.0738.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Transportation Cabinet, Department of Highways, Division of Traffic Operations; owners of gas, food, lodging, tourist attractions, or service centers seeking or maintaining a logo sign on right-of-way on fully controlled or partially controlled access highways; Department of Highways contractors; Tourism, Arts, and Heritage Cabinet; local governments seeking logo signs; trailblazing locations seeking logo signs; current holders of logo signs

(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: Participating entities shall sign a contract that is subject to review by the Department of Highways; participating entities must pay fees as established in this administrative regulation, pay for damage caused to its logo sign, and notify the Department of Highways contractor if the logo sign is no longer needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This administrative regulation amends the following fees: \$600 per sign for camping attractions; \$1,200 per sign for gas, food, lodging, and tourist attractions; and \$300 for reinstalling or uncovering of a logo sign.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, entities subject to this regulation



are likely to have increased visibility to the traveling public and may potentially generate additional revenue.

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

(a) Initially: This administrative regulation is not expected to result in additional cost to the administrative body.

(b) On a continuing basis: This administrative regulation is not expected to result in additional 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: This administrative regulation is not expected to result in additional cost; therefore, no funding source is 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: One of the primary changes in this amendment is in regards to the increase in fees. The Department is amending this regulation to increase the fees slightly so as to be comparable with sister states in administering a program such as this. Please see the attached chart for reference.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: One of the primary changes in this amendment is in regards to the increase in fees. This administrative regulation amends the following fees: \$600 per sign for camping attractions; \$1,200 per sign for gas, food, lodging, and tourist attractions; and \$300 for reinstalling or uncovering of a logo sign. The Department is amending this regulation to increase the fees slightly so as to be comparable with sister states in administering a program such as this. Please see the attached chart for reference.

(9) TIERING: Is tiering applied? Yes, tiering is applied. An example of the need for tiering is mentioned in Section 5(3) (i.e., in urban areas where space for a logo sign is limited or where specific service signs are full, tiering is applied pursuant to criteria established in Section 5). Tiering is also needed to indicate which applicant shall receive a logo if more than one tier 1 applicant applies for an available space for a food logo.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Transportation Cabinet, Department of Highways, Division of Traffic Operations; owners of gas, food, lodging, tourist attractions, or service centers seeking or maintaining a logo sign on right-of-way on fully controlled or partially controlled access highways; Department of Highways contractors; Tourism, Arts, and Heritage Cabinet; local governments seeking logo signs; trailblazing locations seeking logo signs; current holders of logo signs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.0736, 177.0738, 177.0739.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 as amended is expected to generate revenue for state government since the fees are increasing slightly. Fees are increasing from \$600 to \$1,200 for gas, food, lodging, and tourist attractions; from \$300 to \$600 for camping attractions; and from \$100 to \$300 for reinstalling or uncovering. The estimated revenue that this administrative regulation will generate for the first full year the administrative regulation is in effect is approximately \$1,545,705.00.

(b) How 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 as amended is expected to generate revenue for state government since the fees are increasing slightly. Fees are increasing from \$600 to \$1,200 for gas, food, lodging, and tourist attractions; from \$300 to \$600 for camping attractions; and from \$100 to \$300 for reinstalling or uncovering. The estimated revenue that this administrative regulation will generate for subsequent years is approximately \$1,545,705.00.

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to generate additional cost.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to generate additional cost.

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

Revenues (+/-): The generation of revenue is anticipated to be approximately \$1,545,705.00.

Expenditures (+/-): This administrative regulation is not expected to generate additional cost.

Other Explanation: n/a

#### KENTUCKY STATE UNIVERSITY (Amendment)

##### 745 KAR 1:035. Procurement procedures.

RELATES TO: KRS 164A.575

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.560 vests the responsibility with the governing board of a public institution of public higher education to elect to perform financial management functions in accordance with KRS 164A.555 to 164A.630 by issuing administrative regulations. It also permits the board to delegate these responsibilities to an institution official. The function of this administrative regulation shall be to implement the provisions of KRS 164A.560(1) and 164A.575 at Kentucky State University.

Section 1. The Board of Regents of Kentucky State University, under the authorization of KRS 164A.560, elects to perform the financial management functions specified in KRS 164A.575, Sections (1), (2), (3), (4), (5), (6), (7), (8), (9) [(49)], (11), [and] (12), (13), (14), (15), (16), (17), and (18).

Section 2. The president of the university shall be authorized by the Board of Regents of Kentucky State University to perform the financial management functions specified in KRS 164A.575, Sections (1), (2), (3), (4), (5), (6), (7), (8), (9) [(49)], (11), [and] (12), (13), (14), (15), (16), (17), and (18).

Section 3. The president of the university shall be authorized by the Board of Regents of Kentucky State University to negotiate with vendors as authorized by KRS 164A.575[(2)].

CLARA ROSS STAMPS, Acting President

ELAINE FARRIS, Chair

APPROVED BY AGENCY: August 19, 2021

FILED WITH LRC: August 19, 2021 at 3:37 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:00 a.m., at the Julian M. Carroll Academic Services Building, Boardroom, 400 Main 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. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments shall be accepted until November 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: Gregory M. Rush, Vice President for Finance and Administration, Finance and Administration, Julian M. Carroll Academic Services Building, Suite 201, 400 East Main Street, Frankfort, Kentucky 40601, phone (502) 597-6343, and email Gregory.Rush@kysu.edu.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gregory M. Rush

(1) Provide a brief summary of: 745 KAR 1:035

(a) What this administrative regulation does: Establishes procurement procedures for a public institution of higher education.

(b) The necessity of this administrative regulation: The function of this administrative regulation shall be to implement the provisions of KRS 164A.560(1) and 164A.575 at Kentucky State University.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164A.560 Election by institution to perform in accordance with KRS 164A.555 to 164A.630 states, "(1) The governing boards of the postsecondary educational institutions electing to perform in accordance with KRS 164A.555 to 164A.630 regarding the acquisition of funds, accounting, purchasing, capital construction, and affiliated corporations shall do so by regulation. The responsibility for this election is vested with the governing boards, any other statute to the contrary notwithstanding. The governing board may delegate these responsibilities by regulation to appropriate officials of the institution." This administrative regulation reflects the authorizing statute by permitting the Kentucky State University Board of Regents to delegate the responsibilities to an institution official, the President.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation indicates the elected financial management functions by the BOR of Kentucky State University: KRS 164A.575, Sections (1), (2), (3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17) and (18).

(2) If 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 include deletion of section (10) and addition of sections (9), (13), (14), (15), (16), (17), and (18), to align with the revisions to the statute.

(b) The necessity of the amendment to this administrative regulation: Aligns the administrative regulation with the revisions to KRS 164A.575.

(c) How the amendment conforms to the content of the authorizing statutes: Amendments to KRS 164A.575 resulted in the need to amend this administrative regulation for consistency with the applicable financial management functions of Kentucky State University.

(d) How the amendment will assist in the effective administration of the statutes: The amendment brings the administrative regulation into alignment with the applicable statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky State University, Board of Regents of Kentucky State University, the President of Kentucky State University.

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

(a) List 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 aligns the administrative regulation with the applicable statute; no actions needed by the entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost for entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alignment of this administrative regulation with the applicable statute.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No establishment or increase of fees.

(9) TIERING: Is tiering applied? Tiering was not used as tiering is not applicable to this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. KRS 164A.560, KRS 164A.555 to KRS 164A.630, KRS 164A.575.

(a) How much 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 impact on expenditures and revenue. No revenue generation.

(b) How 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 generation.

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

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: No expenditures or revenues associated with 745 KAR 1:035. Procurement Procedures.

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

##### Division of Financial Standards and Examinations (Amendment)

#### 806 KAR 5:025. Credit for reinsurance.

RELATES TO: KRS 304.5-140

STATUTORY AUTHORITY: KRS 304.2-110, 304.5-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. KRS 304.5-140 authorizes the commissioner to promulgate administrative regulations to implement the provisions of that section. This administrative regulation implements KRS 304.5-140 by establishing credit for reinsurance.

Section 1. Definitions.

(1) "Beneficiary" means:

(a) The entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law; and

(b) If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary shall be the court appointed domiciliary receiver, including the conservator, rehabilitator, or liquidator.

(2) "Evergreen clause" means a provision in a letter of credit or its confirmation that prevents the expiration of the letter of credit or its confirmation without written notice to the beneficiary from the issuing or confirming bank or trust company as provided by this administrative regulation.

(3) "Grantor" means:

(a) The entity that has established a trust for the sole benefit of the beneficiary; and

(b) If the trust is established in conjunction with a reinsurance agreement, the unlicensed, unaccredited assuming insurer.

(4) "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means.

(5) "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that:

(a) Represents ownership of one (1) or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation, that:

1. Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

2. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Sections 1709 and 1715b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Section 1703; or

(b) Is secured by one (1) or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and by its terms provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of paragraph (a) of this subsection.

(6) "Obligations" means:

(a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) Reserves for reinsured losses reported and outstanding;

(c) Reserves for reinsured losses incurred but not reported; and

(d) Reserves for allocated reinsured loss expenses and unearned premiums.

(7) "Promissory note" means, when used in connection with a manufactured home, a loan, or advance or credit sale, as evidenced by a retail installment sales contract or other instrument.

(8) "Solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

Section 2. Reinsurer Licensed in Kentucky. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is authorized to transact insurance or reinsurance in Kentucky as of any date on which statutory financial statement credit for reinsurance is claimed.

Section 3. Accredited Reinsurers. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Kentucky as of the date on which statutory financial statement credit for reinsurance is claimed.

(1) To gain accreditation, a reinsurer shall:

(a) File a properly executed Form AR-1 as evidence of its submission to Kentucky's jurisdiction and authority to examine its books and records;

(b) File a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one (1) state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;

(c) File annually a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(d) Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of the qualifications established by Section 3(1), the commissioner may suspend or revoke the accreditation.

(3) Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

Section 4. Reinsurer Domiciled in Another State. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that satisfies all requirements of KRS 304.5-140(3)(c) and files a properly executed Form AR-1.

Section 5. Reinsurers Maintaining Trust Funds. (1) The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount in accordance with this section in a qualified U.S. financial institution as defined in KRS 304.5-140(1)(b), for the payment of valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

(2) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall satisfy all requirements of KRS 304.5-140(1)(d)(5), and (6), and include that contested claims shall be valid and enforceable out of funds in trust to the extent

remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.

(3) (a) Notwithstanding any other provision in the trust agreement, if the trust fund is inadequate because it contains an amount less than the amount required by this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed, and claims shall be filed with and valued, by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(4) Liabilities shall include:

(a) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

1. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
2. Reserves for losses reported and outstanding;
3. Reserves for losses incurred but not reported;
4. Reserves for allocated loss expenses; and
5. Unearned premiums.

(b) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

1. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
2. Aggregate reserves for accident and health policies;
3. Deposit funds and other liabilities without life or disability contingencies; and
4. Liabilities for policy and contract claims.

(5) Assets deposited in trusts established pursuant to KRS 304.5-140(3)(d) and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution, as defined in KRS 304.5-140(1)(a), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in KRS 304.5-140(1)(a), and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust shall not exceed five (5) percent of total investments. No more than twenty (20) percent of the total of the investments in the trust shall be foreign investments authorized under paragraphs (a)5., (c), (e)2., or (f) of this subsection, and no more than ten (10) percent of the total of the investments in the trust shall be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of KRS 304.5-140 shall be invested only as follows:

(a) Government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by:

1. The United States or by any agency or instrumentality of the United States;
2. A state of the United States;
3. A territory, possession, or other governmental unit of the United States;
4. An agency or instrumentality of a governmental unit referred

to in subparagraphs 2. and 3. of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

5. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(b) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution, other than an insurance company, or that are assumed or guaranteed by a solvent U.S. institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

1. Are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

2. Are insured by at least one (1) authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

3. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(c) Obligations issued, assumed, or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.[:]

(d) An investment made pursuant to the provisions of paragraph (a), (b), or (c) of this subsection shall be subject to the following additional limitations:

1. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five (5) percent of the assets of the trust;

2. An investment in any one (1) mortgage-related security shall not exceed five (5) percent of the assets of the trust;

3. The aggregate total investment in mortgage-related securities shall not exceed twenty-five (25) percent of the assets of the trust; and

4. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs (b)1. and (b) 3. of this subsection, but shall not exceed two (2) percent of the assets of the trust.

(e) Equity Interests.

1. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

a. Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

b. The equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one (1) percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

2. Investments in common shares of a solvent institution

organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

a. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

b. The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

3. An investment in or loan upon any one (1) institution's outstanding equity interests shall not exceed one (1) percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten (10) percent of the assets in the trust.[-]

(f) Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(g) Investment Companies.

1. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

a. Invests at least ninety (90) percent of its assets in the types of securities that qualify as an investment under paragraph (a), (b), or (c) of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in paragraph (a), (b), or (c) of this subsection; or

b. Invests at least ninety (90) percent of its assets in the types of equity interests that qualify as an investment under paragraph (e)1. of this subsection;

2. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

a. An investment in an investment company qualifying under subparagraph 1.a. of this paragraph shall not exceed ten (10) percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five (25) percent of the assets in the trust; and

b. Investments in an investment company qualifying under subparagraph 1.b. of this paragraph shall not exceed five (5) percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph (e)1. of this subsection.

(h) Letters of Credit.

1. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

2. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where a draw would be required shall be deemed to be negligence, willful misconduct, or both.

(6) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 7 of this administrative regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

Section 6. Certified Reinsurers. (1) The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding

insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of KRS 304.5-140(3)(e) and Sections 10, 11, or 12 of this administrative regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(a) Ratings Security Required:

Secure – 1	0%;
Secure – 2	10%;
Secure – 3	20%;
Secure – 4	50%;
Secure – 5	75%; and
Vulnerable –6	100%.

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner shall require the certified reinsurer to post 100% security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverable for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables shall only be included in the deferral for [for only] the [following] lines of business set forth in KRS 304.5-140(3)(m)3. [as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence shall be included in the deferral:

- 1. Line 1: Fire;
- 2. Line 2: Allied Lines;
- 3. Line 3: Farm owners multiple peril;
- 4. Line 4: Homeowners multiple peril;
- 5. Line 5: Commercial multiple peril;
- 6. Line 9: Inland Marine;
- 7. Line 12: Earthquake; and
- 8. Line 21: Auto physical damage.]

(e) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(f) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(2) Certification process.

(a) Upon receipt of an application for certification, the commissioner shall promptly post notice at insurance.ky.gov, including instructions on how members of the public may respond to the application.

(b) No fewer than thirty (30) days after posting the notice required by paragraph (a) of this subsection, the commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer, which shall include the rating assigned the certified reinsurer in accordance with subsection (1) of this section.

(c) To be eligible for certification, the assuming insurer shall:

1. Be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to subsection (3) of this section.

2. Maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with subparagraph (d)8. of this subsection. This requirement may also be satisfied by an association including incorporated and individual

unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

3. Maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings shall be one (1) factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- a. Standard & Poor's;
- b. Moody's Investors Service;
- c. Fitch Ratings;
- d. A.M. Best Company; or
- e. Any other Nationally Recognized Statistical Rating Organization.

4. Comply with any other requirements reasonably imposed by the commissioner.

(d) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors considered as part of the evaluation process shall include:

1. The certified reinsurer's financial strength rating from an acceptable rating agency. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies shall result in loss of eligibility for certification;

2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

3. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F or Schedule S;

4. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F or Form CR-S;

5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

6. Regulatory actions against the certified reinsurer;

7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph 8. of this paragraph;

8. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion, as filed with the non-U.S. jurisdiction supervisor, with a translation into English. Upon the initial application for certification, the commissioner shall consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;

9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

10. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

11. Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under subparagraph (d)5. of this subsection, of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the

commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one (1) rating level under subparagraph (d)1. of this subsection, if the commissioner finds that:

1. More than fifteen (15) percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or

2. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.

(f) The assuming insurer shall submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(g) The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that is not otherwise public information subject to disclosure shall be exempted from disclosure under the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

1. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefore;

2. Annually, Form CR-F or CR-S, as applicable;

3. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (4) of this section;

4. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion, as filed with the certified reinsurer's supervisor, with a translation into English. Upon the initial certification, audited financial statements for the last two (2) years filed with the certified reinsurer's supervisor;

5. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

6. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

7. Any other information that the commissioner may reasonably require.

(h) Change in Rating or Revocation of Certification.

1. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (d)1. of this subsection.

2. The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

3. If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded

by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

4. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 7 of this administrative regulation in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 5 of this administrative regulation, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer shall not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(i) The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) Qualified Jurisdictions. (a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) To determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and shall consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of the jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include:

1. The framework under which the assuming insurer is regulated.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

3. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

5. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

6. The history of performance by assuming insurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction shall not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

8. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

9. Any other matters deemed relevant by the commissioner.

(c) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list

of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsection (3)(b)1. to 9. of this section

(d) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(4) Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR1 and any additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten (10) days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (2)(h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time by providing written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with subsection (2)(h) of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(5) Mandatory Funding Clause. In addition to the clauses required under Section 14[13] of this administrative regulation, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(6) The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Section 7. (1) Pursuant to KRS 304.5-140(4), the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of KRS 304.5-140(3) in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in KRS 304.5-140(1)(b). This security shall be in the form of any of the following:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in KRS 304.5-140(1)(a), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of

issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Section 14[43] of this administrative regulation and the applicable portions of Sections 10, 11, or 12 of this administrative regulation have been satisfied.

Section 8. Requirements for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee, which shall be a qualified United States financial institution as defined in KRS 304.5-140(1)(b).

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3)(a) Except as provided by paragraph (b) of this subsection, assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(b) A bank may apply for the executive director's permission to use a foreign branch office of the bank as trustee for trust agreements. If the commissioner ~~[executive director]~~ approves the use of a foreign branch office as trustee, its use shall be approved by the beneficiary in writing. The trust agreement shall provide that the written notice described in subsection (4)(a) of this section shall be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(4) The trust agreement shall provide that:

(a) The beneficiary shall:

1. Have the right to withdraw assets from the trust account at any time after giving written notice to the trustee; and

2. Not be required to give notice to the grantor;

(b) The beneficiary:

1. May be required to acknowledge receipt of withdrawn assets; and

2. Shall not be required to present other statements or documents in order to withdraw assets.

(c) The agreement shall not be subject to conditions or qualifications outside of the trust agreement; and

(d) The agreement shall not contain references to other agreements or documents except as provided by subsection (11) of this section.

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) Receive and hold all assets in a safe place;

(b) Determine that all assets are in a form that the beneficiary, or the trustee upon direction by the beneficiary, may negotiate any assets whenever necessary, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account both at the inception and at intervals no less frequent than the end of each calendar quarter;

(d) Notify the grantor and the beneficiary within ten (10) days of any deposits to or withdrawals from the trust account;

(e) Upon written demand of the beneficiary, immediately take all steps necessary to:

1. Transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary; and

2. Deliver physical custody of the assets to the beneficiary; and

(f) Allow no substitutions or withdrawals of assets from the trust account, except upon:

1. Written instructions from the beneficiary; or

2. The call or maturity of a trust asset, in which case the trustee may withdraw the asset so long as the proceeds are paid into the trust account without the consent of the beneficiary and after notice to the beneficiary.

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of

the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith.

(11)(a) The trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer for the purposes permitted by paragraphs (b) through (d) of this subsection, if:

1. A trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health; and

2. It is customary practice to provide a trust agreement for a specific purpose.

(b) To pay or reimburse the ceding insurer for the:

1. Assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer; or

2. Unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(c) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(d) 1. To withdraw amounts equal to the obligations and deposit them in a separate account as provided by subparagraph 2. of this paragraph, if the:

a. Ceding insurer has received notification of termination of the trust account; and

b. Assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date.

2. Amounts withdrawn pursuant to subparagraph 1. of this paragraph shall be deposited:

a. In the name of the ceding insurer; and

b. In a qualified United States financial institution, as defined in KRS 304.5-140(1), apart from its general assets; and

c. In trust for the uses and purposes specified in paragraphs (a) and (b) of this subsection that may remain executory after the withdrawal for any period after the termination date.

(12) The reinsurance agreement entered into in conjunction with the trust agreement may contain the provisions required by Section 10(1)(b) of this administrative regulation, so long as the conditions required by this section are included in the trust agreement.

(13) The reinsurance agreement or trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code, or any combination thereof, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five (5) percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this paragraph shall be included in the reinsurance agreement.



Section 9. Permitted Conditions for Trust Agreements Qualified under KRS 304.5-140(3).

- (1) The trust agreement may provide that the:
  - (a) Trustee may resign only if written notice of resignation is:
    1. Given to the beneficiary and grantor; and
    2. Effective not less than ninety (90) days after receipt of the notice.
  - (b) Grantor may remove the trustee if written notice is:
    1. Given to the trustee and beneficiary;
    2. Effective not less than ninety (90) days after receipt of the notice;
  - (c) Resignation or removal of the trustee shall not be effective until:
    1. A successor trustee has been duly appointed and approved by the beneficiary and the grantor; and
    2. All assets in the trust have been duly transferred to the new trustee.
- (2)(a) The grantor may have the full and unqualified right to:
  1. Vote any shares of stock in the trust account; and
  2. Receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account.
- (b) Interest or dividends shall be:
  1. Forwarded promptly upon receipt to the grantor; or
  2. Deposited in a separate account established in the grantor's name.
- (3) The trustee may be given authority to invest and accept substitutions of funds in the account with prior approval of the beneficiary, unless the trust agreement:
  - (a) Specifies categories of investments acceptable to the beneficiary; and
  - (b) Authorizes the trustee to invest funds and accept substitutions that the trustee determines are:
    1. At least equal in market value to the assets withdrawn; and
    2. Consistent with the restrictions in Section 10(1)(b) of this administrative regulation.
- (4) The trust agreement may:
  - (a) Provide that the beneficiary may designate a party to which all or part of the trust assets are to be transferred; and
  - (b) Condition the transfer upon the trustee receiving, prior to or simultaneously, other specified assets.
- (5) The trust agreement may provide upon termination of the trust account that all assets not previously withdrawn by the beneficiary shall be delivered over to the grantor with written approval by the beneficiary.

Section 10. Additional Conditions for Reinsurance Agreements Qualified under KRS 304.5-140(3).

- (1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:
  - (a) Require the assuming insurer to:
    1. Enter into a trust agreement;
    2. Establish a trust account for the benefit of the ceding insurer; and
  3. Specify what the agreement is to cover.
  - (b) Except as provided by paragraph (e) of this subsection, stipulate that assets deposited in the trust account shall:
    1. Be valued according to the current fair market value of the assets; and
    2. Consist of:
      - a. Cash that is United States legal tender;
      - b. Certificates of deposit, issued by a United States bank and payable in United States legal tender;
      - c. Investments permitted by the insurance code; or
      - d. A combination of the assets specified in clauses a. through c. of this subparagraph;
    - (c) As provided by paragraph (b) of this subsection, specify the types of investments to be deposited.
    - (d) Investments permitted by paragraph (b) of this subsection shall be issued by an institution that is not the parent, subsidiary, or affiliate of the grantor or beneficiary.
    - (e) If a trust agreement is entered into in conjunction with a

reinsurance agreement that covers risks other than life, annuities, or accident and health, the trust agreement, rather than the reinsurance agreement, may contain the provisions required by paragraphs (c) and (d) of this subsection.

(f) Require the assuming insurer, prior to depositing assets with the trustee, to:

1. Execute assignments or endorsements in blank; or
2. Transfer legal title to the trustee of shares, obligations, or other assets requiring assignments, so that the ceding insurer, or the trustee on the direction of the ceding insurer, may negotiate the assets without the consent or signature of the assuming insurer or any other entity whenever necessary.

(g) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(h) 1. As provided by subparagraph 2 of this paragraph, stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement.

2. The assets shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

c. To fund an account with the ceding insurer in an amount at least equal to the deduction for reinsurance ceded from the ceding insurer liabilities for policies ceded under the agreement. The account shall include amounts for policy reserves, claims and losses incurred, including losses incurred but not reported, loss adjustment expenses, and unearned premium reserves; and

d. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

(a) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw all or part of the trust assets from the trust account and transfer the withdrawn assets to the assuming insurer provided that:

1. The assuming insurer shall at the time of withdrawal replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain the deposit in the required amount at all times; or

2. After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

3. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(b) Provide for:

1. The return of any amount withdrawn in excess of the actual amounts required for subsection (1)(h)1., 2., and 3. of this section or for payments under subsection (1)(h)4. of this section, amounts that are subsequently determined not to be due; and

2. Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (1)(e)3. of this section.

(c) Permit the award by an arbitration panel or court of competent jurisdiction of:

1. Interest at a rate different from that provided in paragraph (b)2. of this subsection;

2. Court or arbitration costs;

3. Attorney's fees; and

4. Other reasonable expenses.

(3)(a) If established on or before the date of filing the financial

statement of the ceding insurer, a trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements that are required to be filed with the office pursuant to this administrative regulation.

(b) The amount of a reduction for the existence of an acceptable trust account:

1. May be lesser than or equal to the current fair market value of acceptable assets that are available to be withdrawn from the trust account at the time of withdrawal; and

2. Shall not be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) A trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996, shall:

(a) Be acceptable until January 1, 1997; and

(b) Beginning January 1, 1997, not be acceptable if it does not comply with the provisions of this administrative regulation.

(5) The failure of a trust agreement to specifically identify the beneficiary shall not be construed to affect actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

#### Section 11. Letters of Credit Qualified under KRS 304.5-140(3).

(1) A letter of credit shall:

(a) Be clean, irrevocable, and unconditional;

(b) Issued or confirmed by a qualified United States financial institution;

(c) Contain an issue date, and date of expiration;

(d) State that it is not subject to a condition or qualification not contained in the letter of credit;

(e) Stipulate that in order to obtain funds, the beneficiary need only draw and present a sightdraft under the letter of credit; and

(f) Except as provided by subsection (9)(a) of this section, not contain a reference to other agreements, documents, or entities.

(2) The heading of a letter of credit may include a boxed section that:

(a) Contains the name of the applicant, and other appropriate notations that provide a reference for the letter of credit; and

(b) Is clearly marked to indicate that the information is only for internal identification purposes.

(3) The letter of credit shall contain a statement that the obligation of the qualified United States financial institution under the letter of credit is not contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least one (1) year and shall contain an evergreen clause. The evergreen clause shall provide for a period of not less than thirty (30) days' notice prior to the date of expiration or nonrenewal.

(5) The letter of credit shall state:

(a) Whether it is governed by the:

1. Laws of Kentucky;

2. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600;

3. International Standby Practices of the International Chamber of Commerce Publication 590; or

4. Any successor publication; and

(b) That a draft drawn under the letter of credit shall be presentable at an office in the United States of a qualified United States financial institution.

(6) A letter of credit shall provide for an extension of time to draw against it if:

(a) Is made subject to subsection (5)(a)2., 3., or 4. of this section; and

(b) An occurrence specified in Article 36 of "Publication 600" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce occurs.

(7) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to KRS 304.5-140(1)(a).

(8) If a letter of credit is issued by a United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution described in

subsection

of this section, the following additional requirements shall be met:

(a) The issuing United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) The evergreen clause shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

(9) Reinsurance agreement provisions.

(a) The reinsurance agreement for which the letter of credit is obtained may contain provisions that:

1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what shall be covered.

2. Stipulate that the assuming insurer and ceding insurer shall agree that, the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement:

a. May be drawn upon at any time, notwithstanding other provisions in the agreement; and

b. Shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the reasons specified in subparagraph 3 of this paragraph.

3.a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;

b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

c. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement; and

d. To pay other amounts the ceding insurer claims are due under the reinsurance agreement.

4. The provisions of this paragraph shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in paragraph (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph (a)2. of this subsection; or

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the reasons established in paragraph (a)3.a. through 3c. of this subsection or, in the case of paragraph (a)3.d. of this subsection, any amounts that are subsequently determined not to be due.

(c) In lieu of the stipulation permitted by paragraph (a)2. of this subsection, a reinsurance agreement may require that the parties enter into a "Trust Agreement", that may be incorporated into the reinsurance agreement or be a separate document, if:

1. A letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health; and

2. It is customary practice to provide a letter of credit for a specific purpose.

(10)(a) A letter of credit shall not be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.

(b) The reduction for the letter of credit may be up to the amount available under the letter of credit but not greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

Section 12. Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Section 13. Reciprocal Jurisdictions.

(1) Pursuant to KRS 304.5-140 (3)(f)1., the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and that shall meet the other requirements of this administrative regulation.

(2) A reciprocal jurisdiction shall mean a jurisdiction as described in KRS 304.5-140, that shall be designated by the commissioner pursuant to subsection (8) of this section, and shall meet one of the following:

(a) A non-U.S. jurisdiction that is set forth in 304.5-140(1)(c), (d)

(b) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(c) A qualified jurisdiction, as determined by the commissioner pursuant to KRS 304.5-140(3)(g), which is not otherwise described in subsection (1) or (2) above and meets all the following additional requirements as determined by the commissioner:

1. Provides that an insurer which has its head office or is domiciled in a qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

2. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for the reinsurance;

3. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in the qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and shall not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

4. Provides written confirmation by a competent regulatory authority in the qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and the qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(3) Credit Allowance.

(a) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer when each of the conditions below are met:

1. The assuming insurer shall be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction;

2. The assuming insurer shall have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in KRS 304.5-140(3)(f)6., according to the methodology of its domiciliary jurisdiction, in the following amounts:

a. No less than \$250,000,000; or

b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(i) Minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least \$250,000,000; and

(ii) A central fund containing a balance of the equivalent of at least \$250,000,000.

(4) The assuming insurer shall have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable,

as follows:

(a) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction set forth in subsection (2)(a) of this section, the ratio specified in the applicable covered agreement;

(b) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (2)(b) of this section, a risk-based capital ratio of three hundred (300) percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(c) If the assuming insurer is domiciled in a reciprocal jurisdiction set forth in subsection (2)(c) of this section, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(5) The assuming insurer shall agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 of its agreement to the following:

(a) The assuming insurer shall agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subsection (3) or (4) of this section, or if any regulatory action is taken against it for serious noncompliance with applicable law;

(b) The assuming insurer shall consent in writing to the jurisdiction of the court of this state and to the appointment of the commissioner as agent for service of process;

1. The commissioner may also require that the consent be provided and included in each reinsurance agreement under the jurisdiction of the commissioner; and

2. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent that such agreements are unenforceable under applicable insolvency or delinquency laws.

(c) The assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;

(d) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable;

(e) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement, which may involve a ceding insurer of this state, and shall agree to notify the ceding insurer and the commissioner, and to provide one hundred (100) percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme or arrangement. Such security shall be in a form consistent with the provisions of KRS 304.5-140(4) and Sections 7, 8, 9, 10, 11, or 12 of this administrative regulation; and

(f) The assuming insurer shall agree in writing to meet the applicable information filing requirements as set forth in KRS 304.5-140(3)(f)4. and subsection (6) of this section.

(6) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

(a) For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

(b) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

(c) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety (90) days or

more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

(d) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subsection (7) of this section.

(7) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(a) More than fifteen (15) percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;

(b) More than fifteen (15) percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety (90) days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

(c) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety (90) days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement.

(8) Pursuant to 304.5-140(3)(g), the commissioner shall publish a list of reciprocal jurisdictions:

(a) A list of reciprocal jurisdictions is published through the NAIC Committee Process. The list created by the commissioner shall include any reciprocal jurisdiction as defined as described by Section 13(2) of this administrative regulation, and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

(b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements set forth in KRS 304.5-140, and Section 13(2) of this administrative regulation, or in accordance with a process published through the NAIC Committee Process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subsection 2(a) and (b) of this section. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to KRS 304.5-140 and this administrative regulation.

(9) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

(a) If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (3) and (4) of this section have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (3) of this section.

(b) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(10) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section. If the commissioner makes such a determination:

(a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the

effective date of the suspension shall qualify for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section 7 of this administrative regulation; or

(b) If an assuming insurer's eligibility is revoked, credit for reinsurance shall not be granted after the effective date of the revocation with respect to any reinsurance agreements entered by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of Section 7 of this administrative regulation.

(11) Before denying statement credit or imposing a requirement to post security with respect to Section 7 of this administrative regulation or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

(a) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsections (3) and (4) of this section;

(b) Provide the assuming insurer with thirty (30) days from the initial communication to submit a plan to remedy the defect, and ninety (90) days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and consumer protection;

(c) After the expiration of ninety (90) days, or less, as set out in paragraph (b) of this subsection, if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subsection; and

(d) Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

(12) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

~~Section 14.~~~~[Section 13.]~~ Reinsurance Contract. Upon the effective date of this administrative regulation, credit shall not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of KRS 304.5-140 unless the reinsurance agreement includes a:

(1) Proper insolvency clause pursuant to KRS 304.5-140(5) and 304.33-350 of the Insurance Code; and

(2) Provision pursuant to KRS 304.5-140(2)(f), if the assuming insurer, is an unauthorized assuming insurer, and has:

(a) Submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;

(b) Agreed to comply with all requirements necessary to give the court or panel jurisdiction;

(c) Designated an agent upon whom service of process may be effected; and

(d) Agreed to abide by the final decision of the court or panel.

~~Section 15.~~~~[Section 14.]~~ Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of this administrative regulation shall conform to the requirements of KRS 304.5-140 and this administrative regulation if credit is to be given to the ceding insurer for reinsurance.

~~Section 16.~~~~[Section 15.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certificate of Assuming Insurer," Form AR, 12/95 [4-December-95];

(b) "Certificate of Certified Reinsurer," Form CR-1, 9/19 [(09/19)];

(c) "Form CR-F" 9/19 [(09/19)]; and

(d) "Form CR-S" 9/19 [(09/19)];

(e) "Form RJ-1", 9/21.

(2) It may be inspected, copied, or obtained from the Department of Insurance, 500 Mero St., Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner  
RAY A. PERRY, Secretary

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 10:10 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for reinsurers to become accredited, certified, or use trust agreements in Kentucky. The administrative regulation ensures the ceding insurer may credit amounts reinsured to these assuming insurers on their financial statements. The administrative regulation also stipulates the process for becoming a qualified jurisdiction where a reinsurer may be domiciled and become certified. The qualified jurisdiction is critical as it means the country has passed a specific regulatory test to provide certainty that insurers within its jurisdiction adhere to similar and strict regulatory rules. The changes included within the administrative regulation commence the process of conforming Kentucky law to the United States covered agreements with the European Union and United Kingdom regarding reinsurance collateral requirements. It moves away from recognizing only 100% collateral as the way to judge financial stability, and moves to a more rounded approach and review of both the company and regulatory jurisdiction where the company is domiciled.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to conform Kentucky law to the United States Covered Agreement with the European Union or else face federal preemption from the Federal Insurance Office (FIO). Historically, U.S. regulators did not impose direct control over non-U.S. reinsurers. Instead, they regulated non-U.S. reinsurance markets by only allowing a statutory credit on the ceding insurer's balance sheet when the non-U.S. reinsurer maintained 100% collateral for its reinsurance obligations. U.S. regulators then began requesting more information from non-U.S. based reinsurers to ensure they were compliant with the requirement and the statutory credit was permissible. This created a tightening of the market for reinsurance, restricted the free flow of capital, and reduced the potential investments an insurer and reinsurer could make. It also created a global fragmented regulatory system, especially within the United States, creating a barrier for many reinsurance companies to operate. The United States Department of Treasury and the European Union entered into intense negotiations to develop a regulatory framework reforming the collateral requirements for reinsurers in and outside

the United States, and on September 22, 2017, the parties entered into a Covered Agreement. The agreement requires states to eliminate reinsurance collateral requirements within five (5) years, or risk preemption under the Covered Agreement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides further clarity on the manner to become an accredited or certified reinsurer pursuant to KRS 304.5-140.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details and a process for the commissioner to accredit or certify reinsurers, as well as, determine qualified jurisdictions.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates a process to determine the reciprocal and qualified jurisdiction list. These amendments derive from the June 2019 "red-lining" of the National Insurance Commissioner's Model Law 786. The statute also requires the Commissioner to design a list of such jurisdictions within the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include a specific process for accreditation and certification of reinsurers following the 2018 statutory amendments to KRS 304.5-140, and the United States covered agreement with the European Union and United Kingdom. The Department has also been required by the NAIC to incorporate the June 201 amendments in order to abide by their Financial Accreditation process, which ensures reciprocity and uniformity across states.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment uses the authority provided to the commissioner by KRS 304.5-140 to establish a list of reciprocal and qualified jurisdictions of reinsurers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is based on the most recent version of the NAIC's Model Regulation 786, and meets the requirements set forth in KRS 304.5-140 to establish a list of reciprocal and qualified jurisdictions of reinsurers. It is necessary to ensure reinsurers meet the new standards negotiated by the United States federal government and incorporated within KRS 304.5-140.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact those domestic insurers that reinsure risks in the United States and through entities outside of the United States.

(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: Reinsurers interested in taking advantage of the ceding process will need to comply with the new filing requirements in order to become an accredited or certified reinsurer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The requirements included within the administrative regulation are part of an NAIC Model Law and Regulation, and are required to be enacted in every jurisdiction across the United States. In the event states do not uniformly enact the changes, the Federal Insurance Office will assert federal preemption based on the covered agreement. Therefore, it will not cost regulated entities any amount to comply with these requirements as they have been enacted in other jurisdictions previously.

(c) As a result of compliance, what benefits will accrue to the entities: The requirements set forth in this administrative regulation will expand the pool of reinsurance available to insurers, and allow them to utilize capital in more productive manners other than unnecessarily holding it in reserve. Additionally, more reinsurers will qualify to allow ceding insurers to take advantage of the credit,

so reinsurance will be more widely available and potentially cheaper. Reinsurers will also greatly benefit from the uniform standards making it easier, cheaper, and more efficient for them to do business in the United States.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied as it applies to all ceding and assuming insurers 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 as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.5-140 and the September 22, 2017 United States Covered agreement with the European Union and the United Kingdom.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected, this will be handled on the Department's current operating budget.

(d) How much will it cost to administer this program for subsequent years? No cost is expected, this will be handled on the Department's current operating budget.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: The program including receipt and review of new filings will be handled by internal personnel. At this point, the Department anticipates all duties will be handled by current personnel due to the minimal nature of Kentucky specific filings. If filings exceed expectations additional staff may become necessary; however, the overseas reinsurance is not large for the small number of Kentucky domestic insurers. Thus, we anticipate a low volume of overall filings.

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

##### 810 KAR 5:030. Claiming races.

RELATES TO: KRS 139.531(1)(c), 230.215, 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260 authorize the Kentucky Horse Racing Commission to regulate conditions under which harness racing shall be conducted in Kentucky. This administrative regulation establishes the requirements for claiming races.

Section 1. (1) A horse entered in a claiming race may be claimed for its entered price by:

(a) A licensed horse owner who has a horse programmed to start in a pari-mutuel race at that meeting;

(b) A licensed horse owner who has received a claim certificate from the commission; or

(c) A person who has qualified for a license as a horse owner and who has received a claim certificate from the commission.

(2) Upon filing with the judges a completed, signed Authorized Agent form (KHRC 2-060-01), incorporated by reference in 810 KAR 2:060, an authorized agent may claim for a qualified owner in his own right, but only for the account of the person for whom he is agent.

(3) To qualify for a license as an owner, the applicant shall have a current United States Trotting Association or Standardbred Canada membership as an owner or membership as an associate-member.

(4) A person shall not knowingly effect a false claim by inducing another to claim a horse for him or her.

##### Section 2. Prohibitions.

(1) A person shall not claim his or her own horse and shall not claim a horse trained or driven by him or her.

(2) A person shall not claim more than one (1) horse in a race, and a person shall not have multiple claims on any one (1) horse in a race.

(3) A qualified owner or the owner's agent shall not claim a horse for another person.

(4) An owner shall not cause his or her horse to be claimed directly or indirectly for his or her own account.

(5) A person shall not offer, or enter into an agreement, to claim or not to claim or attempt to prevent another person from claiming any horse in a claiming race.

(6) A person shall not enter a horse that has a mortgage, bill of sale, or lien of any kind pending, unless the written consent of the holder is filed with the clerk of the course of the association conducting that claiming race.

(7) ~~[(a) A person shall not have more than one (1) claim on any one (1) horse in any claiming race.~~

~~{b}] Owners utilizing the same trainer may claim different horses from the same race, but the trainer cannot make the claim on behalf of either owner. [The trainer shall not act on behalf of either owner if the trainer has more than one (1) horse in the same race.]~~

##### Section 3. Claiming Procedure. (1) Owner's credit.

(a) A person submitting a claim shall provide to the association:

1. Proof of possession of a valid license issued by the commission for the current year;

2. An amount equivalent to the specified claiming price plus the existing Kentucky sales tax as authorized by KRS 139.531(c); and

3. The United States Trotting Association fee for transfer of registration.

(b) By accepting the claim, the association assumes responsibility for and shall make payment to the owner of the horse claimed.

(c) The money due for a claimed horse shall be paid to the owner of the claimed horse within forty-eight (48) hours after the end of the race, Sundays excepted, by the association, if the horse has a current test complying with subsection (14) of this section and if a signed claiming authorization and proper registration papers are provided to the clerk of the course.

(2) The claiming price shall be printed on the program, and all claims shall be for the amount so designated. Any horse entered in a claiming race may be claimed for the designated amount.

(3) A claim shall be in writing, sealed, and deposited at least thirty (30) minutes before the time originally scheduled for the race to begin in a locked box or designated location provided for this purpose by the commission.

(4) The claim shall be examined by the judges or their designee prior to the start of the race. The association's designee shall be prepared to state whether sufficient funds are on deposit in the amount equivalent to the specified claiming price and any other required fees and taxes. The judges shall have a public announcement made and information scrolled on the simulcast video stating there has been a claim made or, in the case of multiple claims, the number of claims made on a horse during the post parade. The successful claimant shall be announced after the completion of the race.

(5) An official shall not open the claim box or give any information on claims filed until after the horses leave the paddock for the post parade.

(6) If more than one (1) claim is filed for the same horse, the owner shall be determined by lot by the judges.

(7) A horse claimed shall be delivered immediately by the original owner or his or her trainer to the successful claimant upon authorization of the judges after the post-race tests are finished; and:

(a) The horse's halter shall accompany the horse;

(b) The horse's shoes shall not be altered or removed; and

(c) The hobble measurements of a claimed horse shall be made available to the successful claimant by the paddock judge.

(8) An owner shall not refuse to deliver a horse legally claimed out of a claiming race.

(9)(a) A horse claimed shall race in all heats or dashes of the event in the interest and for the account of the owner who declared it in the event.

(b) Title to the claimed horse shall be vested in the successful claimant from the time the word "go" is given in the first heat or dash.

(c) The judges shall void the claim and return the title to the original owner if:

1. The horse suffers a fatality during the running of the race or dies or is euthanized before leaving the track; or

2. The commission veterinarian determines the horse will be placed on the Veterinarian's List as bled, unsound, or lame before the horse is released to the successful claimant.

(d) The judges shall not void the claim if, prior to the race in which the horse is claimed, the claimant indicates on the claim envelope that he or she elects to claim the horse regardless of whether the commission veterinarian determines the horse will be placed on the Veterinarian's List as bled, unsound, or lame.

(e) The final vesting of title to a claimed horse shall be subject to the conditions and provisions set forth in this administrative regulation.

(10)(a) The judges may require any person making a claim for a horse to affirm by affidavit that the claimant is claiming the horse for his or her own account or as authorized agent and not for any other person.

(b) A person shall not knowingly make a false statement regarding the claiming process.

(11)(a) A claimed horse may start in a race in which the claiming price is less than the price at which the horse was claimed.

(b) If a horse is claimed, a right, title, or interest in that horse shall not be sold or transferred for a period of thirty (30) days following the date of claiming, except in a claiming race.

(c) A claimed horse shall be required to race at the association where claimed for a period of thirty (30) days or the balance of the current racing meeting, whichever occurs first.

(12) A horse that has been claimed shall not be eligible to start in a race in the name or interest of the previous owner for thirty (30) days. The horse shall not remain in the same stable, or under the care or management of the first owner or trainer, or anyone connected with the previous owner unless reclaimed out of another claiming race.

(13) A horse scratched from a claiming race shall not be eligible to be claimed.

(a) If a horse drawn to start in a claiming race is claimed and has been declared to start in a subsequent race, that horse shall be scratched from that race.

(b) For a period of thirty (30) days, a horse scratched from a claiming race and then entered in a subsequent race, regardless of classification, shall ~~not~~ be eligible to be claimed for the same price as the claiming race from which the horse was scratched~~[at any association licensed by the commission for the same claiming price the horse was carrying in the race from which it was scratched, except scratches that were due to and verified as race office errors].~~

1. The claiming price shall be listed in the program where normal claiming prices are carried;

2. The announcement of the right to claim shall be made by the track announcer; and

3. The claiming price shall be scrolled on the simulcast provider.

(14)(a) A claimed horse not otherwise selected by the judges for post-race testing shall be subjected to post-race testing in blood for the presence of substances regulated by 810 KAR Chapter 8. The results of the test shall be reported to the presiding judge.

(b) If a test is positive for a substance associated with a Class A, B, or C penalty, or for a TCO2 violation, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse and of all expenses incurred after the date of the claim.

(c) While awaiting test results, a claimant:

1. Shall exercise due care in maintaining and boarding a claimed horse; and

2. Shall not materially alter a claimed horse.

(d) An Equine Infectious Anemia (Coggins) test shall not be required of a horse that has been claimed if that horse has a valid certificate stating that within twelve (12) months of the day of the claim the horse has received a Coggins test and is negative for Equine Infectious Anemia. The certificate shall contain the horse's lip tattoo number or a uniform or standardized means of identification approved by the commission.

(15)(a) A filly or mare that has been bred shall not be declared into a claiming race for at least forty-five (45) days following the last breeding of the filly or mare. Following that period, a filly or mare that has been bred shall be declared into a claiming race only after a veterinarian has pronounced the filly or mare not to be in foal.

(b) A filly or mare pronounced in foal shall not be declared into a claiming race.

(c) If a filly or mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding that occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the claimant, if the mare is subjected to a pregnancy examination no later than twenty-one (21) days after the date of the claim that shows the mare is pregnant.

(d) 1. A claimant seeking to void the claim shall file a petition to void that claim with the judges within three (3) days after the results of the pregnancy examination are received. Following the filing of the petition, the judges shall conduct a hearing after due notice to all parties.

2. If the judges determine that the claim is void, the claimant shall receive a reasonable cost from the previous owner to cover the cost of the pregnancy examination and reimbursement from the previous owner of all reasonable costs associated with the claiming process and the post-race test, including the costs of transportation, board, reasonable training fees, and the testing process.

Section 4. In accordance with Section 3(1)(b) of this administrative regulation, the association shall pay the claiming price to the owner when the registration certificate and a signed claiming authorization are delivered for presentation to the successful claimant. The association shall withhold and pay the Kentucky sales tax to the Commonwealth pursuant to KRS 139.531(c).

Section 5. Claiming Conditions. (1) Unless prior approval is given by the presiding judge, claiming races shall be written to separate horses five (5) years and older from younger horses and to separate males from females.

(2)(a) If sexes are mixed, mares shall be given a twenty (20) percent minimum price allowance, except there shall not be any price allowance given to a spayed mare racing in a claiming race.

(b) An allowance for age shall be given as follows:

1. Two (2) year olds shall be given a 100 percent allowance;

2. Three (3) year olds shall be given a fifty (50) percent allowance; and

3. Four (4) year olds shall be given a twenty-five (25) percent allowance.

(c) Claiming races for two (2) year olds may have conditions.

(d) Claiming races for three (3) year olds may have conditions.

(e) A claiming class may have conditions, if deemed necessary by the racing secretary and approved by the judges.

Section 6. Except as provided in 810 KAR 5:020, Section 16, a horse owner shall not be prohibited from determining the price for which his horse shall be entered.

Section 7. To facilitate transfer of claimed horses, the presiding judge or racing secretary may sign the transfer if he or she then sends the registration certificate and claiming authorization to the registrar for transfer.

Section 8. Fraudulent Claim. (1) A person shall not fraudulently declare a horse to a claiming race. If the judges determine that the declaration of a horse to a claiming race is fraudulent on the part of the declarer, they shall void the claim at the option of the claimant, and order the horse returned to the person declaring it in.

(2) A person shall not submit a fraudulent claim on a horse in a claiming race. If the judges determine that a claim of a horse is fraudulent on the part of the person making the claim, they shall:

(a) Void the claim at the option of the person declaring it in; and

(b) Return the horse to the person declaring it in.

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: August 30, 2021

FILED WITH LRC: September 2, 2021 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on November 22, 2021 via video conference at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning claiming races in standardbred racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules about claiming races in standardbred racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to claiming races in standardbred racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning claiming races in standardbred racing that enhance the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: This amendment will omit redundant and confusing language, and also correct an error that was inadvertently introduced during the Red Tape Reduction process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to avoid redundancy and confusion.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to claiming races in standardbred racing.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will provide specific rules about claiming races in standardbred racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this regulation. In 2017, the Commission licensed over 22,000 people to participate in horse racing. This number is consistent year to year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Participants in horse racing, and especially owners, trainers, and drivers, will be required to adhere to the requirements and rules set forth in this regulation pertaining to claiming races in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No significant costs are associated with complying with this proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly-defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this proposed amendment.

(b) On a continuing basis: There is no continuing cost to implement this proposed amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the Commission's budget.



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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this proposed amendment will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, and 230.370.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### **PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)**

#### **810 KAR 5:060. Entries and starters.**

RELATES TO: KRS 230.215, 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entries.

Section 1. Entries. An entry shall:

(1) Be made in writing, by telephone, or electronically to the association racing secretary's office;

(2) Include the following information pertinent to the entry:

(a) The name of the horse;

(b) The name of the trainer;

(c) The name of the driver; and

(d) The class of the race into which the horse is to be entered; and

(3) Comply with the provisions of Section 18 of this administrative regulation if the entry concerns an overnight event.

(4) A horse shall only be permitted to enter if at the time of entry, the owner, trainer, or an authorized agent of the owner or trainer submits a complete medical record for such horse for the fourteen (14) day period prior to the entry date.

Section 2. Payment of Entry Fee. An entry fee shall be due and payable with declaration to start and shall not be refunded if the horse fails to start, unless the horse dies between the time of declaration to start and the start of the race.

Section 3. Receipt of Entries for Early Closing Events, Late Closing Events, Stakes and Futurities.

(1) An entry that is not received prior to the hour of closing shall be ineligible.

(a) If an entry or payment in a stake, futurity, or early closing race is payable on a Sunday or a legal holiday that falls on Saturday, the payment shall be due on the following Monday, and if made by mail, the envelope shall be postmarked on or before the following Tuesday.

(b) If a payment is due on a Monday that is a legal holiday, the payment shall be due on the following Tuesday, and if made by mail, the envelope shall be postmarked on or before the following Wednesday.

(2) Postage meter. If an entry is received by letter bearing the postage meter date without a postmark, the postage meter date shall be considered to be a postmark if the letter is received within seven (7) days following the closing date of the event. A letter received later than seven (7) days following the closing date of the event shall not be considered a valid entry or payment.

Section 4. Deviation from Published Conditions. An entry and payment not governed by published conditions shall be void and any deviation from published conditions shall be a violation of this administrative regulation. A nominator who is allowed privileges not in accordance with the published conditions of the race, or which are in conflict with the published conditions or with Title 810 KAR, shall be barred from receiving any portion of the purse, and any person who knowingly allows the privileges shall be in violation of this administrative regulation.

Section 5. (1) Ineligible Horse in a Stakes Race.

(a) A nominator shall be required to guarantee the identity and eligibility of entries and declarations. If a nominator provides incorrect information, winnings shall be forfeited and redistributed to eligible entries, and the person who provided the information shall be in violation of this administrative regulation.

(b) A person who obtains a purse or money through fraud or error, with the exception of paragraph (c) of this subsection, shall surrender or repay the proceeds upon demand. If the proceeds are not repaid upon demand, the horse that was the subject of the fraud or error, and all persons involved, shall be in violation of this administrative regulation and subject to suspension or revocation until repayment is made.

(c) If a horse is declared ineligible as a result of the negligence of the race secretary, the association shall reimburse the owner for the resultant loss of winnings.

(2) Ineligible horse drawn into overnight race. The trainer shall be responsible for entering the horse in the race for which it is eligible.

Section 6. Transfer of Ineligible Horse. A horse entered in an event for which it is not eligible may be transferred to any event for which it is eligible at the same gait.

Section 7. Withholding Purse on Ineligible Horse. An association shall withhold the purse of a horse, with or without a formal protest, if the association receives information that the entry or declaration was fraudulent or ineligible.

Section 8. Agreement to Race Under Rule. An entry shall constitute an agreement that the horse to be entered and all persons associated with or having control of the horse shall abide by Title 810 KAR.

Section 9. Early Closing Events and Late Closing Races.

(1) Date and place. The sponsor shall state the place and date the event will be raced, and there shall not be a change in the date, program, events, or conditions after the nominations have been taken without the written consent of the owners or trainers of all horses eligible when the conditions are changed.

(2) Filing conditions. An entry blank shall be filed with the commission.

(3) Payments shall be made on or before the 15th day of the month. Nominations and payments other than starting fees in early closing events shall be advertised to be received on the 15th day of the month.

(4) List of nominations. A complete list of nominations to any late closing race or early closing event shall be made available within twenty (20) days after the date of closing to each nominator and the commission.

(5) Procedure if event does not fill. If the event does not fill, each nominator and the commission shall be notified within ten (10) days, and a refund of nomination fees shall accompany the notice.

(6) Transfer provisions for change of gait.

(a) The following conditions shall govern transfers if there is a change of gait, unless the association makes available to the commission, at least thirty (30) days prior to the first publication, its early closing conditions and receives the approval of the commission for those conditions:

1. If a condition published for early closing events allows transfer for change of gait, the transfer shall be to the slowest class for which the horse is eligible, and eligibility shall be determined at time of closing of entries.

2. The race to which transfer may be made shall be the race nearest in time to the date of the event for which the horse was originally entered.

(b) A two (2) year old, three (3) year old, or four (4) year old entered in a class that corresponds to its age group shall be permitted to transfer only to a class for the same age group at the adopted gait, and shall be the race nearest in time to the date of the original event. If transfer is made, entry fees shall be so adjusted.

Section 10. Subsequent Payments; List of Eligibles. If subsequent payments are required by the published conditions, a complete list of those horses withdrawn or declared out shall be made within fifteen (15) days after:

(1) The payment was due; and

(2) The list has been made available to each nominator and the commission.

Section 11. Trust Funds. Fees paid in early closing events shall be segregated and held as trust funds until the event is contested.

Section 12. Early Closing Events by New Track. An early closing event at a pari-mutuel meeting shall not be advertised, nor shall nominations be taken for an early closing event, until the event has been approved by the commission. An association accepting nominations to early closing races, late closing races, stakes, or futurities shall provide stable space to a horse nominated and eligible to the event the day before, the day of, and the day after the race.

Section 13. Limitation on Conditions. Conditions of an early closing event or a late closing race shall not add a horse that has not been nominated to an event or eliminate an already nominated horse from an event by reason of the performance of the horse at an earlier meeting during the same season, and conditions purporting to do so shall be considered to be invalid. An early closing event or a late closing event shall not have more than two (2) also eligible conditions.

Section 14. Purse Requirements. In early closing races, late closing races, and overnight races requiring entry fees, all monies paid in by the nominators in excess of eighty-five (85) percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the advertised purse. In addition to adding excess entry fees as provided in this section, the sponsor shall add at least fifteen (15) percent to the advertised purses of late closing races and overnight races. Fifteen (15) percent of all monies paid in by the nominators shall be added to all early closing races by the sponsor.

Section 15. Requirement to Run Race.

(1) An association shall specify how many entries are required for overnight events and, after the condition is fulfilled, the race shall be run unless declared off as provided in 810 KAR 5:070.

(2) If six (6) or more betting interests are declared in to start an early closing event or a late closing event, the race shall be run, unless it is declared off. Stakes and futurities shall be raced if one (1) or more horses are declared in to start unless declared off as provided in 810 KAR 5:070.

(3) In an early closing event, if fewer horses are declared in than are required to start, and all declarers are immediately so notified, the horse or horses declared in and ready to race shall be entitled to the sum of the entry fees submitted.

Section 16. Elimination Heats or Two (2) Divisions.

(1) If the number of horses declared in to start exceeds twelve (12) on a half-mile track or sixteen (16) on a larger track, the association conducting the race shall have the option, before positions are drawn, of announcing that the race shall be run in elimination heats. A maximum of two (2) tiers of horses, allowing eight (8) feet per horse, shall start in any race.

(2) If an early closing event or late closing event is divided, each division shall race for at least seventy-five (75) percent of the advertised purse unless otherwise specified in the conditions of the race.

(3) If a stake race or futurity is divided, the conditions of the race shall determine the number of starters per division and the purse distribution.

Section 17. Elimination Plans.

(1) If elimination heats are required, or are specified in the published conditions, the race shall be run in the following manner unless otherwise stated in the conditions or conducted under another section of this administrative regulation. The field shall be divided by lot, and:

(a) The first division shall race a qualifying dash for thirty (30) percent of the purse;

(b) The second division shall race a qualifying dash for thirty (30) percent of the purse;

(c) The horses so qualified shall race in the main event for forty (40) percent of the purse; and

(d) The winner of the main event shall be the race winner.

(2) Unless otherwise specified in the conditions of the race, the judges shall draw the starting positions for the main event and shall determine:

(a) Which of the dash winners shall have the pole and which the second position; and

(b) Which of the two (2) horses that have been second shall start in third position, which in fourth position, similarly in succession. An elimination dash and the concluding heat shall be programmed to be raced upon the same day or night, unless special provisions for earlier elimination dashes are set forth in the conditions.

(3) If there are three (3) or more separate heat or dash winners, those winners shall return for a single event race-off to determine the race winner. For that single event race-off, the participating horses shall be assigned post positions according to the order of their finish in the previous heat or dash.

Section 18. Overnight Events. More than nine (9) horses shall not start on a half-mile track in overnight events and more than

twelve (12) horses shall not start on larger tracks at extended pari-mutuel meetings allowing eight (8) feet per horse.

Section 19. Elimination Race for Early Closing Event, Stake, or Futurity. If elimination races are provided for in the conditions of an early closing event, stake, or futurity, the elimination race shall be held not more than five (5) days prior to contesting the main event (excluding Sunday) and omitting the day of the race.

#### Section 20. Declaration.

(1) Extended pari-mutuel meetings. The declaration time shall be the time posted on the condition sheet.

(2) A horse shall not start in more than one (1) race on a racing day.

(3) The time when declarations close shall be the time in use at the meeting.

(4) The association shall provide an entry box with an aperture through which declarations shall be deposited.

(5) At the close of entries the presiding judge or the race secretary shall remove any entries in the box and sort the declarations at the time specified on the condition sheet.

(6) If it is necessary to reopen any race, a minimum of two (2) public announcements shall be made, and the box shall be reopened at the announced time.

(7) In races of a duration of more than one (1) dash or heat at a pari-mutuel meeting, the judges may draw post positions from the stand for succeeding dashes or heats.

(8) Effect of failure to declare on time. If an association requires a horse to be declared at a stated time, failure to declare at that time shall be considered a withdrawal from the event.

(9) After declaration to start has been made, a horse shall be withdrawn only:

(a) Because of sickness, lameness, injury, or hazardous track conditions; and

(b) With the permission of the presiding judge.

(10) Horse omitted through error.

(a) Except as provided in this subsection, a drawing shall be final unless there is conclusive evidence that a horse was properly declared and omitted from the race, and the omission is verified to be due to an error of the association's racing office.

(b) The race shall be redrawn if the error is found prior to scratch time.

(c) If the race has multiple divisions, a horsemen's representative and a judge shall draw the division by lot rather than redraw the entire race.

(d) If there is a division or divisions with short fields, the division or divisions shall be chosen by lot to determine which division shall be drawn.

(e) If the error is found after scratch time, then the horse shall be added to the outside.

Section 21. Qualifying Races. At an extended pari-mutuel meeting, declarations for overnight events shall be governed by the following:

(1)(a) Within forty-five (45) days of being declared in, a horse that has not raced previously at the gait chosen shall:

1. Complete a qualifying race in compliance with the conditions set forth by the association under the supervision of a judge holding a presiding or associate judge's license for pari-mutuel meetings; and

2. Acquire at least one (1) charted line by a licensed charter.

(b) Time and beaten lengths shall be determined by a standard photo finish.

(2)(a) The requirements of subsection (1) of this section shall apply to a horse that does not show a charted line for:

1. The previous season; or

2. Within its last six (6) starts.

(b) Uncharted races contested in a heat of more than one (1) dash, and consolidated according to subsection (4) of this section, shall be considered one (1) start.

(3)(a) The requirements of subsection (2) of this section shall not apply if a horse:

1. Has raced at a charted meeting during the current season;

and

2. Has two (2) meetings at which the races are not charted.

(b) The information from the uncharted races may be:

1. Summarized, including each start; and

2. Consolidated in favor of charted lines.

(4) If the race is less than one (1) mile, the consolidated line shall list the carry date, place, time, driver, finish, track condition, and distance.

(5)(a) The judges ~~may~~shall require a horse that has been on the judge's list to successfully complete a qualifying race.

(b) If a horse has raced in individual time not meeting the qualifying standards for that class of horse, after making allowance for track variations, the horse shall be required to successfully complete a qualifying race.

(6) A horse shall be required to qualify in a qualifying race if it is on the judge's list for any of the following:

(a) Repeated breaks on a fast or good track or breaks off of a qualifying race on a fast or good track;

(b) Scratched sick or lame in two (2) consecutive starts, scratched sick or lame following a qualifier, or scratched sick or lame prior to or after a break line on a good or fast track;

(c) Refusing to come to the gate. Horses causing two (2) recalls shall be scratched and placed on the starter and qualifying list;

(d) Poor performance; or

(e) Being unmanageable.

(7) Qualifying races shall be:

(a) Held at least one (1) week prior to the opening of a meeting of ten (10) days or more; and

(b) Scheduled as needed through the last week of the meeting.

(8)(a) A race to qualify drivers and horses shall be charted, timed, and recorded.

(b) A race to qualify only drivers shall not be required to be charted, timed, and recorded.

(9)(a) ~~If~~Except as provided in paragraph (b) of this subsection, if a horse takes a win record in a qualifying race, the record shall be prefaced with the letter "Q".]

~~(b)1. The record shall not be prefaced with the letter "Q" if, immediately prior to or following the race, the horse has been submitted to an approved urine, saliva, or blood test.]~~

~~(b)2.]~~ The presiding judge shall report the test on the judge's sheet.

(10) Before it is permitted to start in a race with pari-mutuel wagering, a horse shall have a clean charted line within forty-five (45) days, race day to race day, and meet the standards of the meeting.

(11) A horse shall not enter more than one (1) qualifying race per day.

#### Section 22. Coupled Entries.

(1)(a) Except as provided by the provisions of this section, two (2) or more horses shall be coupled as a single entry if they are:

1. Owned or trained by the same person; or

2. Trained in the same stable by the same management.

(b) A wager on one (1) of the horses coupled as an "entry" shall be a wager on all horses in the entry.

(2)(a) If a trainer enters two (2) or more horses, under bona fide separate ownerships or the same ownership, each horse may race as a separate betting entry if:

1. The association has requested they be permitted to race as separate betting entries; and

2. The judges approve the request.

(b) In overnight events the entries do not exclude any single interest.

(c) In overnight events, part of an uncoupled entry drawing also eligible may not be moved into a race to replace another part of the uncoupled entry.

(d) If more than one (1) horse is trained by the same person, that fact shall be stated prominently in the program.

(e) The judges may place both horses in an uncoupled entry if the judges deem that the actions of one part of the uncoupled entry helped or improved the other.

(f) If the race is split in two (2) or more divisions, horses coupled or uncoupled in a single entry shall be seeded insofar as possible, in the following order, by:

1. Owners;
2. Trainers; and
3. Stables.

(g) Divisions and post positions shall be drawn by lot.

(h) Elimination heats also shall be governed by the provisions of paragraphs (f) and (g) of this subsection.

(3) The presiding judge or the race secretary shall be responsible for coupling horses.

(4)(a) If it is necessary to protect the public interest, horses that are separately owned or trained may be coupled for pari-mutuel wagering; and

(b) An entry shall not be rejected on that basis.

(5) If an owner, lessor, or lessee has a vested interest in another horse in the same race, it shall constitute an entry.

#### Section 23. Also Eligibles.

(1) More than two (2) horses shall not be drawn as also eligibles for a race.

(2) The positions of also eligibles shall be drawn along with the starters in the race.

(3) If one (1) or more horses are excused by the judges, the also eligible horse shall:

(a) In handicap races in which the handicap is the same, take the place of the horse that it replaces;

(b) In handicap races in which the handicap is different, take the position on the outside of the horses with a similar handicap; or

(c) In other races, take the post position drawn by the horse it replaces.

(4) A horse shall not be added to a race as an also eligible unless the horse was drawn at the time declarations closed.

(5)(a) A horse shall not be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list shall not be drawn without the permission of the judges.

(b) The owner or trainer of a horse moved into the race from the also eligible list shall be notified that the horse is in to go.

(6) A horse on the also eligible list that is not moved into race by scratch time of the track shall be released.

#### Section 24. Preference.

(1)(a) Preference shall be given in overnight events according to a horse's last previous purse race during the current year.

(b) The preference date on a horse that has drawn to race and has been scratched shall be the date of the race from which the horse was scratched.

(2) If a horse is racing for the first time in the current year, the date of the first successful qualifier shall be considered the horse's last race date, and preference shall be applied accordingly.

(3)(a) If an error has been made in determining or posting a preference date, and the error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one (1) hour of the announcement of the draw.

(b) If a preference date error has occurred, the race shall be redrawn.

#### Section 25. Judge's List.

(1)(a) A horse shall be placed on a judge's list by the presiding judge if it is unfit to race because it:

1. Is dangerous;
2. Is unmanageable;
3. Is sick;
4. Is lame;
5. Is unable to show a performance to qualify for races at the meeting; or
6. Has exhibited repeated breaks.

(b) The owner or trainer shall be notified in writing:

1. If a horse is placed on a judge's list; and
2. Of the specific item listed in paragraph (a) of this subsection

upon which the action is based.

(c) Declaration on a horse placed on a judge's list shall be refused.

(d) If a horse is placed on a judge's list, the clerk of the course shall make a note on the electronic eligibility of the horse stating the:

1. Date it was placed on the judge's list;
2. Reason it was placed on the judge's list; and
3. If the horse has been removed from the judge's list, the date of its removal.

(2)(a) A presiding judge or other official at a nonextended meeting shall not remove from the judge's list and accept as an entry a horse that:

1. Has been placed on a judge's list; and
2. Has not been removed from the judge's list because it is dangerous or unmanageable.

(b) A presiding judge shall refuse declarations on a horse that has been placed on, but not removed from, a judge's list.

(3) A horse scratched from a race because of lameness or sickness shall not race for a period of seven (7) days beginning with the day of the scratch.

#### Section 26. Driver.

(1) A declaration shall state the name of the horse's driver and the driver's colors.

(2) A driver shall not be changed after scratch time of the track without the permission of the judges. The judges shall grant permission if:

(a) The driver is unable to be on the premises for a good-faith reason beyond his or her control; or

(b) The driver is on the premises but unable to participate due to illness or injury.

(3) If a nominator starts two (2) or more horses, the judges shall approve the second and third drivers if no conflicts of interest exist between the ownership of the horses and the drivers.

#### Section 27. Withdrawals and Scratches.

(1) The presiding judge shall call a meeting of all horsemen on the grounds before the opening of an extended pari-mutuel meeting to appoint a committee to consist of the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horseman's Association or the Kentucky Harness Association to consider matters relating to the withdrawal of horses due to bad track or weather conditions.

(2)(a) If track conditions are questionable due to weather, the presiding judge shall call a meeting of the committee established pursuant to subsection (1) of this section.

(b) Upon unanimous decision by the committee that track conditions are safe for racing, withdrawals shall not be made.

(3)(a) An entrant may scratch a horse if:

1. A decision by the committee that the track is safe is not unanimous; and
2. The entrant has posted ten (10) percent of the purse for the race.

(b) A person shall not scratch a horse for a reason other than sickness, lameness, injury, or hazardous track conditions.

(c) If sufficient withdrawals are received to cause the field to be less than six (6), the association shall have the right to postpone an early closing event or stake and cancel an overnight event.

(4)(a) The money posted pursuant to subsection 3(a)2<sub>2</sub> of this section shall be forwarded to the commission.

(b) The commission shall determine whether a withdrawal was for sickness, lameness, injury, or hazardous track conditions.

(c) The money shall be:

1. Forfeited if the commission determines that the withdrawal was not for good cause; or
2. Refunded if the commission determines that the withdrawal was for good cause.

(5) This section applies only to the withdrawal of horses that have been properly declared in and does not apply to postponement as set forth in 810 KAR 5:070.

Section 28. Length of Race and Number of Heats.

(1) A race or dash shall be listed at a stated distance in units no shorter than one-sixteenth (1/16) of a mile.

(2) The length of the race and the number of heats shall be stated in the conditions.

(3) If a distance or number of heats is not specified, any race shall be a single mile dash, except at fairs and meetings of a duration of six (6) days or less where they shall be conducted in two (2) dashes at one (1) mile distances.

Section 29. Two (2) Year Olds. A two (2) year old shall not be permitted to:

(1) Start in a dash or heat exceeding one (1) mile in distance;

or

(2) Race in more than two (2) heats or dashes per day.[]

Section 30. Examination by Attending Veterinarian.

(a) A horse shall only be entered if:

(a) The horse has been examined by an attending veterinarian licensed by the veterinary regulatory body in the jurisdiction where the examination occurs no more than three (3) days prior to entry;

(b) The attending veterinarian certifies in writing that the horse is in serviceable, sound racing condition; and

(c) The written certification is provided to the racing secretary no later than the time of entry.

(2) The examination required by paragraph (a) of subsection (1) of this section shall include watching the horse jog in hand.

(3) If the attending veterinarian who examines the horse prescribes a diagnostic test as part of the evaluation of the horse's soundness, the results of the test shall be provided to the commission's veterinarian no later than one (1) day before the horse is set to start.[]

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: August 30, 2021

FILED WITH LRC: September 2, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on November 22, 2021 via video conference at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements and prohibitions concerning the taking of entries into standardbred races, the rules concerning starters, and declarations to start. These rules provide an orderly means of determining which horses will be considered eligible to enter a race.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to provide specific requirements and methods for taking entries, starters, and declarations in standardbred racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This rule prescribes conditions under which horses become eligible to race in particular standardbred races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by establishing a comprehensive set of rules governing the selection of horses for entry into standardbred racing.

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

(a) How the amendment will change this existing administrative regulation: This regulation includes proposed changes to eliminate redundant language, clarify unclear portions of the regulation, provide needed discretion to the standardbred judges, and carve out a standardbred exception for the veterinary examination requirement.

(b) The necessity of the amendment to this administrative regulation: These proposed amendments are necessary to clarify the regulation, provide discretion to the judges, and eliminate an unnecessary examination requirement. Standardbred horses warm up for one (1) hour prior to racing, in a public location that is open and available for observation by the KHRC veterinary staff. This increased observation period makes the Section 29 requirement for a pre-race veterinary examination unnecessary for Standardbred racehorses.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This proposed amendment prescribes conditions under which horses become eligible to race in particular standardbred races.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by establishing a comprehensive set of rules governing the selection of horses for entry into standardbred racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this proposed amendment's clarification of rules pertaining to the conduct of racing. In 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to entries and starters in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No significant costs are associated with complying with this proposed regulatory amendment.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly-defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this proposed amendment.

(b) On a continuing basis: There is no continuing cost to implement this proposed amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this

administrative regulation. Any minimal costs will be funded from the Commission's budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this proposed amendment will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, and 230.370.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

#### 810 KAR 5:070. Running of the race.

RELATES TO: KRS Chapter 13B, 230.215, 230.260(1), 230.280, 230.290(2), (3), 230.300, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.320(1), 230.361(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.320(1) authorizes the commission to promulgate administrative regulations setting out the conditions under which licenses may be denied, revoked, or suspended. KRS 230.361(1) requires the commission to promulgate regulations concerning the pari-mutuel wagering system. This administrative regulation establishes track rules and requirements concerning

proper racing conduct, the starting and timing of races, placing, money distribution, post time and postponements, and protests.

Section 1. Driving Violations. A leading horse shall be entitled to any part of the track. After selecting a position in the home stretch, a driver of a horse shall not:

(1) Change either to the right or left during any part of the race if another horse is so near the driver that in altering positions, the driver:

(a) Compels the horse behind to shorten strides; or

(b) Causes the driver of any other horse to pull the horse out of his stride;

(2) Jostle, strike, hook wheels, or interfere with another horse or driver;

(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers;

(4) Swerve in and out or pull up quickly;

(5) Crowd a horse or driver by "putting a wheel under him";

(6) "Carry a horse out" or "sit down in front of him", take up abruptly in front of other horses so as to cause confusion or interference among the trailing horses, or do any other act that constitutes "helping";

(7) Allow a horse to pass inside needlessly or otherwise help another horse to improve its position in the race;

(8) Lay off a normal pace and leave a hole if it is well within the horse's capacity to keep the hole closed;

(9) Commit an act that impedes the progress of another horse or causes the horse to "break";

(10) Change course after selecting a position in the home stretch and swerve in or out, or bear in or out, in a manner that interferes with another horse or causes the horse to change course or take back;

(11) Drive in a careless or reckless manner or fail to maintain reasonable control of the horse at all times during the race;

(12) Whip under the arch of the sulky;

(13) Cross the inside limits of the course;

(14) Fail to set or maintain a pace comparable to the class being raced, including traveling an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race; or

(15) Kick a horse. Removal of a foot from the stirrups in and of itself shall not constitute the act of kicking.

#### Section 2. Leaving the Course.

(1) A horse or a horse's sulky that leaves the course by brushing, running over, or going inside of a pylon demarcation shall have violated this administrative regulation and may be penalized by a disqualification if in the opinion of the judges:

(a) The action results in the horse gaining an unfair advantage over other horses in the race;

(b) The action helps the horse improve its position in the race; or

(c) The driver goes inside the pylons and does not immediately correct position.

(2) A horse using the inside to pass shall have complete clearance of the pylons.

(3) A driver striking pylons but not gaining an unfair advantage may[shall] be cited for a violation of this administrative regulation unless he was forced to strike the pylons by circumstances beyond his control.

(4) If an act of interference causes a horse or part of a horse's sulky to be in violation of this administrative regulation and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

#### Section 3. Penalties.

(1) A horse that violates Section 1 or 2 of this administrative regulation shall:

(a) Be placed back one (1) or more positions in the heat or dash behind the horse with which the horse interfered;

(b) Be disqualified from receiving any winnings, if a horse is prevented from finishing as a result of the violation; or

(c) Be placed last among finishing horses, if a horse which the

violating horse interfered with fails to finish the race due to a separate and unrelated incident.

(2) If a violation established in Section 1 or 2 of this administrative regulation is committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back, if the judges determine that the violation may have affected the finish of the race. Otherwise, penalties shall be applied individually to the drivers of any entry.

#### Section 4. Complaints, Reports of Interference.

##### (1) Complaints.

(a) A complaint by a driver relating to driving or other misconduct during a heat shall be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury.

(b) A driver desiring to enter a claim of foul or other complaint of violation of the rules shall, before dismounting, indicate to the judges the driver's intention to enter a claim or complaint, and immediately upon dismounting, the driver shall proceed to the telephone or judges' stand where the claim, objection, or complaint shall be immediately entered.

(c) The judges shall not cause the official sign to be displayed until the claim, objection, or complaint has been entered and considered.

(2) Report of interference. A driver shall report to the designated official any interference to himself or herself or to the driver's horse by another horse or driver during a race.

#### Section 5. Unsatisfactory Drive; Fraud.

(1) A heat in a race shall be fairly contested by each horse in the race, and each horse shall be driven to the finish.

##### (2) A horse shall not be driven:

(a) With design to prevent the horse from winning a heat or dash which the horse was evidently able to win;

(b) In an inconsistent manner with the intent to improperly manipulate the outcome of a race; or

(c) To perpetrate or to aid in a fraud.

(3) The judges shall substitute a competent and reliable driver at any time prior to the start of the heat or race if the judges have reason to doubt the competence or reliability of the original driver.

Section 6. Removal and Substitution of Driver. A driver may be removed and another driver substituted after the positions have been assigned in a race if, in the opinion of the judges, a driver:

(1) Is unfit or incompetent to drive;

(2) Refuses to comply with the directions of the judges; or

(3) Is reckless in his or her conduct and endangers the safety of horses or other drivers in the race.

Section 7. Failure to Finish. If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled "did not finish."

#### Section 8. Disruptive Conduct.

(1) A driver shall not engage in disruptive or distracting, improper conduct during a race.

(2) A driver may remove a foot from the stirrup temporarily for the purpose of pulling earplugs.

#### Section 9. Whipping.

(1) A driver may have a whip that does not exceed four (4) feet with a snapper not longer than six (6) inches.

(2) Except for the ordinary whip or crop, a person shall not use any goading device, chain or mechanical device, or appliance upon a horse in any race, training exercise, or while on association grounds.

(3)(a) A whip or crop shall not be used in a brutal, excessive, or indiscriminate manner during a race, training exercise, or while on association grounds.

(b) A driver shall use a whip only in the conventional manner, by holding the handle and whipping the horse only above the shafts with wrist and elbow movement only. Full swings or going behind the head is prohibited.

(c) Welts, cuts, or whip marks on a horse resulting from

whipping shall constitute a prima facie violation of this section.

##### (d) A driver shall not:

1. Whip a horse under the arch or shafts of the sulky;

2. Kick a horse;

3. Punch a horse;

4. Jab a horse;

5. Use the whip so as to interfere with or cause disturbance to any other horse or driver in a race;

6. Whip a horse after a race; or

7. Whip a horse that is exhausted or no longer in contention to win the race.

(4) A driver shall keep a line in each hand and both hands shall stay in front of the body of the driver from the start of the race until the finish of the race. The left line shall be held in the left hand and the right line shall be held in the right hand.

#### Section 10. Hopples.

(1) A horse shall not wear hopples in a race unless it has qualified in hopples.

(2) Having so started, the horse shall continue to wear them to the finish of the race.

(3) A person shall not remove or alter a horse's hopples during a race, or between races, for the purpose of fraud.

(4) A horse habitually wearing hopples shall not start in a race without them unless:

(a) The horse performs satisfactorily in a qualifying race; or

(b) The presiding judge excuses the horse from performing in a qualifying race.

(5) A horse habitually racing free-legged shall not wear hopples in a race unless:

(a) The horse performs satisfactorily in a qualifying race; or

(b) The presiding judge excuses the horse from performing in a qualifying race.

(6) A horse shall not wear a head pole protruding beyond its nose.

#### Section 11. Breaking.

(1) If a horse breaks from its gait in trotting or pacing, the driver shall at once, if clearance exists, take the horse to the outside and pull it to its gait.

##### (2) A driver shall not:

(a) Fail to properly attempt to pull the horse to its gait;

(b) Fail to take to the outside or inside if clearance exists;

(c) Fail to lose ground by the break; or

(d) Fail to prevent extended break.

(3) If there has been no failure on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contending horse on its gait is lapped on the hind quarter of the breaking horse at the finish.

(4) A driver shall not allow a horse to break for the purpose of fraudulently losing a heat.

(5) If a horse or driver's actions cause another horse to be off-stride at the wire, the offending horse shall be placed behind the horse with whom it interfered after all other placements have been made.

(6) A horse making a break, which causes interference with other contesting horses, shall be placed behind all offended horses.

(7) The judges shall set a horse back one (1) or more places if this section is violated.

Section 12. Breaks. One (1) of the judges shall call out every break made, and the clerk shall at once note the break and its character in writing.

Section 13. Time Between Heats and Races. The time between separate heats of a single race shall be no less than forty (40) minutes. A heat shall not be called after sunset if the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

#### Section 14. Accidents.

(1) If any horse in the current program falls, runs uncontrollably

on the track, or is involved in an accident after starting to warm up, that horse shall be permitted to start only after examination and approval by the commission veterinarian.

(2) If an accident occurs, the judges shall allow adequate time in between posts to clear the track. A driver involved in an accident shall be cleared by an emergency medical technician or paramedic before resuming driving engagements.

Section 15. Sulkies.

(1) A driver shall be seated in his sulky at the finish of the race or the horse shall be placed as not finishing.

(2) The owner and trainer shall provide every sulky used in a race with uncolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission. If necessary, the presiding judge may order the use of mud guards to be provided by the owners or trainers.

(3) A sulky shall not be used in a race unless it meets the requirements of the rules and regulations of the United States Trotting Association, 2018, Rule 18, Section 25, "Sulky Performance Standards".

Section 16. Helmets. A protective helmet, securely fastened under the chin and meeting the Snell Memorial Foundation 2000 Standard for Protective Headgear for Use in Harness Racing, shall be worn at all times on the premises of an association while:

- (1) Racing, parading, or warming up a horse prior to racing; or
- (2) Jogging, training, or exercising a horse at any time.

Section 17. Safety Vests. A safety vest shall be worn while racing, parading, or warming up a horse prior to racing.

Section 18. A licensee shall not:

- (1) Refuse to comply with an order or ruling of a member or employee of the commission, a racing official, or judge;
- (2) Interfere with the performance of the duty of a person specified in subsection (1) of this section;
- (3) Threaten, strike, or harass an owner, trainer, driver or attendant of a horse, or an employee of the association or commission;
- (4) Sexually harass an owner, trainer, driver or attendant of a horse, or an employee of the association or commission; or
- (5) Use force or intimidation against an owner, trainer, driver or attendant of a horse, or an employee of the association or commission.

Section 19. (1) A person or association shall not offer any money, benefit, or other inducement to any licensee, employee of the commission, or officer of a racing association to affect the entries to a race, the running of a race, or the outcome of a race.

(2) Any action prohibited by subsection (1) of this section shall be immediately reported to the judges who shall promptly inform the racing association and the commission.

Section 20. (1) An owner, trainer, agent, or driver of a horse shall not threaten or join with others in threatening not to race, or not to declare in, because of the entry of a certain horse or a particular stable, thereby compelling or attempting to compel the racing secretary to reject an eligible entry.

(2) An action prohibited by subsection (1) of this section shall be immediately reported to the commission.

Section 21. An owner, agent, or driver who has entered a horse shall not demand of the association a bonus of money or other special award or consideration as a condition for starting the horse.

Section 22. Wagering.

(1) A driver shall not place a wager, or cause a wager to be placed on his or her behalf, or accept a ticket or winnings from a wager on a race, except:

- (a) A race on the horse he is driving; and
  - (b) Through the owner or trainer of the horse he is driving.
- (2) An owner or trainer who places a wager for his driver shall:

- (a) Maintain a complete record of the wager; and
- (b) Make the record available for examination by the judges upon request.

Section 23. Duty to Report Fraudulent Proposal. A person shall immediately report to the presiding judge the details of an offer, promise, or request for a bribe or wager intended to affect the outcome of a race.

Section 24. Denerving.

(1) A horse that has had a chemical, surgical, or thermal neurectomy at or above the fetlock shall not be permitted to race.

(2) A horse that has had a palmar or plantar digital neurectomy may be permitted to race if:

- (a) The neurectomy has been reported by the trainer to the stewards; and
- (b) The horse has been approved for racing by the commission veterinarian prior to being entered to race.

(3) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, virtual certificate, racing permit, and entry in the electronic registration system. Responsibility for ensuring that the neurectomy is correctly noted on the horse's registration certificate, virtual certificate, racing permit, and entry in the electronic registration system shall fall:

(a) Jointly on the practicing veterinarian who performed the operation and the trainer of the denerved horse if the neurectomy was performed at a location under the commission's jurisdiction; and

(b) Solely on the owner of the denerved horse if the neurectomy was performed at a location not under the commission's jurisdiction.

(4) If a horse races in violation of this section and participates in the purse distribution, a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this section and is claimed, a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting that the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be made publicly available.

Section 25. Spayed Mares. If a mare has been spayed:

(1) It shall be noted on the:

- (a) Registration certificate;
- (b) Electronic eligibility certificate; and
- (c) Program when the mare races; and

(2) The owner shall:

- (a) Notify the United States Trotting Association that the mare has been spayed; and
- (b) Return the mare's papers to the United States Trotting Association for correction.

Section 26. Starting Gate.

(1) Starter's control. The starter shall have control of the horses from the formation of the parade until the word, "go", is given.

(2) Before or during the parade, the starter shall inform the drivers of the number of scores permitted. After one (1) or two (2) preliminary warming up scores, the starter shall notify the drivers to proceed to the starting gate.

(3) A horse shall not be brought to the starting gate nearer than one eighth (1/8) of a mile before the start, if the length of the stretch permits.

(4) On a mile track, a horse shall be brought to the starting gate at the head of the stretch.

(5) The starting point shall be a point on the inside rail a distance of at least 200 feet from the first turn. The starter shall give the word "go" at the starting point.

(6) When a speed has been reached in the course of a start there shall not be a decrease except in the case of a recall.



(7) If a recall is necessary, a light plainly visible to the driver shall be flashed and a recall sounded and, if possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. The starter may close the wings of the gate if an emergency situation arises.

(8) There shall not be a recall after the word "go" has been given and any horse, regardless of position or accident, shall be considered a starter from the time the horse enters into the starter's control, unless dismissed by the starter or judges pursuant to subsection (10) of this section.

(9) The starter shall endeavor to start all horses in position and on gait, but a recall shall not be sounded for a breaking horse.

(10) The starter may sound a recall only for the following reasons, if the starter believes the integrity of the race may be jeopardized:

- (a) A horse scores ahead of the gate;
  - (b) There is interference;
  - (c) A horse has broken equipment;
  - (d) A horse falls before the word "go" is given;
  - (e) There is a malfunction of the starting gate;
  - (f) A horse comes to the gate out of position; or
  - (g) A circumstance arises that will not allow a fair start, as determined by the starter.
- (11) A driver shall not:
- (a) Delay the start;
  - (b) Fail to obey the starter's instructions;
  - (c) Rush ahead of the inside or outside wing of the gate;
  - (d) Come to the starting gate out of position;
  - (e) Cross over before reaching the starting point;
  - (f) Interfere with another driver during the start; or
  - (g) Fail to come up into position.
- (12) Unless granted permission by the presiding judge, a person other than the starter, or the starter's driver or operator, shall not be allowed to ride in the starting gate.

(13) Use of a mechanical loudspeaker for any purpose other than to give instructions to drivers shall be prohibited. The volume shall not be higher than necessary to carry the voice of the starter to the drivers.

#### Section 27. Holding Horses Before Start.

(1) A horse shall not be held on the backstretch for more than three (3) minutes awaiting post time, except if delayed by an emergency or by permission of the judges.

(2) Post time shall be posted no later than two (2) minutes following a previous race with the exception of mutual malfunction.

(3) Horses shall not be held on the track more than ten (10) minutes unless permission is granted by the Presiding Judge.

#### Section 28. Two (2) Tiers.

(1) If there are two (2) tiers of horses, the withdrawal of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier.

(2)(a) If a horse is drawn from any tier, horses on the outside shall fill the vacancy.

(b) If a horse has drawn a post position in the second tier, the driver of the horse may elect to score out behind any horse in the first tier, if the driver does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

#### Section 29. Starters.

(1) A horse shall be considered to have started when the word, "go", is given by the starter, and a horse shall be required to complete the course except in case of accident, broken equipment, or other circumstance which, in the opinion of the judges, makes it impossible or unsafe to complete the course.

(2) For the purpose of declaring a horse a nonstarter, the judges shall consider the actual starting point on the track regardless if there was a start.

#### Section 30. Unmanageable Horse.

(1) If, in the opinion of the judges or the starter, a horse is

unmanageable or may cause accidents or injury to another horse or to any driver, it shall be scratched. The starter shall notify the judges of the scratch, who shall then notify the public.

(2) A horse shall be considered unmanageable if it causes two (2) recalls in the same dash or heat, in which case it shall be scratched.

Section 31. Bad Acting Horse. At a meeting where there is no wagering, the starter may place a bad acting horse on the outside. At a pari-mutuel meeting, this action may be taken only if there is time for the starter to notify the judges, who shall in turn notify the public prior to the sale of tickets for the race. If tickets have been sold, the bad acting horse shall be scratched under the provisions of Section 30 of this administrative regulation.

Section 32. Post Positions; Heat Racing. The horse winning a heat shall take the pole (or inside position) in the succeeding heat, unless otherwise specified in the published conditions, and all others shall take their positions in the order they were placed in the last heat. If two (2) or more horses finish in a dead heat, their positions shall be settled by lot.

Section 33. Shield. The arms of a starting gate shall be provided with a screen or a shield in front of the position for each horse, and the arms shall be perpendicular to the rail.

Section 34. Unfair Advantage Prior to Start. If a horse comes to the gate out of its assigned post position and gains an unfair advantage by moving either to the left or right to its assigned post position before the starter gives the word, "go," that horse shall be disqualified and placed by the judges.

Section 35. Malfunction of the Gate. A licensed starter shall check the starting gate for malfunctions before commencing a meeting and shall practice the measures to be followed if there is a malfunction. Both the starter and the driver of the gate shall know and practice emergency measures, and the starter shall be responsible for the training of drivers in taking emergency measures.

Section 36. Timing Races. The time of a heat shall be taken by:

- (1) One electronic timing device; and
- (2) One hand-held timing device.

Section 37. Track Measurement Certificate. An association shall file with the commission a certificate from a duly licensed civil engineer or land surveyor attesting that the track has been measured from wire to wire three (3) feet out from the pole or inside hub rail, and certifying in linear feet the result of the measurement. If there is a change or relocation of the hub rail, the track shall be measured and recertified.

Section 38. Time for Lapped on Break. The leading horse shall be timed and his time only shall be announced. A horse shall not obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing.

Section 39. Time for Dead Heat. If there is a dead heat, the time shall constitute a record for the horses making a dead heat and both shall be considered winners.

Section 40. Timing Procedure. The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

Section 41. Time Performances. Time performances shall be permitted with the permission of the presiding judge subject to the following:

- (1) A urine test or blood test or both shall be required for any horse with a winning time performance; and
- (2) A workout for the judges or time trial performance shall not

be used to qualify a horse to race.

Section 42. Unless otherwise provided in the conditions, a purse shall be distributed on the dash basis with the money awarded according to a horse's position in each separate dash or heat of the race. Purse money distribution in overnight events shall be limited to the first five (5) finishers.

Section 43. Dashes.

(1) Except for stakes or futurities as established in 810 KAR 5:050, Section 7, unless otherwise specified in the conditions, the money distribution in dashes shall be in the following percentages: fifty (50), twenty-five (25), twelve (12), eight (8), and five (5).

(2) In early closing races, late closing races, or added money events, if there are less than five (5) starters, the remaining purse shall go to the race winner unless the conditions call for a different distribution.

(3) In overnight events, if there are less than five (5) starters, the purse for the position for which there are no starters shall be retained by the association.

(4) If there is a purse for which horses have started but were unable to finish due to an accident, all non-offending horses that did not finish shall share equally in the premium or premiums.

(5) If there is a purse for which horses have started but were unable to finish and the situation is not covered by subsection (4) of this section, the purse shall be paid to the winner.

Section 44. If unfavorable weather or other unavoidable cause exists that necessitates postponement of a race, and the judges consent, an association shall postpone a race in the following manner:

(1) Early closing races, stakes, and futurities shall be postponed to a definite hour the next fair day and good track.

(2) A late closing race, early closing race, stake, or futurity (except as provided in subsections (4) and (5) of this section) that cannot be raced during the scheduled meeting shall be declared off, and the entrance money and forfeits shall be divided equally among the nominators who have horses declared in and eligible to start.

(3) A late closing race or early closing race that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary. A late closing race or early closing race that has been started but postponed by rain earlier in the meeting shall be declared ended and the full purse divided according to the summary, if there is sufficient time to conduct the race during the scheduled meeting.

(4) A stake or futurity shall be raced where advertised, and the race meeting, if necessary, shall be extended. A stake or futurity that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary, unless the association elects to extend the meeting to complete the race. A horse that is scratched after a heat and before a race is declared finished shall not participate in purse distribution from subsequent heats.

(5) Unless otherwise provided in the conditions of the race, unanimous consent shall be obtained from the association and from those with eligibles in the race before a stakes race or futurity may be transferred to another meeting.

(6) At a meeting of more than five (5) days duration, an overnight event may be postponed and carried over for a maximum of two (2) racing days.

(7) At a meeting of five (5) days duration or less, an overnight event or late closing race shall be cancelled and starting fees shall be returned if postponement occurs, unless the association adds the postponed race to the advertised program and the race is held within two (2) weeks of cancellation.

(8) A postponed race may, at the option of the association, be contested in a single mile dash. If a race is postponed under this administrative regulation, the association shall select the order in which the events shall be raced in any combined program.

Section 45. Post Time.

(1) If racing is conducted at night or twilight, the racing program shall be completed no later than 12:00 a.m., midnight.

(2) Post time for the first race of the evening shall be fixed by the association. A delay in the first post of not more than ten (10) minutes from the established post time may be taken without prior approval of the commission.

Section 46. Number of Races Per Program.

(1) If eight (8) races are programmed, four (4) completed races shall constitute a completed program.

(2) If nine (9) races are programmed, five (5) completed races shall constitute a completed program.

(3) If ten (10) or more races are programmed, six (6) completed races shall constitute a completed program.

Section 47. Postponements.

(1) Racing shall not be conducted by an association over a track that is dangerous to drivers or horses.

(2) If inclement weather or other conditions appear to make the track dangerous, the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horseman's Association or the Kentucky Harness Association shall determine whether racing shall be conducted or postponed.

(3) If a difference of opinion exists between the representative of the association and the representative of the Kentucky Harness Horseman's Association or the Kentucky Harness Association as to whether racing shall be conducted or postponed, the decision of the presiding judge shall be final.

Section 48. Protests. Protests shall:

(1) Be made only by:

- (a) An owner;
- (b) A manager;
- (c) A trainer; or
- (d) A driver;

(2) Be made at any time before distribution of the purse is made;

(3) Be made in writing;

(4) Be sworn to; and

(5) Contain at least one (1) specific charge questioning eligibility which, if true, would prevent the offending horse from competing in the race.

Section 49. The judges shall, in case of protest, demand that the driver and the owner or owners, if present, shall immediately testify under oath. If a person refuses to testify after being ordered to do so and the race has not yet started, that person's horse shall not be allowed to start or continue in the race, but shall be ruled out, and any entrance money shall be forfeited.

Section 50. Unless the judges find satisfactory evidence to warrant excluding the horse, they shall allow a horse to start or continue in the race under protest. If the purse is won by that horse, it shall be retained by the association on behalf of the commission to allow the interested parties to continue the protest proceeding, in accordance with Section 53 of this administrative regulation.

Section 51. A person shall not knowingly, and with intent to influence the results of a race, protest a horse falsely and without cause.

Section 52. This administrative regulation shall not affect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution is made upon the official placing at the conclusion of the heat or dash.

Section 53. (1) A protest shall be reviewed and appealed in accordance with the procedures set forth in 810 KAR 8:030 and KRS Chapter 13B.

(2) The purse money affected shall be deposited with the association pending the decision of the protest review or appeal.

Section 54. A judge shall not refuse to accept a protest.

Section 55. A person who has knowledge, prior to a race, of information that would prevent an ineligible horse from running in a race, and who fails to file a protest prior to the race with regard to that horse, shall have waived the right to protest after the race if the protest would have prevented the ineligible horse from running in the race.

Section 56. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Rules and Regulations of the United States Trotting Association, 2018, Rule 18, Section 25, "Sulky Performance Standards"; and

(b) The Snell Memorial Foundation's "2000 Standard for Protective Headgear for Use in Harness Racing".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.810 KAR 5:070

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: August 30, 2021

FILED WITH LRC: September 2, 2021 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on November 22, 2021 via video conference at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a comprehensive set of rules for the conduct of standardbred races. The regulation sets forth rules concerning fouls, improper driving, timing of races, placing and money distribution, postponement and rescheduling, post time requirements, and protests.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a set of rules to ensure the orderly and fair running of standardbred races.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to various aspects of the running of standardbred races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the statutory mandate of the Commission to promulgate regulations prescribing the conditions

under which horse racing is conducted in 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 proposed amendment will change the regulation to give the standardbred judges the discretion to cite a driver striking pylons but not gaining an unfair advantage.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the judges with necessary discretion.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This proposed amendment prescribes the conditions relating to various aspects of the running of standardbred races.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment implements the statutory mandate of the Commission to promulgate regulations prescribing the conditions under which horse racing is conducted in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky's two licensed standardbred race tracks, and all individual participants in horse racing, are potentially affected by this proposed amendment's clarification of rules pertaining to the conduct of racing. In 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to entries and starters in standardbred racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No significant costs are associated with complying with this proposed regulatory amendment.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly-defined rules that enhance the integrity of racing.

(a) Initially: There is no initial administrative cost to implement this proposed amendment.

(b) On a continuing basis: There is no continuing cost to implement this proposed amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the Commission's budget.

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

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

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied, because this proposed amendment will apply to all similarly situated entities in an equal manner.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, and 230.370.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

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

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

**902 KAR 2:020. Reportable disease surveillance.**

RELATES TO: KRS [241.180(1),—244.040,] 214.645, 214.625(5)(c)5, 214.990(1), 215.520, 216B.015, 258.065, 258.990, 311.282, 311.571, 315.010, 321.181(4), 333.020, 333.130

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.180(1)(a), 214.010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(a) ~~authorizes~~[requires] the cabinet to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases that are transmissible to man, and other diseases and health hazards that can be controlled. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet. This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases and to permit an accurate assessment of the health status of the commonwealth.

Section 1. Definitions. (1) "Acid fast bacilli" or "AFB" means the mycobacteria that, if stained, retains color even after having been washed in an acid solution and can be detected under a microscope in a stained smear.

(2) "Health facility" is defined by KRS 216B.015(13).

(3) "Health professional" means a professional licensed under KRS Chapters 311 through 314.

(4) "Healthcare-associated infection" or "HAI" means an infection acquired by a person while receiving treatment for a separate condition in a health care setting.

(5) "Kentucky public health advisory" means a notification to health professionals, health facilities, and laboratories subject to this administrative regulation identifying a new health threat that warrants reporting through the procedures of this administrative regulation.

(6) "Laboratory-confirmed influenza" means influenza diagnosed through testing performed using:

(a) Reverse transcriptase polymerase chain reaction (RT PCR);

(b) Nucleic acid detection; or

(c) Viral culture.

(7) "Medical laboratory" is defined by KRS 333.020(3).

(8) "National Healthcare Safety Network" or "NHSN" means the nation's most widely used healthcare-associated infection (HAI) tracking system as provided to medical facilities by the Centers for Disease Control and Prevention (CDC)[CDC].

(9) "National reference laboratory" means a laboratory located outside of Kentucky that is contracted by a Kentucky health professional, laboratory, or health facility to provide laboratory testing.

(10) "Novel influenza A virus" means an influenza virus that causes human infection but is different from the seasonal human influenza A virus subtypes and includes viruses predominately of avian and swine origin.

(11) "Nucleic acid amplification test" or "NAAT" means the laboratory test used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence, usually for detecting a microorganism.

(12) "Outbreak" means:

(a) Two (2) or more cases, including HAIs, that are epidemiologically linked or connected by person, place, or time; or

(b) A single case of an HAI not commonly diagnosed.

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

(14) "Post-exposure prophylaxis" or "PEP" means taking an antiretroviral medicine after being potentially exposed to HIV to prevent becoming infected.

(15) "Pre-exposure prophylaxis" or "PrEP" means daily medicine intended to reduce the chance of getting HIV.

(16) "Select agent" means a biological agent or toxin that could pose a severe threat to public health, plant health, animal product, or plant product as determined by the National Select Agent Registry (NSAR) at [www.selectagents.gov](http://www.selectagents.gov).

(17) "Veterinarian" is defined by KRS 321.181(4).

Section 2. Notification Standards. (1) Health professionals and facilities.

(a) A health professional or a health facility shall give notification if:

1. The health professional or a health facility makes a probable diagnosis of a disease specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation; and

2. The diagnosis is supported by:

a.(i) Clinical or laboratory criteria; and

(ii) Case classifications published by the Centers for Disease Control and Prevention at [wwwn.cdc.gov/nndss](http://wwwn.cdc.gov/nndss); or

b. A health professional's medical opinion that the disease is present.

(b) A single report by a health facility of a condition diagnosed by a test result from the health facility's laboratory shall constitute notification on behalf of the health facility and its laboratory.

(c) A health facility may designate an individual to report on behalf of the health facility's laboratory, pharmacy, and the health facility's other clinical entities.

(d) Notification shall be given to the local health department serving the county in which the patient resides.

(e) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(f) The reporting health professional or health facility shall submit:

1. Information required in Section 5(6) of this administrative regulation; and

2. Clinical, epidemiologic, and laboratory information pertinent

to the disease including sources of specimens submitted for laboratory testing.

(2) Medical Laboratories.

(a) A laboratory test result that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation shall be reported to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c) The reporting laboratory shall submit the information required in Section 5(6) of this administrative regulation.

(3) National Reference Laboratories.

(a) A test result performed by a national reference laboratory that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation shall be reported by the director of a medical laboratory, a health facility, or the health professional that referred the test to the national reference laboratory to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c) The report shall include the information required by Section 5(6) of this administrative regulation.

Section 3. Submission of Specimens to the Kentucky Department for Public Health Division of Laboratory Services. (1) A medical laboratory and a national reference laboratory in receipt of diagnostic specimens originating from the Commonwealth of Kentucky shall send direct specimens or pure clinical isolates for diseases established in subsection (5) of this section to the Division of Laboratory Services for primary or confirmatory testing and related studies.

(2) A medical laboratory or national reference laboratory using non-culture techniques to identify bacterial agents of diarrheal disease, such as enzyme immunoassays (EIAs) or molecular assays, shall attempt isolation of the etiologic agent identified. Pure clinical isolates shall be submitted to the Division of Laboratory Services.

(3) If the culture attempts do not produce a clinical isolate, the direct specimen, submitted in the appropriate preservative, shall be sent to the Division of Laboratory Services. A submitting laboratory shall provide the name of the etiologic agent detected by the non-culture technique at the time of specimen submission.

(4) A medical laboratory performing this test shall continue to follow the state's requirement for the submission of appropriate materials to the state public health laboratory.

(5) A medical or national reference laboratory shall submit pure isolates or, if not available, the direct specimen from the following diseases to the Division of Laboratory Services:

(a) Botulism, with prior approval from the Division of Epidemiology for testing;

(b) Brucellosis;

(c) Campylobacteriosis;

(d) Candida auris;

(e) Carbapenem-resistant Acinetobacter;

(f) Carbapenem-resistant Enterobacteriaceae;

(g) Carbapenem-resistant Pseudomonas;

(h) Cholera and diseases caused by other Vibrio species;

(i) Diphtheria;

(j) Escherichia coli O157:H7;

(k) Hemolytic Uremic Syndrome (HUS) – Post Diarrheal;

(l) Listeriosis;

(m) Measles;

(n) Meningococcal infections;

(o) Rabies, animal;

(p) Rubella;

(q) Salmonellosis;

(r) Shiga toxin-producing E. coli (STEC);

(s) Shigellosis;

(t) Tuberculosis (TB);

(u) Tularemia;

(v) Typhoid fever;

(w) Vancomycin-intermediate Staphylococcus aureus;

(x) Vancomycin-resistant Staphylococcus aureus; and

(y) Zika, with prior approval from the Division of Epidemiology for testing.

(6) All direct specimens or clinical isolates from enteric disease shall be submitted within seventy-two (72) hours from collection.

Section 4. Laboratory Testing and Submission of Specimens to the Division of Laboratory Services for the Identification of M. tuberculosis.

(1) For the identification of M. tuberculosis, a medical laboratory or national reference laboratory shall perform AFB smear and culture, regardless of rapid molecular testing results (NAAT).

(2) Rapid molecular testing shall be performed for the identification of M. tuberculosis on:

(a) Any diagnostic specimen with an AFB smear positive result; or

(b) Any specimen that originates from an individual with clinical or epidemiological evidence suggesting active tuberculosis.

(3) If rapid molecular testing cannot be performed by the medical laboratory or national reference laboratory, the diagnostic specimen shall be sent to the Division of Laboratory Services.

(4) A medical laboratory or national reference laboratory that has a diagnostic specimen test positive for M. tuberculosis by rapid molecular testing shall send the remainder of that specimen to the Division of Laboratory Services.

(5) Any diagnostic specimen found to be positive for M. tuberculosis by rapid molecular testing or culture testing shall be reported in accordance with Section 7 of this administrative regulation.

Section 5. Reporting Classifications and Methods. (1) Immediate reporting.

(a) A report required by Section 12(1) and (2) of this administrative regulation to be made immediately shall be:

1. Made by telephone to the local health department serving the county in which the patient resides; and

2. Followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring immediate reporting, the local health department shall:

1. Notify the Kentucky Department for Public Health by telephone; and

2. Assist the department in carrying out a public health response.

(c) Weekend, evening, or holiday immediate notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) For the protection of patient confidentiality, a report using the emergency number shall include:

1. The name of the condition being reported; and

2. A telephone number that can be used by the department to contact the reporting health professional or health facility.

(2) Urgent reporting.

(a) A report made within twenty-four (24) hours as required by Section 6 of this administrative regulation shall be:

1. Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. If submitted by telephone, followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring urgent reporting, the local health department shall:

1. Notify the Kentucky Department for Public Health; and

2. Assist the department in carrying out a public health

response.

(c) Weekend, evening, or holiday urgent notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) For the protection of patient confidentiality, notification using the emergency number shall include:

1. The name of the condition being reported; and

2. A telephone number that can be used by the department to contact the reporting health professional or health facility.

(3) Priority reporting.

(a) A report made within one (1) business day as required by Section 7, 11, 12(3), 17(4), or 18 of this administrative regulation shall be:

1. Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. If submitted by telephone, followed up by electronic or fax submission of a report to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring priority reporting, a local health department shall:

1. Investigate the report and carry out public health protection measures; and

2. Notify the Kentucky Department for Public Health of the case by electronic or fax submission within one (1) business day.

(c) The reporting health department may seek assistance in carrying out public health measures from the Kentucky Department for Public Health.

(4) Routine reporting.

(a) A report made within five (5) business days, as required by Section 8, 9, 10, 13(1), 16(1), 17(7), or 20(1) of this administrative regulation, shall be made electronically, by fax, or by mail to the local health department serving the county in which the patient resides.

(b) Upon receipt of a report of a disease or condition requiring routine reporting, a local health department shall:

1. Make a record of the report;

2. Answer inquiries or render assistance regarding the report if requested by the reporting entity; and

3. Forward the report to the Kentucky Department for Public Health by electronic or fax submission of a report, or in writing within five (5) business days.

(5) General reporting. A report made within three (3) months, as required by Section 19 of this administrative regulation, shall be made electronically, by fax, or by mail.

(6) Reporting requirements.

(a) A report submitted by fax or by mail shall be made using one (1) of the following reporting forms:

1. EPID 200, Kentucky Reportable Disease Form;

2. EPID 250, Kentucky Reportable MDRO Form, to be used for priority reporting;

3. EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less);

4. EPID 399, Perinatal Hepatitis B Prevention Form for Infants;

5. Adult HIV Confidential Case Report Form; or

6. Pediatric HIV Confidential Case Report Form.

(b) Information to be reported. Except as provided in subsections (1)(d) and (2)(d) of this section, a report required by this administrative regulation shall include:

1. Patient name;

2. Date of birth;

3. Gender;

4. Race;

5. Ethnicity;

6. Patient address;

7. County of residence;

8. Patient telephone number;

9. Name of the reporting medical provider or facility;

10. Address of the reporting medical provider or facility; and

11. Telephone number of the reporting medical provider or facility.

(c) A reporting health professional shall submit the information listed in this subsection and Section 2(1)(f) of this administrative regulation.

Section 6. Notifiable Infectious Conditions Requiring Urgent Notification. (1) Notification of the following diseases shall be considered urgent and shall be made within twenty-four (24) hours:

(a) Anthrax;

(b) Botulism;

(c) Brucellosis (multiple cases, temporally or spatially clustered);

(d) Diphtheria;

(e) Hepatitis A, acute;

(f) Measles;

(g) Meningococcal infections;

(h) Middle East Respiratory Syndrome-associated Coronavirus (MERS-CoV) disease;

(i) Multi-system Inflammatory Syndrome in Children (MIS-C);

(j) Novel influenza A virus infections;

(k) Plague;

(l) Poliomyelitis;

(m) Rabies, animal;

(n) Rabies, human;

(o) Rubella;

(p) Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV) disease;

(q) Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19);

(r) Smallpox;

(s) Tularemia;

(t) Viral hemorrhagic fevers due to:

1. Crimean-Congo Hemorrhagic Fever virus;

2. Ebola virus;

3. Lassa virus;

4. Lujo virus;

5. Marburg virus; or

6. New world arenaviruses including:

a. Guanarito virus;

b. Junin virus;

c. Machupo virus; and

d. Sabia virus; and

(u) Yellow fever.

(2) To track the spread of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, notification of testing results shall include both positive and negative test results.

Section 7. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Priority Notification. Notification of the following diseases or conditions shall be considered priority and shall be made within one (1) business day:

(1) Arboviral diseases, neuroinvasive and non-neuroinvasive, including:

(a) California serogroup virus diseases, including diseases caused by:

1. California encephalitis virus;

2. Jamestown Canyon virus;

3. Keystone virus;

4. La Crosse virus;

5. Snowshoe hare virus; and

6. Trivittatus viruses;

(b) Chikungunya virus disease;

(c) Eastern equine encephalitis virus disease;

(d) Powassan virus disease;

(e) St. Louis encephalitis virus disease;

(f) Venezuelan equine encephalitis disease;

(g) West Nile virus disease;

(h) Western equine encephalitis virus disease; and

(i) Zika virus disease or infection or the birth of a child to a mother who was Zika-positive or Zika-inconclusive during any stage of pregnancy or during the periconceptional period;

(2) Brucellosis (cases not temporally or spatially clustered);

(3) Campylobacteriosis;

- (4) Carbon monoxide poisoning;
- (5) Cholera;
- (6) Cryptosporidiosis;
- (7) Cyclosporiasis;
- (8) Dengue virus infections;
- (9) Escherichia coli O157:H7;
- (10) Foodborne disease outbreak;
- (11) Giardiasis;
- (12) Haemophilus influenzae invasive disease;
- (13) Hansen's disease (leprosy);
- (14) Hantavirus infection, non-Hantavirus pulmonary syndrome;
- (15) Hantavirus pulmonary syndrome (HPS);
- (16) Hemolytic uremic syndrome (HUS), post-diarrheal;
- (17) Hepatitis B, acute;
- (18) Hepatitis B infection in a pregnant woman;
- (19) Hepatitis B infection in an infant or a child aged five (5) years or less;
- (20) Newborns born to Hepatitis B positive mothers at the time of delivery;
- (21) Influenza-associated mortality;
- (22) Legionellosis;
- (23) Leptospirosis;
- (24) Listeriosis;
- (25) Mumps;
- (26) Norovirus outbreak;
- (27) Pertussis;
- (28) Pesticide-related illness, acute;
- (29) Psittacosis;
- (30) Q fever;
- (31) Rubella, congenital syndrome;
- (32) Salmonellosis;
- (33) Shiga toxin-producing E. coli (STEC);
- (34) Shigellosis;
- (35) Streptococcal toxic-shock syndrome;
- (36) Streptococcus pneumoniae, invasive disease;
- (37) Tetanus;
- (38) Toxic-shock syndrome (other than Streptococcal);
- (39) Tuberculosis;
- (40) Typhoid fever;
- (41) Varicella;
- (42) Vibriosis; and
- (43) Waterborne disease outbreak.

Section 8. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Routine Notification. Notification of the following diseases shall be considered routine and shall be made within five (5) business days:

- (1) Acute Flaccid Myelitis;
- (2) Anaplasmosis;
- (3) Babesiosis;
- (4) Coccidioidomycosis;
- (5) Creutzfeldt-Jakob disease;
- (6) Ehrlichiosis;
- (7) Hepatitis C, acute;
- (8) Hepatitis C infection in a pregnant woman;
- (9) Hepatitis C infection in an infant or a child aged five (5) years or less;
- (10) Newborns born to Hepatitis C positive mothers at the time of delivery;
- (11) Histoplasmosis;
- (12) Laboratory-confirmed influenza;
- (13) Lead poisoning;
- (14) Lyme Disease;
- (15) Malaria;
- (16) Spotted Fever Rickettsiosis (Rocky Mountain Spotted Fever);
- (17) Toxoplasmosis; and
- (18) Trichinellosis (Trichinosis).

Section 9. Notifiable Infectious Conditions Requiring Routine Notification by Electronic Laboratory Reporting. (1) Notification of the following shall be considered routine and shall be electronically

reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

- (a) Hepatitis B laboratory test results, which shall:
  1. Be reported as positive or negative; and
  2. Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive;
- (b) Hepatitis C laboratory test results, which shall:
  1. Be reported as positive or negative; and
  2. Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive; or
- (c) Varicella laboratory test results reported as positive for:
  1. Isolation of varicella virus from a clinical specimen;
  2. Varicella antigen detected by direct fluorescent antibody test; or
  3. Varicella-specific nucleic acid detected by polymerase chain reaction (PCR).
- (2) Reports made pursuant to this section shall include a diagnosis.

Section 10. Multi-Drug Resistant Organisms and Other Organisms Requiring Routine Notification by Electronic Laboratory Reporting. (1) Notification of the following diseases shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

- (a) Clostridioides (formerly Clostridium) difficile (C. difficile) identified from a positive laboratory test result for C. difficile toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;
- (b) Enterobacteriaceae species resistant to ceftazidime, ceftriaxone, or cefotaxime;
- (c) Methicillin-resistant Staphylococcus aureus (MRSA), which includes S. aureus cultured from any specimen that tests oxacillin-resistant, ceftazidime-resistant, or methicillin-resistant by standard susceptibility testing methods, or by a laboratory test that is FDA-approved for MRSA detection from isolated colonies. These methods may also include a positive result by any FDA-approved test for MRSA detection; and
- (d) Vancomycin-resistant Enterococcus species (VRE), only those identified to the species level, that are resistant to Vancomycin by standard susceptibility testing methods or by results from any FDA-approved test for VRE detection from specific specimen sources.

(2) The report of an organism under this section shall include the:

- (a) Date of specimen collection;
  - (b) Source of specimen;
  - (c) Susceptibility pattern; and
  - (d) Name of the ordering health professional.
- (3) Upon a test result performed by a medical laboratory that indicates infection with an agent associated with one (1) or more of the diseases or conditions or a multi-drug resistant organism specified in this section, the director of the medical laboratory shall electronically report the result to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) days.
- (4) The report shall include a diagnosis.

Section 11. Multi-drug Resistant Organisms and Other Organisms Requiring Priority Reporting by EPID 250 and by Electronic Laboratory Reporting to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within One (1) Business Day. Notification of the following diseases shall be considered priority:

- (1) Candida auris - Laboratory Criteria for Diagnosis shall include:
  - (a) Confirmatory laboratory evidence for detection of Candida auris from any body site using either culture or a culture independent diagnostic test (for example, Polymerase Chain

Reaction {PCR}); or

(b) Presumptive laboratory evidence for detection of *Candida haemulonii* from any body site using a yeast identification method that is not able to detect *Candida auris*, and either the isolate or specimen is not available for further testing, or the isolate or specimen has not yet undergone further testing;

(2) Carbapenem-resistant – *Acinetobacter* – Any *Acinetobacter* species testing resistant to imipenem, meropenem, or doripenem, with minimum inhibitory concentration (MIC)[MIC] value greater than or equal to eight (8) µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(3) Carbapenem-resistant Enterobacteriaceae (CRE) – Any Enterobacteriaceae species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to four (4) µg/mL, or ertapenem with MIC value greater than or equal to two (2) µg/mL, by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(4) Carbapenem-resistant – *Pseudomonas* – Any *Pseudomonas* species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to eight (8) µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(5) Vancomycin-intermediate *Staphylococcus aureus* (VISA), which includes *S. aureus* cultured from any specimen having a MIC[~~minimum inhibitory concentration (MIC)~~] of four (4) to eight (8) µg/mL for vancomycin per standard laboratory methods; and

(6) Vancomycin-resistant *Staphylococcus aureus* (VRSA), which includes *S. aureus* cultured from any specimen having a MIC[~~minimum inhibitory concentration (MIC)~~] of greater than or equal to sixteen (16) µg/mL for vancomycin per standard laboratory methods.

Section 12. Newly Recognized Infectious Agents, HAI Outbreaks, Emerging Pathogens, and Pathogens of Public Health Importance. (1) The following shall be reported immediately by telephone to the Kentucky Department for Public Health:

(a) A suspected incidence of bioterrorism caused by a biological agent;

(b) Submission of a specimen to the Kentucky Division of Laboratory Services for select agent identification or select agent confirmation testing; or

(c) An outbreak of a disease or condition that resulted in multiple hospitalizations or death.

(2) An unexpected pattern of cases, suspected cases, or deaths that could indicate the following shall be reported immediately by telephone to the local health department in the county where the health professional is practicing or where the facility is located:

(a) A newly-recognized infectious agent;

(b) An outbreak;

(c) An emerging pathogen that may pose a danger to the health of the public;

(d) An epidemic; or

(e) A noninfectious chemical, biological, or radiological agent.

(3) A report of the following shall be considered priority and shall be reported to the local health department in the county where the health professional is practicing or where the facility is located within one (1) business day:

(a) Suspected *Staphylococcal* or other foodborne intoxication; or

(b) Salmonellosis or other foodborne or waterborne infection.

(4) The local health department shall:

(a) Investigate the outbreak or occurrence;

(b) Carry out public health protection measures to address the disease or condition involved; and

(c) Make medical and environmental recommendations to prevent future similar outbreaks or occurrences.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 13. Laboratory Surveillance. (1) Medical or national reference laboratory results for the following shall be considered

routine:

(a) Influenza virus isolates;

(b) PCR-positive test results for influenza virus; and

(c) DNA molecular assays for influenza virus.

(2) The report shall include specific laboratory information pertinent to the result.

(3) Upon request by the Kentucky Department for Public Health, a health facility laboratory or a medical laboratory shall report the number of clinical isolates and information regarding the antimicrobial resistance patterns of the clinical isolates at intervals no less frequently than three (3) months for:

(a) *Acinetobacter baumannii* complex;

(b) *Enterobacter cloacae* complex;

(c) *Enterococcus* species;

(d) *Escherichia coli*;

(e) *Klebsiella oxytoca*;

(f) *Klebsiella pneumoniae*;

(g) *Pseudomonas aeruginosa*;

(h) *Staphylococcus aureus*; or

(i) An organism specified in a request that includes a justification of its public health importance.

(4) A facility that reports antimicrobial resistance (AR) data to the National Healthcare Safety Network (NHSN) AUR (Antimicrobial Use & Resistance) module shall meet this reporting requirement through NHSN reporting.

Section 14. Healthcare-Associated Infection Surveillance. (1) A health facility in Kentucky that participates in Centers for Medicare and Medicaid Services (CMS)[CMS] reporting programs shall authorize the CDC to allow the Kentucky Department for Public Health to access health care-associated infection data reported to NHSN.

(2) The Kentucky Department for Public Health shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(3) The Kentucky Department for Public Health may issue reports to the public regarding healthcare-associated infections in aggregate data form that:

(a) May identify individual health care facilities; and

(b) Shall comply with methodology developed by the CDC and CMS for national reporting of health care-associated infections.

(4) The Kentucky Department for Public Health may evaluate healthcare-associated infection data for accuracy and completeness.

Section 15. Antimicrobial Use Reporting. (1) A short-term acute-care hospital in Kentucky that participates in the CMS[~~Centers for Medicare and Medicaid Services (CMS)~~] reporting programs shall report data on facility-wide inpatient antimicrobial use to the Kentucky Department for Public Health, Healthcare-Associated Infection/Antibiotic Resistance (HAI/AR) Prevention Program, on a quarterly basis[~~effective January 1, 2024~~]. Critical access hospitals shall be exempt.

(2) Reporting deadlines shall be consistent with the CMS reporting program submission deadlines of data to the NHSN.

(3) The HAI/AR Prevention Program shall provide the specifications for data submission.

(4) Hospitals shall include aggregated antimicrobial use and patient day data for all inpatient units (facility-wide inpatient) included in the NHSN Laboratory-identified (LabID) MRSA Bacteremia reporting.

(5) The antimicrobial use numerator shall be days of therapy (DOTs) as defined by the NHSN Antimicrobial Use and Resistance (AUR) Module, available at [//www.cdc.gov/nhsn/pdfs/pscmanual/11pscaurcurrent.pdf](https://www.cdc.gov/nhsn/pdfs/pscmanual/11pscaurcurrent.pdf).

(6) Total DOTs shall be submitted for each of the following antimicrobials:

(a) Azithromycin;

(b) Cefepime;

(c) Ceftazidime;

(d) Ceftriaxone;

(e) Ciprofloxacin;

(f) Clindamycin;



- (g) Daptomycin;
- (h) Ertapenem;
- (i) Imipenem;
- (j) Levofloxacin;
- (k) Linezolid;
- (l) Meropenem;
- (m) Moxifloxacin;
- (n) Piperacillin-tazobactam; and
- (o) Vancomycin.

(7) Total DOTs for the listed drugs shall include only administrations via the intravenous and digestive tract routes.

(8) The denominator for antimicrobial use reporting shall be patient days as defined by the NHSN LabID Module available at [https://www.cdc.gov/nhsn/pdfs/pscreporting/12pscmrdo\\_cdadcurrent.pdf](https://www.cdc.gov/nhsn/pdfs/pscreporting/12pscmrdo_cdadcurrent.pdf).

(9) A hospital that reports antimicrobial use data to the NHSN AUR Module shall meet this reporting requirement through NHSN reporting.

Section 16. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) All case reports shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning, or its designee, within five (5) business days of diagnosis on one (1) of the following forms:

- (a) Adult HIV Confidential Case Report Form; or
- (b) Pediatric HIV Confidential Case Report Form.

(2) Health professionals and medical laboratories shall report:  
(a) A positive test result for HIV, ~~[infection]~~ including tests with negative or indeterminate results that are part of a diagnostic testing algorithm whose overall interpretation is positive, and results[a result] from:

- 1. Any HIV antibody test[3rd-generation immunoassay];
- 2. Any HIV antigen test[4th-generation immunoassay];
- 3. Any HIV Ribonucleic acid (RNA) or Deoxyribonucleic acid (DNA) test;

~~4. [Western Blot];~~  
~~4. PCR;~~  
~~5. HIV-1 or HIV-2 differentiating such as Multispot;~~  
~~6. HIV antigen;~~  
~~7. HIV antibody;~~  
~~8. CD4+ assay including absolute CD4+ cell counts and CD4+%;~~

~~5. [9. HIV Viral Load Assay including detectable and undetectable values;~~

~~10. HIV genetic sequencing; or~~

~~6. HIV culture; or]~~

~~11. A positive confirmatory serologic test result for HIV infection; or]~~

(b) A diagnosis of AIDS that meets the definition of AIDS established within the CDC guidelines.

(3) ~~A~~The most recent negative HIV test, if available, shall be submitted with the report required by subsection (2) (a) or (b) of this section.

(4) Any request for data related to HIV infection or AIDS shall be made to the Department for Public Health, Division of Epidemiology and Health Planning.

(5) A case report for a person with an HIV infection without a diagnosis of AIDS, or HIV infection with a diagnosis of AIDS shall include:

- (a) The patient's full name;
- (b) The patient's complete address;
- (c) Date of birth using the format MMDDYYYY;
- (d) Gender;
- (e) Race;
- (f) Ethnicity;
- (g) Risk ~~factors~~factor as identified by CDC;
- (h) County of residence;
- (i) Name of provider and facility submitting report including contact information;
- (j) ~~Specimens~~Specimen collected;
- (k) Date and type of HIV test performed using the format MMDDYYYY;

- (l) Results of CD4+ cell counts and CD4+%;
- (m) Results of viral load testing;
- (n) Results of RNA, DNA~~[PCR]~~, HIV culture, HIV antigen, and HIV antibody, if performed;
- (o) Results of TB testing, if available;
- (p) Any documented HIV negative test, if available;
- (q) History of PrEP or PEP treatment, if available;
- (r) Antiretroviral treatment, if available;
- (s) HIV status of the person's partner, spouse, or children, as applicable;

(t) Current pregnancy status for females;

(u) Opportunistic infections diagnosed; and

(v)~~[(u)]~~ Date of onset of illness.

(6) A report of pregnancy and delivery for a female diagnosed with HIV disease shall include:

(a) All HIV diagnostic testing and results associated with the determination of HIV status of the infant, including tests with negative or indeterminate results that are part of a diagnostic testing algorithm and if final result is negative; and

(b) Any HIV treatment prescribed to an infant.

(7) A report of AIDS shall be made whether or not the patient has been previously reported as having an HIV infection.

(8)~~[(7)]~~ If the patient has not been previously reported as having an HIV infection, the AIDS report shall also serve as the report of HIV.

Section 17. Sexually Transmitted Disease (STD). (1) Notification of a probable diagnosis of an STD as specified in subsection (4) or (7) of this section shall be made.

(2) The report shall provide:

- (a) Pregnancy status; and
- (b) Clinical, epidemiologic, laboratory, and treatment information pertinent to the disease.

(3) Upon a laboratory test result that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in subsection (4) or (7) of this section, a medical laboratory shall report to the Kentucky Department for Public Health information required by Section 5(6)(b) of this administrative regulation.

(4) Sexually Transmitted Diseases Requiring Priority Notification. A report of the following shall be considered priority and shall be made within one (1) business day:

(a) Each pregnant female who has tested positive for syphilis regardless of stage; or

(b) Syphilis - primary, secondary, or early latent.

(5) Upon receipt of a report for a disease or condition specified in subsection (4) of this section, a local health department shall:

- (a) Investigate the report;
- (b) Carry out public health protection measures to address the disease or condition; and
- (c) Forward the report to the Kentucky Department for Public Health within one (1) business day.

(6) The local health department may seek assistance from the Kentucky Department for Public Health.

(7) Sexually Transmitted Diseases Requiring Routine Notification. A report of the following shall be considered routine and shall be made within five (5) business days:

- (a) Chancroid;
- (b) Chlamydia trachomatis infection;
- (c) Gonorrhea;
- (d) Granuloma inguinale;
- (e) Lymphogranuloma venereum; or
- (f) Syphilis, other than primary, secondary, early latent, or congenital.

(8) Upon receipt of a report for a disease or condition specified in subsection (7) of this section, a local health department shall:

(a) Make a record of the report using Form EPID 200, Kentucky Reportable Disease Form;

(b) Forward the report to the Kentucky Department for Public Health within five (5) business days; and

(c) Render assistance if requested by the reporting entity or the Kentucky Department for Public Health.

Section 18. Tuberculosis. (1) A pharmacist shall give notice if two (2) or more of the following medications used for the initial treatment of active tuberculosis are dispensed to an inpatient in a health facility or to an ambulatory patient in a health facility or a pharmacy:

- (a) Ethambutol;
- (b) Isoniazid;
- (c) Pyrazinamide; and
- (d) Rifampin or rifabutin.

(2)(a) A report of tuberculosis shall be considered priority and shall be reported to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(3) The report shall include:

- (a) Information required in Section 5(6)(b) of this administrative regulation; and
- (b) Names of the medications dispensed.

Section 19. Asbestosis, Coal Worker's Pneumoconiosis, and Silicosis. (1) A health professional shall report a diagnosis of the following to the Kentucky Department for Public Health within three (3) months of diagnosis:

- (a) Asbestosis;
- (b) Coal worker's pneumoconiosis; or
- (c) Silicosis.

(2) A report required under this section shall include the information required in Section 5(6)(b).

Section 20. Reporting of Communicable Diseases in Animals.

(1) A diagnosis in an animal of a condition known to be communicable to humans, except for rabies, shall require routine notification.

(2) A veterinarian shall report the diagnosis within five (5) business days to the local health department serving the county in which the animal is located.

(3) If a laboratory test indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a medical laboratory shall report the result to the local health department serving the county in which the animal is located within five (5) business days.

(4) The local health department receiving the report shall:

- (a) Investigate the report;
- (b) Carry out public health protection measures for the control of communicable diseases; and
- (c) Forward the report to the Kentucky Department for Public Health within five (5) business days.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 21. Kentucky Public Health Advisory. (1) If the secretary of the Cabinet for Health and Family Services or the commissioner of the Department for Public Health determines that a disease not presently listed in this administrative regulation requires reporting, the secretary or commissioner shall issue a Kentucky public health advisory.

(2) The Kentucky public health advisory shall include:

- (a) Date and time the advisory is issued;
- (b) A unique number to identify the advisory;
- (c) Names for the disease or condition;
- (d) A description of the disease or condition;
- (e) Recommendations for health professionals, health facilities, and laboratories; and
- (f) Notification requirements including:
  1. The notification time interval; and
  2. Methods for notification.

(3) The duty to report by health professionals, health facilities, and laboratories pursuant to a Kentucky public health advisory shall begin upon receipt of the advisory and shall remain in effect until the advisory is rescinded by order of the secretary or the commissioner.

Section 22. Penalty. If the cabinet has cause to believe that a physician willfully neglects or refuses to notify the cabinet in accordance with this administrative regulation, pursuant to KRS 214.990(1) the cabinet shall make a referral to the appropriate professional licensing board.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "EPID 200, Kentucky Reportable Disease Form", 4/2020;
- (b) "EPID 250, Kentucky Reportable MDRO Form", 10/2020[10/2000];
- (c) "EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less)", 9/2020;
- (d) "EPID 399, Perinatal Hepatitis B Prevention Form for Infants", 6/2020;
- (e) "Adult HIV Confidential Case Report Form", 11/2019; and
- (f) "Pediatric HIV Confidential Case Report Form", 11/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and available online at <https://chfs.ky.gov/agencies/dph/dehp/ldb/Pages/default.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 16, 2021

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the commonwealth.

(b) The necessity of this administrative regulation: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

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

the authorizing statutes: This administrative regulation delineates which diseases are reportable including the urgency of the notification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow clinicians including every physician, advanced practice registered nurse, and head of family to notify the local health department of the existence of the diseases specified in the administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates an updated form for reporting multi-drug resistant organisms and updates the HIV reporting criteria.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the correct reporting form is used and to ensure cases of HIV infection are properly reported.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 214.010 requires the reporting of diseases designated by administrative regulation to the cabinet. KRS 214.625(5)(c)5. authorizes the reporting of HIV test results to the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures the correct information is reported to the cabinet to aid in the control of the spread of disease.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation include all health facilities as defined by KRS 216B.015(13), health professionals licensed under KRS Chapters 311 through 314, medical laboratories as defined by KRS 333.020(3), national reference laboratories contracted by Kentucky health professionals, laboratories, or health facilities, pharmacists licensed under KRS Chapter 315, and veterinarians licensed under KRS Chapter 321. In addition, all citizens of the commonwealth will be affected as a result of this amendment.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities in question (3) will need to be aware of the updated form for reporting multi-drug resistant organisms; and, all those who test and report HIV results will need to be aware of the expanded reporting criteria.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs associated with compliance is unknown. Health facilities and physicians already report communicable diseases.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the benefits of the timely and appropriate prevention and control of communicable diseases will be afforded to all citizens of the commonwealth.

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

(a) Initially: This is an ongoing program, there are no initial costs.

(b) On a continuing basis: There is no increase in ongoing costs associated with the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The reportable disease programs affected by this administrative regulation are funded through a mix of state general fund dollars, federal dollars, and specialized grants.

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

amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. While the list of reportable diseases and conditions is separated by immediate, urgent, priority, routine, or general notification, all health facilities and physicians are required to report any known communicable disease.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Epidemiology and Health Planning, as well as all local health departments.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.090(3), 211.180(1), and 214.010

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? There are no increased costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no increased 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 (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

#### **902 KAR 10:121. Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments.**

RELATES TO: KRS 211.185[211.180(1)(e)], 211.990(2)[, 2000 Ky. Acts ch. 549, part I.A.41]

STATUTORY AUTHORITY: KRS 194A.050, 211.180(2) [(1), (3), 2000 Ky. Acts ch. 549, part I.A.41]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 and 211.180(2)[(3) and 2000 Ky. Acts ch. 549, part I.A.41] authorize the Secretary of the Cabinet for Health and Family Services to adopt a schedule of reasonable fees covering the costs for permitting and inspection of efforts regarding compliance with program standards administered by the cabinet. The fees shall be the total of the operational and administrative costs of the programs to the cabinet and to agencies as defined in KRS 211.185[cost of annual inspections performed by the Cabinet for Health Services or a local health department]. This administrative regulation establishes a schedule of fees for the cost of annual permitting and inspections of public swimming and bathing facilities, construction plan review, and construction inspection.

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

Section 1. Fees for Inspections. (1) A fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with:

(a) 902 KAR 10:120 for public swimming and bathing facilities; and

(b) 902 KAR 10:190 for splash pads operated by local governments.

(2) For public swimming and bathing facilities the annual inspection fee shall be:

(a) Assessed according to the total square footage of the water surface area;

(b) Calculated as established in this paragraph:

1. 1,000 square feet or less, the fee shall be ninety (90) dollars;

2. 1,001 to 1,500 square feet, the fee shall be \$150;

3. 1,501 to 2,000 square feet, the fee shall be \$200; and

4. 2,001 and above, the fee shall be \$200 plus fifty (50) dollars for each additional 500 square feet of water surface area; and

(c) Include seventy-five (75) dollars for each interactive water feature.

(3) For all beaches, the annual inspection fee shall be:

(a) Assessed according to the linear square footage of beach front;

(b) Calculated as established in this paragraph:

1. 149 or less linear square feet, the fee shall be ninety (90) dollars;

2. 150 to 200 linear square feet, the fee shall be \$175; and

3. 201 and above, the fee shall be \$175 plus fifty (50) dollars for each additional fifty (50) linear square feet; and

(c) Include seventy-five (75) dollars for each interactive or inflatable water feature.

(4) For splash pads operated by local governments the annual inspection fee shall be \$250 per year.

(5) For spas and hot tubs, the annual inspection fee shall be \$150 per year.

(6) The inspection fee required by this section shall be:

(a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;

(b) Deposited in the environmental fee account; and

(c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury.

Section 2. Plan Review and Construction Inspection. (1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department to determine compliance with:

(a) 902 KAR 10:120 for public swimming and bathing facilities; and

(b) 902 KAR 10:190 for splash pads operated by local governments.

(2) The fee for plan review shall be calculated as follows:

(a) Swimming and bathing facility plan review for gutter pools, the fee shall be \$315.

(b) Swimming and bathing facility plan review for skimmer pools, the fee shall be \$157.50.

(c) Swimming and bathing facility plan review for minor reconstruction, the fee shall be \$105.

(3) The fee required by subsection (2) of this section shall include seventy-five (75) dollars for each interactive water feature.

(4) The fee for swimming and bathing facility construction inspection shall be calculated as follows:

(a) Pre-renovation evaluation, the fee shall be \$210.

(b) Rough-in construction inspection, the fee shall be \$105.

(c) Final construction inspection, the fee shall be \$157.50.

(5) The plan review and construction inspection fees required by this section shall be paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

Section 3. Annual Permit Fee. (1) An annual permit fee of \$100 for all public swimming and bathing facilities, including beaches, and splash pads operated by local governments shall be:

(a) Paid no later than May 1 each year; and

(b) Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

(2) A late payment fee of fifty (50) dollars shall be assessed on all annual permits not received by May 1 each year. [Public swimming and bathing facilities shall be subject to the following fees:

(1) Swimming and bathing facility with a total water surface area of less than 1,000 square feet or less; and a beach front of 149 linear feet or less - eighty-seven (87) dollars per year.

(2) Swimming and bathing facility with a total water surface area of 1,001 square feet or more; and a beach front of 150 linear feet or more - \$167 per year.

(3) Swimming and bathing facility prerenovation evaluation - \$200.

(4) Swimming and bathing facility plan review for gutter pools - \$300.

(5) Swimming and bathing facility plan review for skimmer pools - \$150.

(6) Swimming and bathing facility plan review with minor reconstruction - \$100.

(7) Swimming and bathing facility rough-in construction inspection - \$100.

(8) Swimming and bathing facility final construction inspection - \$150.

Section 2. Payment of Fees. Fees shall be paid to the local health department having jurisdiction. Fees received by a local health department shall be deposited in the Kentucky State Treasury in a trust and agency account for use solely in administering the program. Inspection fees shall be submitted annually prior to May 1. Fees for a newly constructed facility shall be submitted initially at the preopening inspection and at each May 1 date thereafter.]

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 30, 2021

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy 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 or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fee amounts for reviewing construction plans and conducting construction inspections, annual fees for inspections of public swimming and bathing facilities including those with interactive water features, spray and splash pads or parks, and

beaches, and fees for annual permitting of these facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a schedule of fees to help support the local health departments (LHD) and the cabinet in administering a program for public and semipublic swimming and bathing facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with addressing the cost to administer public swimming and bathing facility construction, permitting and inspection programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes a reasonable schedule of fees necessary to help support LHDs and the cabinet for the costs of reviewing construction plans and conducting construction inspections, annual fees for inspections of public swimming and bathing facilities including those interactive water features, spray and splash pads or parks, and beaches, and fees for annual permitting of these facilities. This change in the schedule of fees is consistent with the amount of time and effort expended by LHD and cabinet staff in conducting plan reviews and inspections based on the size and complexity of the establishment and the amount of time the establishment is open during the year that determines the number of inspections.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to offset the cost of administering this program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The increase in inspection and permitting fees will help to offset the costs incurred by the cabinet and LHD when inspecting, reviewing construction plan, and permitting public and semipublic swimming and bathing facilities. This will ensure all public and semipublic swimming and bathing facilities are in full compliance with program standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,250 public swimming pools, bathing facilities, and spas, and thirty-three (33) beaches regulated by the department. The department receives approximately 115 requests for plan review each year.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The permitted swimming and bathing facilities will pay a set permitting fee based on the time required to administratively track and renew permits in the Environmental Health Management Information System (EHMIS) database. Fees for inspections are being increased since this regulation was last amended in 2001 to help recoup the cost borne by local health

departments and the cabinet to administer this program based on current salary rates, time and effort expended dependent upon facility size and complexity and the number of months open throughout the year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A reasonable schedule of permitting and inspection fees is established in this amendment which help LHDs and the cabinet partially recover the full cost of running these programs. These fees are based on current salary requirements, time and effort spent conducting inspections which is largely dependent on size and complexity and the number of months a facility is open during the year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All swimming and bathing facilities are required to be inspected and permitted by the cabinet. The fees paid for inspection and permitting help to ensure swimming and bathing facilities are in compliance with state laws.

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

(a) Initially: The only additional cost will be to pay Custom Data Processing to update the inspection fees in EHMIS and to create a new permitting fee in EHMIS.

(b) On a continuing basis: There are no additional costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds received from the fees continue to be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: This amendment does result in an increase in fees paid by swimming and bathing facilities. There is no increase in funding necessary for this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The amendment to this administrative regulation increases the fees associated with operating public or semipublic swimming pools and recreational beach facilities. The administrative costs to local health departments and the cabinet is approximately \$150 per hour for local health department environmental health inspectors of swimming and bathing facilities. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS), Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost. The total costs across all local health departments and the state is approximately \$2,376,885 per year. The size and complexity of the establishment as well as the number of months the facility is open during a year all have an impact on the time required to conduct an inspection as well as the number of inspections performed throughout the year. All public and semi-public swimming and bathing facilities require a minimum of two (2) full facility inspections and monthly monitoring inspections per year. Facilities open year round will have a total of twelve (12) inspections while seasonal facilities will have a total of five (5) inspections.

The current fee structure for swimming pools is based on the total square footage of the water surface area and separated into two (2) categories of 1,000 feet or less and 1,001 feet or more. This fee structure does not take into account the complexity of the inspection required for larger swimming pools, nor does it account for interactive or specialized water features. The current fee structure for beaches is based on the linear square feet of the beachfront and is separated into two (2) categories of 149 feet or less and 150 feet or more. This does not account for the complexity of inspecting larger beach areas, nor does it account for interactive or inflatable water features.

Public and Semi-public Swimming Pools including spas, hot tubs, and splash pads	Current Fee Structure			
	Size of the pool	Number of pools	Current fee	Revenue
	1,000 or less square feet of surface water	1,350	\$87	\$117,450
	1,001 or more square feet of surface water	904	\$167	\$150,968
<b>TOTAL</b>		<b>2,254</b>		<b>\$268,418</b>
Beaches				
	Size of the beach front	Number of	Current fee	Revenue

# VOLUME 48, NUMBER 4– OCTOBER 1, 2021

	beaches		
149 linear feet or less of beach front	10	\$87	\$870
150 linear feet or more of beach front	24	\$167	\$4,008
<b>TOTAL</b>	<b>34</b>		<b>\$4,878</b>

The proposed fee structure for swimming pools keeps the categories based on total square footage for water surface area but adds two (2) additional categories of 1,001 to 1,500 square feet and 1,501 to 2,000 square feet. Swimming pools 2,001 square feet and more will pay an additional fifty (50) dollars for each additional

500 square feet. The proposed fee structure for beaches adds one (1) additional category of 150 to 200 linear square feet. Beaches 201 or more linear square feet of beachfront will pay an additional fifty (50) for each additional 50 feet.

Public and Semi-public Swimming Pools	Proposed Fee Structure			
	Size of the pool	Number of pools	Proposed fee	Revenue
	1,000 or less square feet of surface water	1,350	\$90	\$121,500
	1,001 to 1,500 square feet of surface water	419	\$150	\$62,850
	1,501 to 2,000 square feet of surface water	143	\$200	\$28,600
	2,001 or more square feet of surface water	342	\$200+\$50 for each additional 500 square fee	\$68,400 (at a minimum)
<b>TOTAL</b>		<b>2,254</b>		<b>\$281,350</b>

  

Beaches	Size of the beach front	Number of beaches	Proposed fee	Revenue
	149 linear feet or less of beach front	10	\$90	\$900
	150 to 200 linear feet of beach front	10	\$175	\$1,750
	201 or more linear feet of beach front	14	\$175+\$50 for each additional 50 linear square feet	\$2,450 (at a minimum)
<b>TOTAL</b>		<b>34</b>		<b>\$5,100</b>

The proposed amendment to the fee structure includes the following new fees: seventy-five (75) dollars for each interactive water feature, including inflatable water features; \$150 for spas and hot tubs; \$250 for splash pads operated by local governments; and \$100 annual permit fee for all facilities.

(9) TIERING: Is tiering applied? (Explain why or why not.) Tiering is applied. The inspection of complex swimming and bathing facilities and the facilities open more than 5 months in a year (not seasonal) requires more time and attention to detail. These facilities will pay a larger annual inspection fee. All swimming and bathing facilities will pay the same annual permitting fee to cover the administrative cost of tracking these facilities in EHMIS and renewing permits.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 impacts the Department for Public Health, Division of Public Health Protection and Safety, Environmental Management and Public Safety Branches, and all local health departments. Furthermore, those counties and municipalities that operate and maintain public swimming and bathing facilities will be impacted as will be the Kentucky Department of Parks which operates public swimming and bathing facilities including public beaches.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The change in fee structure will generate an estimated \$286,450 in the first year. The new permit fee will generate an estimated \$228,800 in the first year.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The change in fee structure will generate an estimated \$286,450 in subsequent years. The annual permit fee will generate an estimated \$228,800 in subsequent years.

(c) How much will it cost to administer this program for the first year? The costs associated with administering the permitting and inspection program is \$2,376,885.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (Amendment)

**902 KAR 20:081. Operations and services; home health agencies.**

RELATES TO: KRS Chapter 13B, 209.032, 216.935, 216.937, 216.9375, 216B.010-216B.130, 216B.990, 311.840(3), 314.011(8), 314.042(8), 319A.010(3), [320.240(2)-] 327.010(2), 334A.020(3), 45 C.F.R. Part 160, 164, 42 U.S.C. 1320d-1320d-8

STATUTORY AUTHORITY: KRS 216B.042(1), 216.9375(11)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216.9375(11)(a) requires the cabinet to promulgate administrative regulations to

implement, monitor, and enforce compliance with dementia-specific training requirements for home health aides. This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by home health agencies.

Section 1. Definitions. (1) "Coordination agreement" means an agreement to coordinate health care services within the service area of the agency.

(2) "Home health agency" is defined by KRS 216.935(4)(2).

(3) "Home health aide" is defined by KRS 216.935(3)(4).

(4) "Home health aide services" is defined by KRS 216.935(5).

(5) "Medical social worker" means an individual who:

(a) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work;

(b) Has at least one (1) year of social work experience in a health care setting; and

(c) Is licensed by the Kentucky Board of Social Work.

(6)(5) "Occupational therapist" is defined by KRS 319A.010(3).

(7)(6) "Physical therapist" is defined by KRS 327.010(2).

(8)(7) "Qualified medical social worker" means an individual who:

(a) Has a master's degree from a school of social work accredited by the Council on Social Work Education;

(b) Has social work experience in a hospital, outpatient clinic, medical rehabilitation, medical care, or mental health program; and

(c) Is licensed by the Kentucky Board of Social Work.

(9)(8) "Speech-language pathologist" is defined by KRS 334A.020(3).

Section 2. Scope. A home health agency shall provide part-time or intermittent health and health related services to a patient in his or her place of residence, either singly or in combination as required by a plan of care prescribed by a licensed physician, advanced practice registered nurse, or physician assistant.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for:

(a) The operation of the home health agency; and

(b) Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the service.

(2) The licensee shall establish policies for the administration and operation of the service. The policies shall include the following:

(a) Acceptance of patients. The policy shall assure that the acceptance of patients is based on medical, nursing, and social information provided by the:

1. Physician, advanced practice registered nurse, or physician assistant responsible for the patient's care;

2. Institutional personnel; and

3. Staff of the home health agency.

(b) Establishment and review of the plan of care. The policy shall assure that services and items provided are specified under a plan of care:

1. Established, signed, and reviewed by the physician, advanced practice registered nurse, or physician assistant who is responsible for the care of the patient; and

2. Developed by the physician, advanced practice registered nurse, or physician assistant and appropriate professional staff acting within the limits of his or her statutory scope of practice.

(3) Home health services shall be available to the total population regardless of age, sex, and ethnic background.

(4)(a) The status of each patient and the plan of care shall be reviewed at such intervals as the severity of the patient's illness requires but no less frequently than every two (2) months, with a maximum of sixty (60) days, by home health agency staff and the physician, advanced practice registered nurse, or physician assistant.

(b) Verbal authorization to change the plan of care shall be:

1. Put in writing, signed, and dated with the date of receipt by the registered nurse or other appropriate professional staff responsible for furnishing or supervising the order services; and

2. Signed by the physician, advanced practice registered nurse, or physician assistant within thirty (30) days after the verbal order is issued.

(5) Clinical records.

(a) The home health agency shall maintain a clinical record for each patient that:

1. Covers the services the agency provides directly and those provided through arrangements with another agency; and

2. Contains pertinent past and current medical, nursing, and social information, including the plan of care.

(b) Ownership.

1. Medical records shall be the property of the home health agency.

2. The original medical record shall not be removed except by court order.

3. Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(c) Confidentiality and Security: Use and Disclosure.

1. The agency shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The home health agency may use and disclose clinical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. An agency may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(6) Original drug orders and changes in orders. The following shall be signed by the physician or other prescribing practitioner acting within the statutory scope of his or her license and incorporated in the patient record maintained by the agency:

(a) The original drug order; and

(b) Changes in orders for the administration of drugs subject to federal and state controlled substance acts, and other legend drugs.

(7) Verbal authorization for an original order for drugs or a change order shall be reviewed and signed by the same prescribing practitioner within thirty (30) days after the order is issued.

(8) Evaluation.

(a) The agency shall have procedures that provide for a systematic evaluation of the agency's program at least once every two (2) years.

(b) The agency staff shall conduct the evaluation.

(c) The program evaluation shall include measures to determine whether the policies established are followed, including:

1. A review of patient records on a sample basis to determine that services are being used appropriately and the extent to which the needs of the patients the agency serves are being met both quantitatively and qualitatively; and

2. A mechanism for reviewing overall management aspects of the agency's services to assure economy and efficiency of operations.

(9) Planning. Each agency shall develop and annually review a long range plan which includes:

(a) Assessment of needs for services in the service area of the agency;

(b) Identification of agency's role in meeting those needs;

(c) Staff expansion for a two (2) year period;

(d) Establishment of goals and objectives; and

(e) Coordination of volunteer services, community education, and community development activities if these services are provided by the agency.

(10) Subdivision operating as home health agency.

(a) If a subdivision of an agency, including the home care department of a hospital or the nursing division of a health department, applies for a license, the subdivision shall:

1. Be licensed as a home health agency; and

2. Maintain records of the subdivision's activities, ensuring that expenditures attributable to the services provided are identifiable.

(b) The parent organization shall determine who:

1. Signs each coordination agreement and other official documents; and
2. Receives and disburses funds.

Section 4. Personnel; Supervision and Training. (1) Personnel policies. The agency shall have written policies available to staff concerning qualifications, responsibilities, and conditions of employment for each type of personnel (including whether licensure is required by state law). The policies shall cover:

(a) Wage scales, hours of work, vacation, and sick leave;

(b) A plan for a preemployment medical examination and follow-up medical examination no less than every three (3) years thereafter for agency staff who serve patients in their place of residence;

(c) Annual tuberculin screening conducted pursuant to 902 KAR 20:205;

(d) Plans for orientation and for on-the-job training;

(e) Annual evaluation of employee performance;

(f) Job descriptions for each category of health personnel which are specific to the type of activity each may carry out;

(g) Pre-employment abuse registry checks conducted pursuant to KRS 216.937 and KRS 209.032; and

(h) Pre-employment criminal background checks in which the agency shall not employ an individual in a position that involves providing direct services if the individual has been convicted of a:

1. Felony offense related to:

- a. Theft;
- b. Abuse, possession, or sale of illegal drugs;
- c. Abuse, neglect, or exploitation of a child or an adult; or
- d. A sexual crime; or

2. Misdemeanor offense related to abuse, neglect, or exploitation of an adult.

(2) Agency supervision. The home health agency shall designate a physician, [et] registered nurse, or physician assistant to supervise the agency's performance in providing home health services in accordance with the:

(a) Orders of the physician, advanced practice registered nurse, or physician assistant responsible for the care of the patient; and

(b) Plan of care established by the physician, advanced practice registered nurse, or physician assistant.

(3) Supervision of therapy services.

(a) If the services of aides or other personnel providing supplementary services are utilized in providing home health services, the staff shall be trained and supervised by a qualified practitioner responsible for the delivery or supervision of services within the practitioner's scope of licensure.

(b) If supervision is less than full-time, the supervision shall:

1. Be provided on a planned basis; and
2. Assure adequate review of each individual plan of care and progress.

(4) Supervision of home health aides.

(a) A registered nurse shall provide direct supervision as described in this subsection and be readily available at other times by telephone.

(b) The supervisor shall evaluate the home health aide closely to ensure the aide's competence in providing care, including the aide's ability to:

1. Carry out assigned duties;
2. Relate well to the patient; and
3. Work effectively as a member of a team of health workers.

(c) If the patient receives skilled nursing care or another skilled service, the registered nurse or a qualified practitioner responsible for the delivery or supervision of services within the practitioner's scope of licensure shall make a supervisory visit to the patient's residence at least every two (2) weeks when the aide is:

1. Present to observe and assist; or
2. Absent to assess relationships and determine whether goals are being met.

(d) If home health aide services are provided to a patient who

is not receiving skilled nursing care or another skilled service, the registered nurse shall make a supervisory visit to the patient's residence at least every sixty (60) days and the supervisory visit shall occur while the home health aide is providing patient care.

(5) Training of home health aides.

(a) The home health agency shall ensure that each home health aide successfully completes an aide training and competency evaluation program, including training in:

1. ~~[(a)]~~ Methods of assisting patients to achieve maximum self-reliance;

2. ~~[(b)]~~ Principles of nutrition and meal preparation;

3. ~~[(c)]~~ The aging process and the emotional problems of illness;

4. ~~[(d)]~~ Procedures for maintaining a clean, healthful, and pleasant environment;

5. ~~[(e)]~~ Awareness of changes in the patient's condition that should be reported;

6. ~~[(f)]~~ Work of the agency and the health team; and

7. ~~[(g)]~~ Ethics, confidentiality, and recordkeeping.

(b)1. In addition to the training and competency evaluation program required by paragraph (a) of this subsection and within ninety (90) days from the most recent effective date of this administrative regulation, a home health aide who provides care to a patient that exhibits symptoms of Alzheimer's disease or other dementia shall complete at least six (6) hours of initial training and three (3) hours of annual training in dementia care pursuant to the requirements established by KRS 216.9375(3).

2. In accordance with KRS 216.9375(2), a home health aide shall successfully complete the initial training in dementia care prior to providing services to a patient that exhibits symptoms of Alzheimer's disease or other dementia.

3. Pursuant to KRS 216.9375(6), a home health aide who has a lapse of twenty-four (24) months or more providing care to a patient that exhibits symptoms of Alzheimer's disease or other dementia shall complete the six (6) hours of initial training within sixty (60) days of resuming the delivery of care to a patient that exhibits symptoms of Alzheimer's disease or other dementia.

(c) A home health agency shall:

1. Obtain cabinet approval of the agency's dementia care training curriculum in accordance with the process established by 910 KAR 4:010;

2. Provide a certificate of completion pursuant to KRS 216.9375(4) to each home health aide who successfully completes the initial and annual dementia care training; and

3. Maintain documentation of successful completion of dementia care training for each home health aide in accordance with KRS 216.9375(5).

(d) The cabinet shall impose fines in accordance with KRS 216.9375(9) and (10).

(e) A home health agency's appeal of any decision regarding a fine shall be conducted in accordance with KRS Chapter 13B.

Section 5. Provision of Services. (1) The home health agency shall provide:

(a) Part-time or intermittent skilled nursing services; and

(b) Other services for restoring, maintaining, and promoting health or rehabilitation with minimum disruption of daily living, including:

1. At least one (1) other therapeutic service (physical, speech, or occupational therapy);

2. Medical social services; or

3. Home health aide services.

(2) Services shall be available five (5) days a week with back-up arrangements for weekend and emergency services.

(3) In addition to the services described in subsection (1) of this section, the agency may provide:

(a) Medical supplies; or

(b) Equipment services.

(4) The following conditions shall be met for the provision of therapeutic and medical social services:

(a) Physical, speech, or occupational therapy. An agency that provides or arranges for physical, speech, or occupational therapy directly or under a contractual arrangement shall provide the



service in accordance with a physician, advanced practice registered nurse, or physician assistant's [physician's] written order by or under the supervision of a therapist defined by Section 1(6), (7), or (9)(5), (6), or (8)] of this administrative regulation.

(b) Respiratory therapy. An agency that provides or arranges for respiratory therapy directly or under a contractual arrangement shall provide the service in accordance with a physician, advanced practice registered nurse, or physician assistant's [physician's] written order by or under the supervision of a licensed nurse with experience and training in the field of respiratory therapy.

(c) Medical social services. An agency that provides or arranges for medical social services directly or under a contractual arrangement shall provide the service in accordance with a physician, advanced practice registered nurse, or physician assistant's [physician's] written order by a medical social worker or a qualified medical social worker as defined by Section 1(5) or (8)(4) or (7)] of this administrative regulation.

(5) Home health aide services. A visit by a home health aide for the provision of personal care and other related health services shall be:

(a) Ordered by a physician, advanced practice registered nurse, or physician assistant; and

(b) Included in a plan of care approved by the physician, advanced practice registered nurse, or physician assistant.

(6) Services arranged with another provider. A home health agency that makes arrangements for the provision of home health services by another agency shall establish a written agreement that:

(a) Identifies each service provided under the agreement;

(b) Ensures that the services shall be provided within the scope and limitations set forth in the plan of care;

(c) Allows for services to be altered only upon the specific order of the initiating home health agency as the result of a change made by the physician, advanced practice registered nurse, or physician assistant in the patient's plan of care;

(d) Describes how the contracted personnel shall be supervised;

(e) Requires contract personnel to record progress notes and observations in the home health agency records for purposes of planning and evaluating patient care;

(f) Assures that the contract agency's staff and services meet the requirements established in this administrative regulation for personnel qualifications, functions, supervision, orientation, and training; and

(g) Specifies the period of time the written agreement shall be in effect and how frequently the agreement shall be reviewed.

(7) Service agreements with other health care facilities. A home health agency shall establish a coordination agreement defined by Section 1(1) of this administrative regulation with health care providers in the agency's service area including hospitals and long-term care facilities.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2021

FILED WITH LRC: August 25, 2021 at 11:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed

administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of home health agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing standards for home health agencies licensed by the Cabinet for Health and Family Services, Office of Inspector General.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed home health agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment seeks to align this administrative regulation's training requirements for home health aides with the dementia-specific training requirements established by KRS 216.9375, a new law created by the passage of SB 61 from the 2021 session of the Kentucky General Assembly. In addition, this amendment seeks to align this administrative regulation with the 2021 passage of SB 154 to allow advanced practice registered nurses and physician assistants to supervise home health services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 216.9375(11)(a), a new law created by SB 61 that requires the cabinet to promulgate administrative regulations to implement, monitor, and enforce compliance with dementia-specific training requirements for home health aides. This amendment is also necessary to comply with the passage of SB 154 which expanded the class of practitioners authorized to supervise home health services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042 by establishing licensure standards for home health agencies. This amendment also conforms to the content of KRS 216.9375 by aligning the training requirements for home health aides with the new dementia-specific training requirements created by SB 61. This amendment further conforms to the content of SB 154 by expanding the class of practitioners authorized to supervise home health services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing standards for licensed home health agencies, including dementia-specific training for home health aides.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects licensed home health agencies. There are currently ninety-three (93) home health agencies licensed by the cabinet.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with this amendment, home health agencies will be required to ensure that each home health aide who provides care to a patient that exhibits symptoms of Alzheimer's disease or other dementia completes at least six (6) hours of initial and three (3) hours of annual training in dementia care pursuant to the requirements established by KRS 216.9375(3). Additionally, home health agencies may use advanced practice registered nurses and physician assistants in lieu of physicians to supervise home health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The actions identified by (4)(a) are in addition to existing requirements. However, the six (6) hours of initial dementia-specific training and three (3) hours of annual training for home health aides who provide care to patients with Alzheimer's disease or other dementia is not anticipated to result in a significant cost impact to home health agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By aligning the home health aide training requirements in this administrative regulation with the dementia-specific training requirements of SB 61, this amendment is intended to improve the quality of care provided to individuals with Alzheimer's disease and other dementia as well as help retain workers. In addition, expanding the class of practitioners authorized to supervise home health services will better meet the needs of Kentuckians.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all home health agencies 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 impacts licensed home health agencies and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042(1) and 216.9375.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Although KRS 216.9375(9) authorizes the cabinet to impose a fine of \$500 for each day that a home health agency fails to demonstrate compliance with

the requirements for dementia care training, the cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(b) How 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 cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (Amendment)

#### 906 KAR 1:180. Operation and services; personal services agencies.

RELATES TO: KRS Chapter 13B, 209.030(2), (3), 209.032, 216.710-216.716, 216B.015, 311.621(16), 620.030(1)

STATUTORY AUTHORITY: KRS 216.712(4), 216.713(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.712(4) requires the cabinet [Secretary] to promulgate administrative regulations to implement KRS 216.712 through 216.716, which require that personal service agencies be certified by the Cabinet for Health and Family Services. KRS 216.713(11) requires the cabinet to promulgate administrative regulations to implement, monitor, and enforce compliance with the dementia-specific training requirements for direct-care staff members. This administrative regulation establishes standards for the certification of personal services agencies.

Section 1. Definitions. (1) "Adverse action" means action taken by the cabinet's Office of Inspector General (OIG) to deny or revoke the certification of a personal services agency.

(2) "Cabinet" is defined by KRS 216.710(1).

(3) "Certification" means that a person, business entity, corporation, or association, either for-profit or not-for-profit, has been issued a certificate by the Office of Inspector General to operate a personal services agency.

(4) "Client" is defined by KRS 216.710(2).

(5) "Designated representative" is defined by KRS 216.710(5).

(6) "Direct-care staff member" is defined by KRS 216.710(6).

(7) "Direct service" is defined by KRS 216.710(7) [(6)].

(8) [(7)] "Employee" means an individual who is:

(a) Directly employed by a personal services agency;

(b) An agent of a personal services agency;

(c) An independent contractor who has a contractual arrangement with a personal services agency to provide personal services; or

(d) Referred by another person or other agency that has an ownership or financial interest that is realized from the delivery of personal services rendered by the individual for whom the referral is made.

(9) [(8)] "Facilitate the self-administration of medication" means the client or the client's guardian, healthcare surrogate as defined by KRS 311.621(16) [(15)], or attorney-in-fact as appointed by a durable power of attorney authorizing the attorney-in-fact to make health care decisions for the client, has executed a written consent designating the persons or entities authorized to prepare or direct

the client's medications and authorizing the personal services agency to facilitate the self-administration of medication which shall be limited as follows:

(a) A client's medication shall:

1. Be prepared or directed in accordance with KRS 216.710(9)(7)(a)2 by:

a. The client's designated representative; or

b. A licensed health-care professional who is not an owner, manager, or employee of the personal services agency;

2. Except for ointments, be preset in a medication organizer or be a single dose unit; and

3. Include the client's name on the medication organizer or container in which the single dose unit is stored;

(b) A personal services agency direct care staff person may:

1. Remind a client when to take medications and observe to ensure that the client takes the medication as directed;

2. Hand the client's medication to the client. If the client is unable to open the medication, the staff person may open the unit dose or medication organizer, remove the medication from a medication organizer, and close the medication organizer for the client;

3. Assist a client in consuming oral medication, including tablets, capsules, or liquid medication, by:

a. Placing the dose in a container and placing the container to the mouth of the client;

b. Placing the medication in the client's hand or mouth; or

c. Following the written instructions of the client's designated representative or licensed health care professional for how to enable the client to take his or her medication; or

4. Steady or guide a client's hand while applying ointments; and

(c) Facilitating the self-administration of medication shall not include:

1. Instilling eye, ear, or nasal drops;

2. Mixing, compounding, converting, or calculating medication doses;

3. The preparation of syringes for injection or the administration of medications by any injectable route;

4. Administration of medications through intermittent positive pressure breathing machines or a nebulizer;

5. Administration of medications by way of a tube inserted in a cavity of the body;

6. Administration of parenteral preparations;

7. Administration of irrigations or debriding agents used in the treatment of a skin condition; or

8. Administration of rectal, urethral, or vaginal preparations.

(10) [(9)] "Parent personal services agency" is defined by KRS 216.710(11)(9).

(11) [(10)] "Personal services" is defined by KRS 216.710(9)(7).

(12) [(11)] "Personal services agency" is defined by KRS 216.710(10)(8).

(13) [(12)] "Provisional certification" means that the Office of Inspector General (OIG) has issued a ninety (90) day preliminary certificate to operate a personal services agency to a person, business entity, corporation, or association, either for-profit or not-for-profit, which:

(a) Has three (3) or fewer employees when the initial application is filed; and

(b) Indicated on the application that it intends to hire additional employees within ninety (90) calendar days of the date of the application.

(14) [(13)] "Significant financial interest" means lawful, direct or indirect ownership of a personal services agency or health care facility licensed pursuant to KRS Chapter 216B in an amount equal to or greater than twenty-five (25) percent total ownership of the personal services agency or health care facility.

Section 2. Certification of Personal Services Agencies. (1) To operate a personal services agency, a person or entity shall obtain certification from the Office of Inspector General.

(2) If an out-of-state personal services agency operates a branch office in Kentucky, the out-of-state agency shall be required

to obtain separate certificates for each of its branch offices in Kentucky.

(3) A branch office of a parent personal services agency shall be owned and controlled by the parent personal services agency.

(4) A "health facility" or a "health service" as defined by KRS 216B.015 or a health-care practitioner licensed, certified, or regulated by local, state, or federal statutes or administrative regulations shall not be required to obtain certification to provide personal services pursuant to KRS 216.710(9)(7)(b)9.

Section 3. Initial Application, Provisional Certification, and Approval. (1) No person, entity, corporation, or association shall provide personal services prior to obtaining certification.

(2) An applicant for initial certification, including provisional certification, shall submit to the OIG:

(a) An initial application fee of \$500 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG – 1180[–November-2009]; and

(c) Documentation required by Section 3.A<sub>1</sub> if applicable, and Section 6 of the application.

(3) Approval of initial certification shall be contingent on:

(a) Submission of the initial application fee of \$500;

(b) The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of the documentation required by Section 3.A<sub>1</sub> if applicable, and Section 6 of the application.

(4)(a) Approval of provisional certification shall be contingent on:

1. Submission of the initial application fee of \$500;

2. The applicant's demonstration of compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

3. Submission of the documentation required by Section 3.A<sub>1</sub> if applicable, and Section 6 of the application.

(b) A personal services agency operating under provisional certification shall, no later than fourteen (14) calendar days prior to expiration of the provisional certificate, submit employee information required by Section 6, paragraph 2 of the Application for Certification to Operate a Personal Services Agency, OIG - 1180 for each employee hired by the agency after submission of the application for initial certification.

(c) If a personal services agency operates under provisional certification prior to approval of initial certification, the initial certification period shall expire one (1) year from the date of the provisional certificate.

Section 4. Annual Recertification. (1) At least sixty (60) calendar days prior to expiration of certification, the personal services agency shall submit to the OIG:

(a) An annual recertification fee of \$350 made payable to the Kentucky State Treasurer;

(b) A completed Application for Certification to Operate a Personal Services Agency, OIG – 1180[–November-2009]; and

(c) Documentation required by Section 6 of the application.

(2) Approval of recertification shall be contingent on:

(a) Submission of the annual recertification fee of \$350;

(b) The applicant's demonstration of continued compliance with the requirements of this administrative regulation and KRS 216.712, as documented on the Application for Certification to Operate a Personal Services Agency, OIG - 1180; and

(c) Submission of documentation required by Section 6 of the application.

Section 5. Change of Status. (1) Within thirty (30) calendar days after a change in an ownership interest of more than twenty-five (25) percent of a personal services agency, the following shall be submitted to the OIG:

(a) An Application for Certification to Operate a Personal Services Agency, OIG - 1180;

(b) Documentation required by Section 3.A<sub>2</sub> if applicable, and Section 6 of the application;

(c) A fee of \$350 made payable to the Kentucky State Treasurer; and

(d) A bill of sale or comparable document which includes:

1. The name and signature of the new owner or corporation;
2. The name and signature of the buyer and the seller; and
3. The effective date of the transaction.

(2) Following a change of ownership reported in accordance with subsection (1) of this section, certification shall be effective for a period of one (1) year from the date the change of ownership is approved by the OIG.

(3) A personal services agency shall notify the OIG in writing within thirty (30) calendar days after the effective date of:

- (a) A change of name;
- (b) A change in the location of the parent personal services agency or a branch office;
- (c) The opening of a new branch office in Kentucky; or
- (d) The closing of the parent personal services agency or an existing branch office within the state.

Section 6. Staff Requirements. (1)(a) A personal services agency shall employ an individual to act as the personal services agency's manager.

(b) The manager shall be responsible for the organization and daily operation of the personal services agency.

(c) The manager shall designate in writing one (1) or more individuals to act on behalf of the manager, or to perform any or all of the manager's responsibilities during the time in which the manager is unavailable to perform daily managerial duties for at least three (3) consecutive business days.

(2) Prior to acting as a personal services agency's manager, or prior to providing direct services to a client, an applicant for employment in a personal services agency shall submit to, and have completed a:

(a) Criminal record check conducted by the Justice and Public Safety Cabinet, Administrative Office of the Courts, or a company that conducts a search of criminal record information maintained by the Justice and Public Safety Cabinet or Administrative Office of the Courts;

(b) Check of the nurse aide and home health aide abuse registry established by [pursuant to] 906 KAR 1:100;

(c) Check of the caregiver misconduct registry established by 922 KAR 5:120 and required by KRS 209.032;

(d) Substance abuse test; and

(e) [(d)] 1. A tuberculosis (TB) risk assessment performed and reported by a physician, advanced practice registered nurse, physician [physician's] assistant, or registered nurse.

2. If the TB risk assessment indicates that the applicant for employment is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the individual shall submit to the following for purposes of employment:

- a. Follow-up tuberculin skin test (TST); or
- b. Blood assay for M. tuberculosis (BAMT).

3. An individual who has a positive TST result or a positive BAMT result:

a. Shall have a medical evaluation for possible active TB and receive a chest x-ray; and

b. Shall not provide direct services to a client until evidence is provided to the personal services agency documenting that the individual is free of active TB as verified through a health professional's statement, signed by a physician, advanced practice registered nurse, physician [physician's] assistant, or registered nurse.

(3) A personal services agency may, at its discretion, request that its manager or an employee who provides direct services to a client submit to any of the following background checks after the date of initial hire:

(a) Criminal record check conducted by the Justice and Public Safety Cabinet, Administrative Office of the Courts, or a company that conducts a search of criminal record information maintained by the Justice and Public Safety Cabinet or Administrative Office of the Courts;

(b) Check of the nurse aide and home health aide abuse registry;

(c) Check of the caregiver misconduct registry; or

(d) [(e)] Substance abuse test.

(4) A personal services agency shall not employ or retain an individual to serve as a manager or provide direct services to a client if the individual:

(a) Has been convicted of a crime defined by KRS 216.710(3) as verified through a criminal record check conducted pursuant to subsection (2)(a) or (3)(a) of this section;

(b) Appears on the nurse aide and home health aide abuse registry as verified through a check of the ~~[nurse aide and home health aide abuse]~~ registry conducted pursuant to subsection (2)(b) or (3)(b) of this section;

(c) Appears on the caregiver misconduct registry as verified through a check of the registry conducted pursuant to subsection (2)(c) or (3)(c) of this section;

(d) Tests positive for the presence of an illegal drug as verified through a substance abuse test conducted pursuant to subsection (2)(d) [(e)] or subsection (3)(d) [(e)] of this section; or

(e) [(d)] Fails to provide upon initial employment pursuant to subsection (2)(e) [(d)] or annually pursuant to subsection (5) of this section:

1. A copy of the results of a health professional's statement documenting that the individual is free of active tuberculosis;

2. Documentation of a negative TST; or

3. Documentation of a negative BAMT.

(5)(a) A personal services agency shall require its manager and each employee who provides direct services to a client to submit annually to a tuberculosis risk assessment performed and reported by a physician, advanced practice registered nurse, physician [physician's] assistant, or registered nurse.

(b) If a determination is made from the annual tuberculosis risk assessment that the employee is at increased risk for developing tuberculosis infection, or for progressing to active TB disease if infected, the employee shall submit to a follow-up TST or BAMT.

(c) An employee who has a positive TST result or a newly positive BAMT shall have a medical evaluation for possible active TB and receive a chest x-ray.

(d) If the annual tuberculosis screening reveals that the employee is recently infected, the employee shall not provide direct services to a client until evidence is provided documenting that the employee is free of active tuberculosis as verified through a health professional's statement signed by a physician, advanced practice registered nurse, physician's assistant, or a registered nurse.

(6) A personal services agency shall maintain documentation of the following in employee records:

(a) The results of each criminal record check conducted pursuant to subsection (2)(a) and (3)(a) of this section;

(b) The results of each check of the nurse aide and home health aide abuse registry conducted pursuant to subsection (2)(b) and (3)(b) of this section;

(c) The results of each check of the caregiver misconduct registry conducted pursuant to subsection (2)(c) and (3)(c) of this section;

(d) The results of the substance abuse test conducted pursuant to subsection (2)(d) and (3)(d) [(e)] of this section; and

(e) [(d)] Documentation from a health professional that the employee is free of active TB and, if applicable, documentation of a follow-up TST or BAMT, chest x-ray, or medical evaluation.

(7) A personal services agency shall:

(a) Maintain employee records for a period of at least five (5) years; and

(b) Ensure that the records of current employees are:

1. Maintained on the premises of the agency; or
2. Accessible via a central computer file.

(8) A personal services agency or agency employee shall not be, or shall not apply to be a client's:

- (a) Guardian;
- (b) Power of attorney;
- (c) Conservator;
- (d) Limited conservator;
- (e) Limited guardian;

- (f) Standby guardian; or
- (g) Testamentary guardian.

Section 7. Staff training and Competency. (1) Prior to providing direct services to a client, each employee shall receive training from the personal services agency regarding the following:

(a) Procedures for reporting abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3), or child abuse or neglect pursuant to KRS 620.030(1);

(b) Procedures for facilitating the self-administration of medications if personal services agency staff facilitate the self-administration of medication; and

(c) Effective communication techniques tailored to individual client needs.

(2)(a)1. In addition to the training required by subsection (1) of this section and within ninety (90) days from the most recent effective date of this administrative regulation, a direct-care staff member who provides services to a client that exhibits symptoms of Alzheimer's disease or other dementia shall complete at least six (6) hours of initial training and three (3) hours of annual training in dementia care pursuant to the requirements established by KRS 216.713(3).

2. In accordance with KRS 216.713(2), a direct-care staff member shall successfully complete the initial training in dementia care prior to providing services to a client that exhibits symptoms of Alzheimer's disease or other dementia.

3. Pursuant to KRS 216.713(6), a direct-care staff member who has a lapse of twenty-four (24) months or more providing care to a client that exhibits symptoms of Alzheimer's disease or other dementia shall complete the six (6) hours of initial training within sixty (60) days of resuming the delivery of care to a client that exhibits symptoms of Alzheimer's disease or other dementia.

(b) A personal services agency shall:

1. Obtain cabinet approval of the agency's dementia care training curriculum in accordance with the process established by 910 KAR 4:010;

2. Provide a certificate of completion pursuant to KRS 216.713(4) to each direct-care staff member who successfully completes the initial and annual dementia care training; and

3. Maintain documentation of successful completion of dementia care training for each direct-care staff member in accordance with KRS 216.713(5).

(c)1. The cabinet shall impose fines in accordance with KRS 216.713(9) and (10).

2. All fines collected by the cabinet shall be deposited in the Kentucky personal services agency fund pursuant to KRS 216.716(1)(c).

(3)(a) A personal services agency shall evaluate the competency of each employee who will provide direct services to a client.

(b) The agency's evaluation to determine competency shall pertain to each personal services task the agency chooses to have the employee perform.

(4)((3)) An employee's evaluation and a determination by the personal services agency that the employee is competent to perform a personal services task shall occur before the employee performs the task for a client without direct agency supervision.

(b) The content of the employee's training and evaluation shall:

1. Be documented and maintained in the employee's record, which shall be retained for a period of at least five (5) years; and

2. Include the date and the signature of the:

- a. Person who conducted the training and evaluation; and
- b. Employee who received the training and evaluation.

Section 8. Service Agreement. (1) Each personal services agency shall provide a written service agreement to the client or the client's designated representative that includes the following:

(a) The charge for each service provided by the personal services agency;

(b) The personal services agency's policy for notifying the client or client's designated representative of any change in the charge for services. Notice of an increase in the charge for services shall be given to a participating client or client's

designated representative at least thirty (30) calendar days in advance of the effective date of the increase;

(c) The hours the personal services agency's office is open for business;

(d) The procedure for contacting the personal services agency's manager or the manager's designee;

(e) The procedure and telephone number to call for the purpose of filing a grievance with the personal services agency as described in Section 10 of this administrative regulation;

(f) An explanation of whether the personal services agency:

1. Directly employs the individual who will be providing personal services to the client;

2. Provides bonded protection for the client; and

3. Pays workers compensation or other benefits for the individual who will be providing personal services to the client;

(g) Name of the personal services agency's owner, including anyone with a significant financial interest in the agency;

(h) The procedure for changing or terminating a client's service plan; and

(i) A statement of client rights, which shall include the following:

1. The client has the right to have the client's property treated with respect;

2. The client has the right to request a change in his or her service plan, including the temporary suspension, permanent termination, temporary addition, or permanent addition of a service;

3. The client has the right to file a grievance as described in Section 10 of this administrative regulation regarding services, employee conduct, or the lack of respect for property and not be subject to discrimination or reprisal for filing the grievance; and

4. The client has the right to be free from verbal, physical, and psychological abuse, and to be treated with dignity.

(2) A personal services agency shall report to the cabinet an incident of suspected:

(a) Abuse, neglect, or exploitation of an adult pursuant to KRS 209.030(2) and (3); or

(b) Child abuse or neglect pursuant to KRS 620.030(1).

Section 9. Service Plan. (1) A personal services agency's manager or the manager's designee shall prepare a service plan. The initial service plan shall:

(a) Be in writing, dated, and signed by the:

1. Individual who prepared it; and

2. Client or client's designated representative;

(b) List the types and schedule of services to be provided to the client; and

(c) Identify the charge per service or charge per hour, whichever method the agency uses to bill clients.

(2) If a client or the client's designated representative requests a change in the type of service, duration of the service, or an increase or decrease in the number of visits, the personal services agency manager or manager's designee shall document on the client's service plan the:

(a) Requested change;

(b) Name of the person who requested the change; and

(c) Date the request was made.

(3) A personal services agency shall provide a copy of the service plan to the client within ten (10) calendar days of the date that the agency begins providing initial services.

Section 10. Client Grievances. (1) A personal services agency shall investigate a grievance made by a client or the client's designated representative alleging:

(a) An issue with a service that is furnished;

(b) Failure to furnish a service listed in the service plan;

(c) Failure to provide thirty (30) day advance notice of an increase in the amount the agency charges for its services;

(d) Inappropriate conduct of an employee while the individual is providing services to the client; or

(e) A violation of the client's rights.

(2)(a) A personal services agency shall:

1. Document how the agency investigated each grievance; and

2. Maintain on file for a period of at least five (5) years a written record documenting the outcome of the agency's investigation,

including any action taken by the agency.

(b) Upon completing an investigation of a grievance, the personal services agency shall document that it notified the individual who reported the grievance of the outcome of the investigation and any action the agency plans to take as a result.

Section 11. Complaint Investigations. (1) The OIG shall investigate a:

(a) Report of any business that provides personal services without receiving certification;

(b) Report of any business that markets its services as a personal services agency without receiving certification;

(c) Complaint against a certified personal services agency in which the agency is alleged to be in noncompliance with the requirements of this administrative regulation, ~~[or] KRS 216.712, or 216.713;~~

(d) Complaint against a certified personal services agency in which an agency employee is alleged to have abused or neglected a client, or misappropriated a client's property; or

(e) Complaint against a certified personal services agency in which an agency employee is alleged to have provided services to a client that exceed the scope of personal services.

(2)(a) A certified personal services agency or a business that is the subject of a complaint investigation shall not deny access to a representative of the OIG, after proper identification, to make an inspection for determining compliance with the requirements of this administrative regulation, ~~[or] KRS 216.712, or 216.713.~~

(b) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the OIG to enter the agency or deny access to records related to an inspection or investigation shall result in revocation of a personal services agency's certification.

Section 12. Request for Additional Information and Plans of Correction. (1) (a) The OIG shall notify an applicant or certified personal services agency in writing after:

1. Receipt of an incomplete or illegible application for initial certification or recertification;

2. Receipt of an application for initial certification or recertification in which additional information is needed by the OIG to verify that the applicant or personal services agency is in compliance with the requirements of this administrative regulation, ~~[and] KRS 216.712, and in the case of recertification, KRS 216.713;~~ or

3. Completion of a complaint investigation pursuant to Section 11 of this administrative regulation.

(b) The OIG's written notification specified in paragraph (a) of this subsection shall request that the applicant or certified personal services agency submit the following within ten (10) calendar days of the date of the notice:

1. Additional information needed by the OIG to deem an initial or recertification application as complete or legible;

2. Additional information needed by the OIG to make a determination of compliance with the requirements of this administrative regulation, ~~[and] KRS 216.712, and in the case of recertification, KRS 216.713;~~ or

3. A written plan of correction if the OIG has found upon completion of a complaint investigation that the certified personal services agency is in violation of this administrative regulation, ~~[or] KRS 216.712, or 216.713.~~ A plan of correction shall:

a. Be signed by the personal services agency's owner or manager;

b. Specify the date by which the agency intends to have corrected the violation;

c. Identify the specific measures the agency intends to use to correct the violation; and

d. Identify the specific measures the agency plans to use to ensure the violation will not recur.

(c) The OIG shall review additional information or a written plan of correction submitted pursuant to paragraph (b) of this subsection and notify the applicant or certified personal services agency in writing of the decision to:

1. Approve or not approve an application;

2. Accept or not accept a plan of correction; ~~[or]~~

3. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712; ~~or~~

4. Impose a fine in accordance with Section 7(2)(c) of this administrative regulation.

(d) If the OIG determines that a plan of correction is not acceptable and makes a written request for an amended plan of correction, the certified personal services agency shall submit the amended plan of correction within ten (10) calendar days of the date of the OIG's written request. The OIG shall review an amended plan of correction and notify the personal services agency in writing of the decision to:

1. Accept the amended plan of correction;

2. Deny or revoke certification for a violation of this administrative regulation or KRS 216.712; ~~[or]~~

3. Require the agency to submit an acceptable plan of correction; ~~or~~

4. Impose a fine in accordance with Section 7(2)(c) of this administrative regulation.

(e) Except for a violation for which a fine is imposed pursuant to Section 7(2)(c) of this administrative regulation, a certified personal services agency that fails to submit an acceptable plan of correction or acceptable amended plan of correction shall have its certification revoked.

(2) The OIG may impose fines in accordance with KRS 216.714(1) or (2).

Section 13. Denial, ~~[and]~~ Revocation, and Fines. (1) Initial certification shall be denied if an applicant:

(a) Has a significant financial interest in the entity applying for certification and held a significant financial interest in a personal services agency or health facility licensed pursuant to KRS Chapter 216B in which the agency's certification or facility's licensure was revoked during the three (3) years immediately preceding the filing of the application;

(b) Knowingly misrepresents or submits false information on the application; or

(c) Submits an application which fails to validate the entity's compliance with the requirements of this administrative regulation and KRS 216.712.

(2) Certification shall be revoked if a personal services agency:

(a) Fails to apply for annual recertification pursuant to Section 4(1) of this administrative regulation;

(b) Knowingly misrepresents or submits false information on the application at the time of annual recertification;

(c) Submits an application for annual recertification which fails to validate the agency's compliance with the requirements of this administrative regulation and KRS 216.712;

(d) Fails to comply with the background check and employment requirements of Section 6(2), (4), and (5) of this administrative regulation;

(e) Knowingly retains an employee who is:

1. Found by the cabinet to have abused or misappropriated a client's property; or

2. Convicted of, or pleads guilty, to a crime as defined by KRS 216.710(3);

(f) Fails to submit an acceptable plan of correction or acceptable amended plan of correction pursuant to Section 12(1)(b)3 or (d) of this administrative regulation;

(g) Interferes with a cabinet representative's ability to perform an official duty; or

(h) Provides services that are beyond the scope of personal services as defined by KRS 216.710(9)~~[(7)]~~.

(3) Written notice of adverse action or notice of a decision to impose a fine pursuant to Section 7(2)(c) of this administrative regulation shall be provided at least thirty (30) calendar days prior to the:

(a) Effective date of the denial, [or] revocation; or

(b) Date by which the amount of the fine shall be paid in full.

(4) The ~~[adverse action]~~ notice shall:

(a) Explain the reason for the:

1. Denial or revocation of certification; ~~or~~

2. Decision to impose a fine;

(b) Unless a fine is imposed pursuant to Section 7(2)(c) of this administrative regulation, specify that the personal services agency shall cease operation prior to the effective date of the adverse action;

(c) Advise the personal services agency of the right to request an appeal prior to the:

1. Effective date of the adverse action; or
2. Date by which the amount of the fine shall be paid in full;

(d) Specify that denial, [or] revocation, or fine shall be stayed if an appeal is requested; and

(e) Require the agency to:

1. Surrender the certificate of operation to OIG when the denial or revocation becomes effective; or
2. Pay any fine in full if an appeal is not requested.

Section 14. Closure of a Personal Services Agency. If a personal services agency closes voluntarily or as the result of adverse action, the agency shall relinquish to the OIG its certificate to operate as a personal services agency immediately after the effective date of the closure.

Section 15. Appeals. (1) A personal services agency that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action or notice of a decision to impose a fine shall be afforded a hearing in accordance with KRS Chapter 13B.

(2) If a hearing officer's final order does not uphold revocation of certification, the personal services agency may resume providing personal services.

Section 16. Incorporation by Reference. (1) "OIG - 1180, Application for Certification to Operate a Personal Services Agency", edition September 2021 [~~November 2009~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/lcapplications.aspx>

ADAM MATHER, Inspector General  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2021

FILED WITH LRC: August 25, 2021 at 11:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum certification requirements for the operation of personal services agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216.712(4), which requires the cabinet to promulgate administrative regulations to implement KRS 216.714 through 216.716 by establishing standards for the operation of personal services agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.712(4) by establishing standards for personal services agencies certified by the Cabinet for Health and Family Services, Office of Inspector General.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for certified personal services agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment seeks to align this administrative regulation's training requirements for direct-care staff members with the dementia-specific training requirements established by KRS 216.713, a new law created by the passage of SB 61 from the 2021 session of the Kentucky General Assembly. This amendment also updates this administrative regulation by adding a cross-reference to KRS 209.032 and 922 KAR 5:120, state rules enacted in 2014 and 2015 respectively that require personal services agency staff to submit to a check of the adult caregiver misconduct registry.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 216.713(11)(a), a new law created by SB 61 that requires the cabinet to promulgate administrative regulations to implement, monitor, and enforce compliance with dementia-specific training requirements for direct-care staff members.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216.712 by establishing certification standards for personal services agencies. This amendment also conforms to the content of KRS 216.713 by aligning the training requirements for direct-care staff members with the new dementia-specific training requirements created by SB 61.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing standards for certified personal services agencies, including dementia-specific training for direct-care staff members.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certified personal services agencies. There are currently 216 personal services agencies certified by the cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with this amendment, personal services agencies will be required to ensure that each direct-care staff member who provides care to a client that exhibits symptoms of Alzheimer's disease or other dementia completes at least six (6) hours of initial and three (3) hours of annual training in dementia care pursuant to the requirements established by KRS 216.713(3).

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

question (3): The actions identified by (4)(a) are in addition to existing requirements. However, the six (6) hours of initial dementia-specific training and three (3) hours of annual training for direct-care staff members who provide care to clients with Alzheimer's disease or other dementia is not anticipated to result in a significant cost impact to personal services agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By aligning the direct-care staff member training requirements in this administrative regulation with the dementia-specific training requirements of SB 61, this amendment is intended to improve the quality of care provided to individuals with Alzheimer's disease and other dementia as well as help retain workers.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all personal services agencies 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 impacts certified personal services agencies and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.712(4) and 216.713(11)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Although KRS 216.713(9) authorizes the cabinet to impose a fine of \$500 for each day that a personal services agency fails to demonstrate compliance with the requirements for dementia care training, the cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(b) How 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 cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Program Integrity (Amendment)

#### 907 KAR 1:005. Nonduplication of payments.

RELATES TO: KRS 205.624, 205.6312[205.520], 42 U.S.C. 1396a, 42 U.S.C. 1396k, 42 C.F.R. Parts 431, 433, 447  
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.622

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) empowers the cabinet, by administrative regulation, to comply with any 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 the Medicaid program policies relating to nonduplication of payment and treatment of third-party liability.

Section 1. Nonduplication of Payment. (1) In accordance with 42 C.F.R. 447.15, a payment to a provider for a service provided to a recipient shall be payment in full to the provider for the service[~~except as provided in subsection (3) of this section~~].

(2)(a) A provider shall not seek payment from a recipient for a covered service provided to the recipient[~~except as permitted pursuant to subsection (3) of this section~~].

(b) A recipient shall not be financially liable to a provider for a covered service provided by the provider to the recipient[~~except as provided pursuant to subsection (3) of this section~~].

~~(3) A cost-sharing obligation that complies with 907 KAR 1:604 and 42 C.F.R. 447.50-447.90 shall not be a violation of this section.~~

Section 2. Third-party Liability. (1) The department shall comply with 42 C.F.R. Part 433, Subpart D, and consider any third-party liability as a resource.

(2) A recipient shall cooperate with the department for third-party liability purposes in accordance with 42 U.S.C. 1396k, 42 C.F.R. 433.138, and 42 C.F.R. 433.145.

(3) If payment for a covered service is due and payable from a third-party source such as Medicare, an insurance plan, or some other third-party with a legal obligation to pay, the amount payable by the cabinet shall be reduced by the amount of the third-party obligation.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 28, 2021

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS



13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program policies relating to nonduplication of payment and third party liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program's nonduplication of payment and third party liability policies.

(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's nonduplication of payment and third party liability policies.

(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 nonduplication of payment and third party liability policies in accordance with 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 amendment changes this administrative regulation by removing an exemption for cost-sharing as a nonduplication of payment. Cost sharing and copayments are now prohibited in the Medicaid Program after the passage of SB 55 during the 2021 Regular Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the regulation to comply with SB 55's prohibition of cost sharing.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the content of the authorizing statutes by complying with KRS 205.6312's prohibition of cost-sharing within the Medicaid 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 instituting a clear policy regarding the use of copayments in the Medicaid program as required by SB 55 of the 2021 Regular Session.

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

All Medicaid recipients who may be subject to cost sharing may be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied. The department estimates that up to 800,000 Medicaid members may be impacted by this administrative regulation.

By removing all co-pays, DMS also anticipates that 46,000 Medicaid providers will no longer experience reduced rates or administrative costs in pursuing payment for nominal co-pays.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will be required to accept department or recipient payment as payment in full. Recipients will need to ensure that no other entities have liability to pay before the department, which is the payor of last resort.

(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 are expected.

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

participate in the Medicaid program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of 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 the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or 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 or entities regulated by it.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(25), 42 U.S.C. 1396k, 42 C.F.R. 433.138,

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

KRS 205.520(4) states: "It is the intention of the General Assembly to comply with the provisions of Title XIX of the Social Security Act which require that the Kentucky Medical Assistance Program recover from third parties which have a legal liability to pay for care and services paid by the Kentucky Medical Assistance Program."

KRS 205.520(5) states: "The Kentucky Medical Assistance Program shall be the payor of last resort and its right to recover under KRS 205.622 to 205.630 shall be superior to any right of reimbursement, subrogation, or indemnity of any liable third party."

3. Minimum or uniform standards contained in the federal mandate. When another party has a legal obligation to support a Medicaid recipient or pay for the recipient's medical expenses, the Department for Medicaid Services must identify the responsible party and seek reimbursement for any Medicaid expenditures spent for services provided to the beneficiary.

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 establish standards that are stricter than required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments do not impose requirements that are stricter than federal requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520, 205.622, 205.624, 42 C.F.R. 433.138, 42 C.F.R. 431.625.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 amendment 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 Department for Medicaid Services (DMS) anticipates no costs resulting from the amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no costs resulting from the amendment in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# **CABINET FOR HEALTH AND FAMILY SERVICES**

## **Department for Medicaid Services**

### **Division of Policy and Operations**

#### **(Amendment)**

## **907 KAR 1:030. Home health agency services.**

RELATES TO: KRS 216.935, 216.936, 216.937, 216.937.5, 216.939[205.520], 42 C.F.R. 440.70, 447.325, 484.4, 45 C.F.R. 164.316, 42 U.S.C. 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements relating to Medicaid Program home health care services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Electronic signature" is defined by KRS 369.102(8).

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Home health agency" or "HHA" means:

(a) An agency defined pursuant to 42 C.F.R. 440.70(d); and

(b) A Medicare and Medicaid-certified agency licensed in accordance with 902 KAR 20:081.

(6) "Home health aide" means a person who meets the home health aide requirements established in 902 KAR 20:081.

(7) "Licensed practical nurse" or "LPN" means a person who is licensed in accordance with KRS 314.051.

(8) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(9) "Medical social worker" means a person who meets the medical social worker requirements as established in 902 KAR 20:081.

(10) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907

KAR 3:130.

(11) "Nursing service" means the delivery of medication, or treatment by a registered nurse or a licensed practical nurse supervised by a registered nurse, consistent with KRS Chapter 314 scope of practice provisions and the Kentucky Board of Nursing scope of practice determination guidelines.

(12) "Occupational therapist" is defined by KRS 319A.010(3).

(13) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(14) "Physical therapist" is defined by KRS 327.010(2).

(15) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy services and related duties as assigned by the supervising physical therapist.

(16) "Place of residence" means, excluding a hospital or nursing facility, the location at which a recipient resides.

(17) "Plan of care" means a written plan which shall:

(a) Stipulate the type, nature, frequency and duration of a service; and

(b) At least every sixty (60) days, be reviewed and signed by a HHA staff person and physician, advanced practice registered nurse, or physician assistant~~(and HHA staff person at least every sixty (60) days)~~.

(18) "Provider" is defined by KRS 205.8451(7).

(19) "Qualified medical social worker" means a person who meets the qualified medical social worker requirements as established in 902 KAR 20:081.

(20) "Qualified social work assistant" means a social work assistant as defined in 42 C.F.R. 484.4.

(21) "Recipient" is defined by KRS 205.8451(9).

(22) "Registered nurse" or "RN" is defined by KRS 314.011(5).

(23) "Speech-language pathologist" is defined by KRS 334A.020(3).

(24) "Speech-language pathology assistant" is defined by KRS 334A.020(8).

Section 2. Conditions of Participation. (1) In order to provide home health services, a provider shall:

(a) Be an HHA; and

(b) Comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 907 KAR 1:673;

4. All applicable state and federal laws; and

5. The Home Health Services Manual.

(2)(a) A home health provider shall maintain a medical record for each recipient for whom services are provided.

(b) A medical record shall:

1. Document each service provided to the recipient including the date of the service and the signature of the individual who provided the service;

2. Contain a copy of the plan of care;

3. Document verbal orders from the physician, advanced practice registered nurse, or physician assistant, if applicable;

4. Except as established in paragraph (d) of this subsection, be retained for a minimum of five (5) years from the date a covered service is provided or until any audit dispute or issue is resolved beyond five (5) years;

5. Be kept in an organized central file within the HHA; and

6. Be made available to the department upon request.

(c) The individual who provided a service shall date and sign the health record on the date that the individual provided the service.

(d)1. If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (b)4. of this section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

2. In the case of a recipient who is a minor, the recipient's medical record shall be retained for three (3) years after the recipient reaches the age of majority under state law or the length established in paragraph (b)4 of this subsection or subparagraph 1

of this paragraph, whichever is longest.

(3) A provider shall comply with 45 C.F.R. Part 164.

(4)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 3. Covered Services. (1) A home health service shall be:

(a) Prior authorized by the department to ensure that the service or modification of the service is medically necessary and adequate for the needs of the recipient;

(b) Provided pursuant to a plan of care; and

(c) Provided in a recipient's place of residence.

(2) The following services provided to a recipient by a home health provider who meets the requirements in Section 2 of this administrative regulation shall be covered by the department:

(a) A nursing service which shall:

1. Include part-time or intermittent nursing services; and

2. If provided daily, be limited to thirty (30) days unless additional days are prior authorized by the department;

(b) A therapy service which shall:

1. Include physical therapy services provided by a physical therapist or a physical therapist assistant who is under the supervision of a physical therapist;

2. Include occupational therapy services provided by an occupational therapist or an occupational therapy assistant who is under the supervision of an occupational therapist;

3. Include speech-language pathology services provided by a speech-language pathologist or a speech-language pathology assistant who is under the supervision of a speech-language pathologist;

4. Be provided pursuant to a plan of treatment which shall be developed by the appropriate therapist and physician, advanced practice registered nurse, or physician assistant;

5. Be provided in accordance with 907 KAR 1:023; and

6. Comply with the:

a. Physical therapy service requirements established in the:

(i) Technical Criteria for Reviewing Ancillary Services for Adults if the therapy service is a physical therapy service provided to an adult; or

(ii) Technical Criteria for Reviewing Ancillary Services for Pediatrics if the therapy service is a physical therapy service provided to a child;

b. Occupational therapy requirements established in the:

(i) Technical Criteria for Reviewing Ancillary Services for Adults if the therapy service is an occupational therapy service provided to an adult; or

(ii) Technical Criteria for Reviewing Ancillary Services for Pediatrics if the therapy service is an occupational therapy service provided to a child; or

c. Speech-language pathology service requirements established in the:

(i) Technical Criteria for Reviewing Ancillary Services for Adults if the service is a speech-language pathology service provided to an adult; or

(ii) Technical Criteria for Reviewing Ancillary Services for Pediatrics if the service is a speech-language pathology service provided to a child;

(c) A home health aide service which shall:

1. Include the performance of simple procedures as an extension of therapy services, personal care, range of motion exercises and ambulation, assistance with medications that are ordinarily self-administered, reporting a change in the recipient's condition and needs, incidental household services which are essential to the recipient's health care at home when provided in the course of a regular visit, and completing appropriate records;

2. Be provided by a home health aide who is supervised at least every fourteen (14) days by:

a. An RN;

b. A physical therapist, for any physical therapy services that are provided by the home health aide;

c. An occupational therapist, for any occupational therapy services that are provided by the home health aide; or

d. A speech-language pathologist, for any speech-language pathology services that are provided by the home health aide; and

3. Be a service that the recipient is either physically or mentally unable to perform;

(d) A medical social service which shall:

1. Be provided by a qualified medical social worker or qualified social work assistant; and

2. Be provided in conjunction with at least one (1) other service listed in this section;

(e) A supply listed on the Home Health Schedule of Supplies, which shall be covered if provided to a recipient pursuant to the recipient's plan of care; or

(f) A supplemental nutritional product listed on the Home Health Schedule of Supplies, which shall:

1. Be ingested orally or delivered by tube into the gastrointestinal tract;

2. Provide for the supplemental nutrition of a recipient; and

3. Require a completed MAP-248 signed by a physician, advanced practice registered nurse, or physician assistant certifying the medical necessity of the supplemental nutritional product.

Section 4. Limitations and Exclusions from Coverage. (1) A domestic or housekeeping service which is unrelated to the health care of a recipient shall not be covered.

(2) A medical social service shall not be covered unless provided in conjunction with another service pursuant to Section 3 of this administrative regulation.

(3) Supplies for personal hygiene shall not be covered.

(4) Drugs shall not be covered.

(5) Disposable diapers shall not be covered for a recipient age three (3) years and under, regardless of the recipient's medical condition.

(6) Except for the first week following a home delivery, a newborn or postpartum service without the presence of a medical complication shall not be covered.

(7) A recipient who has elected to receive hospice care shall not be eligible to receive coverage under the home health program.

(8)(a) There shall be an annual limit of twenty (20):

1. Occupational therapy service visits per recipient per calendar year except as established in paragraph (b) of this subsection;

2. Physical therapy service visits per recipient per calendar year except as established in paragraph (b) of this subsection; and

3. Speech-language pathology service visits per recipient per calendar year except as established in paragraph (b) of this subsection.

(b) The limits established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:

1. Department if the recipient is not enrolled with a managed care organization; or

2. Managed care organization in which the enrollee is enrolled if the recipient is an enrollee.

(c) Prior authorization by the department shall be required for each visit that exceeds the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for a speech-language pathology service provided to the same recipient during the same time period via the home health services

program.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 8. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 10. Appeal Rights. (1) An appeal of an adverse action taken by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

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

(a) "MAP-248", July 2021[April 2009];

(b) "Home Health Services Manual", May 2014;

(c) "Technical Criteria for Reviewing Ancillary Services for Adults", February 2000;

(d) "Technical Criteria for Reviewing Ancillary Services for Pediatrics", April 2000; and

(e) "Home Health Schedule of Supplies", May 2014.

(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) The Web site located at <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/hh.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 28, 2021

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy 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](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding home health services.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Medicaid Program coverage provisions and requirements regarding home health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program coverage provisions and requirements regarding home health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid Program coverage provisions and requirements regarding home health agency services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation will comport with recent legislative and practice evolution that allow for advanced practice registered nurses (APRNs) and physician assistants (PAs) to order services to recipients receiving services from home health agencies. Specifically the administrative regulation is amended to allow for an APRN, a PA, or a physician to sign a plan of care, or certify the medical necessity of modifications to a plan of care. In addition, the MAP-248 form is updated in order to allow for an APRN, PA, or a physician to authorize services.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation is necessary to expand the practice of APRNs and PAs within home health agencies, especially within fee-for-service Medicaid.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to the administrative regulation will comport with recent legislative and practice evolution that allow for advanced practice registered nurses (APRNs) and physician assistants (PAs) to order services to recipients receiving services from home health agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: SB 154 from the 2021 Regular Session allowed for additional practice by APRNs and PAs within home health agencies. In addition, this has been an ongoing topic and potential area of expanded practice for

some time.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently approximately 90 home health services providers enrolled in Medicaid.

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

(a) List 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 of regulated entities or individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on regulated entities or individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Home health agencies will benefit by being able to utilize other providers in providing home health agency services.

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

(a) Initially: DMS does not anticipate additional expenses in administering this administrative regulation as a result of this amendment on an initial basis.

(b) On a continuing basis: DMS does not anticipate additional expenses in administering this administrative regulation as a result of this amendment on a continuing basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee nor funding increase is necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes nor increases any fee.

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply equally to the regulated entities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440.220.

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Medicaid programs are required to cover "home health services (\$440.70) to any individual entitled to skilled nursing facility services."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 440.220.

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? DMS does not anticipate that this administrative regulation and amendment will generate additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not anticipate that this administrative regulation and amendment will generate additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? DMS anticipates no additional cost as a result of the amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional cost as a result of the amendment in 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:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amendment)

#### 907 KAR 1:604. [Recipient] Cost-sharing prohibited within the Medicaid program.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.20, 447.21, 447.50, 447.52, 447.54, 447.55, 447.56, 447.57, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396e, 1396f-6, 1396f-8, 1396u-1, 1397aa -1397jj

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), [205.6312(5)], 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.90, 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. [KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments for Medicaid recipients.] This administrative regulation prohibits cost-sharing within the Medicaid program, and extends the KRS 205.6312 prohibition of cost-sharing to providers as well as the department and managed care organizations[establishes the provisions relating to Medicaid Program copayments].

Section 1. Definitions. (1) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

(2) "Department" means the Department for Medicaid Services

# VOLUME 48, NUMBER 4– OCTOBER 1, 2021

or its designee.

(3) "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.

(4) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(5) ["Medicaid Works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(6) "Recipient" is defined by KRS 205.8451(9).

Section 2. [Copayments. (1) Except as provided by subsection (4) of this section, the following table shall establish the copayment amounts that a recipient shall pay, unless the recipient is otherwise exempt from cost sharing.

Benefit	Copayment Amount
Emergency room for a nonemergency visit	\$1
Prescription and over-the-counter drugs	\$1
Ambulance services provided to individuals in need of nonemergency health transportation services	\$1

(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement, unless the recipient has already met any copayment obligation for the year pursuant to Section 3(1)(b) of this administrative regulation.

(3) The maximum amount of cost sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) A prescription co-payment shall not apply to:

(a) Certain antipsychotic medications;

(b) Contraceptives for family planning;

(c) Tobacco cessation medications;

(d) All covered diabetes or diabetic supplies;

(e) Pregnant recipients;

(f) Long-term care residents; or

(g) Any recipient exempted pursuant to Sections 3 or 5 of this administrative regulation.

Section 3. Copayment General Provisions and Exemptions.

(1) Pursuant to KRS 205.6312, the department or any MCO shall not utilize or require cost-sharing or copayments within any component of the Medicaid program[(a) Cost-sharing or copayments for the delivery of Medicaid services within the Commonwealth shall not exceed the amounts established in the table in Section 2 of this administrative regulation.

(b) After paying for one (1) copayment each calendar year for any service or product within the table established in Section 2 of this administrative regulation, a recipient shall not be subject to additional copayments or cost sharing for that service or any other Medicaid covered service or product for the remainder of that calendar year].

(2) [A Medicaid beneficiary who is younger than nineteen (19) years of age shall be exempt from the copayment or cost-sharing requirements established pursuant to this administrative regulation.

(3) A copayment shall not be imposed for a service, prescription, item, supply, equipment, or any type of Medicaid benefit provided to a foster care child or a pregnant woman.

(4) The department shall impose no cost sharing for an individual or recipient who is exempt pursuant to 42 C.F.R. 447.56.

(5) A provider shall not deny services to a recipient who cannot pay any required cost sharing.

(6) Any amount of uncollected copayment by a provider from a recipient shall not be considered a debt to the provider.

(7) A provider shall not collect:

(a) a copayment from an enrollee for a service or item [if a copayment is not imposed for that service or item; or

(b) Any copayment or cost sharing from an enrollee that is greater than the copayment amounts established in the table in Section 2 of this administrative regulation.

(8) Cumulative cost sharing for copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(9) In response to a declared emergency relating to or rationally related to healthcare or public health, the department may waive or direct the waiving of all required cost-sharing for all Medicaid beneficiaries or any subpopulation of Medicaid beneficiaries not already exempted from this administrative regulation, including a geographic or age-related subpopulation.

Section 4. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid Works individual shall pay a monthly premium that is:

1. Based on income used to determine eligibility for the program; and

2. Established in paragraph (b) of this subsection.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.

(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in subsection (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.

Section 5. Provisions for Enrollees. A managed care organization:

(1) Shall not impose a copayment on an enrollee that exceeds a copayment established in this administrative regulation; and

(2) May impose on an enrollee:

(a) A lower copayment than established in this administrative regulation, if possible; or

(b) No copayment.]

Section 3.[Section 6.] Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

Section 4.~~[Section 7.]~~ Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

Section 5.~~[Section 8.]~~ Federal Approval and Federal Financial Participation. The department's copayment provisions and any coverage of services established in this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation; and
- (2) Centers for Medicare and Medicaid Services' approval.

Section 6.~~[Section 9.]~~ This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.

LISA LEE, Commissioner  
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2021

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

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

### REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cost sharing requirements and provisions for the Kentucky Medicaid program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cost sharing requirements and provisions for the Kentucky Medicaid program.

(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 cost sharing requirements and provisions for the Kentucky Medicaid program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes all copays and cost-sharing from the Medicaid program, and changes the title of the administrative regulation. This regulation now contains a clear prohibition on charging copayments for providers, managed care organizations, and the department. This change is

being made to comply with SB 55 of the 2021 Regular Session. In addition, references to a premium for Medicaid Works individuals has been removed, an existing federal clarification has removed a premium requirement for this population. Furthermore, DMS is currently reviewing the possibility of ending the Medicaid Works program and transitioning this population to the general Medicaid expansion population.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to remove copayments within the Medicaid program in response to SB 55 of the 2021 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by removing copayments and establishing certain protections for members and providers relating to copayment obligations in order to improve access to care and facilitate a more efficient and responsive Medicaid 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 instituting a clear policy prohibiting the use of copayments in the Medicaid program as required by SB 55 of the 2021 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients who may be subject to cost sharing may be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied. The department estimates that up to 800,000 Medicaid members may be impacted by this administrative regulation.

By removing all co-pays, DMS also anticipates that 46,000 Medicaid providers will no longer experience reduced rates or administrative costs in pursuing payment for nominal co-pays.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The department, managed care organizations and providers will need to not assess or collect copayments in order to comply with the changes made to 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). Enrollees and recipients will incur no costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Enrollees, recipients, and providers will be able to participate fully in the Medicaid program.

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

(a) Initially: The Department for Medicaid Services (DMS) has recently implemented changes that reduce all cost-sharing to no more than \$1 per year. As such, DMS does not anticipate additional costs in implementing this administrative regulation. Furthermore, this administrative regulation will allow for improved treatment adherence and removing a barrier to care for many low-income recipients, DMS anticipates that these costs may be neutralized by improved and earlier care.

(b) On a continuing basis: The Department for Medicaid Services (DMS) is already working to continue substantial reductions in cost-sharing, due to recent regulatory and COVID-19 pandemic changes. As such, DMS does not anticipate additional costs in implementing this administrative regulation. Furthermore, this administrative regulation will allow for improved treatment adherence and removing a barrier to care for many low-income recipients, DMS anticipates that these costs may be neutralized by improved and earlier care.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.



(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation neither establish nor increase any fees.

(9) Tiering: Is tiering applied? Tiering is no longer appropriate in this administrative regulation as cost sharing obligations have been removed for all members.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(14), 42 U.S.C. 1396o, 42 C.F.R. 447.50 through 447.90, 42 C.F.R. 447.15 and 447.20, and 42 C.F.R. 438.108

2. State compliance standards. KRS 205.520(3), KRS 205.6312, and KRS 194A.050(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(14) authorizes a state's Medicaid program to impose cost sharing only as allowed by 42 U.S.C. 1396o. 42 U.S.C. 1396o establishes categories of individuals for whom a state's Medicaid program may not impose cost sharing as well as cost sharing and premium limits.

42 C.F.R. 447.50 through 447.60 also establish limits on cost sharing (based on income of the given Medicaid eligibility group); Medicaid populations exempt from cost sharing (children, pregnant women, institutionalized individuals for example); services exempt from cost sharing (emergency services, family planning services to child-bearing age individuals); prohibition against multiple cost sharing for one (1) service; a requirement that state Medicaid programs do not increase a provider's reimbursement by the amount of cost sharing; and a requirement that managed care organizations' cost sharing must comply with the aforementioned federal regulations.

42 C.F.R. 438.108 establishes that a managed care organization's cost sharing must comply with the federal cost sharing requirements for Medicaid established in 42 C.F.R. 447.50 through 42 C.F.R. 447.90.

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. Stricter requirements are not imposed.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal regulations 42 C.F.R. 447.50 through 42 C.F.R. 447.90, 42 C.F.R. 447.15 and 447.20, 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 does not expect the amendment to this administrative regulation to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) has recently implemented changes that reduce all cost-sharing to no more than \$1 per year. As such, DMS does not anticipate additional costs in implementing this administrative regulation. Furthermore, this administrative regulation will allow for improved treatment adherence and removing a barrier to care for many low-income recipients, DMS anticipates that these costs may be neutralized by improved and earlier care.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) is already working to continue substantial reductions in cost-sharing, due to recent regulatory and COVID-19 pandemic changes. As such, DMS does not anticipate additional costs in implementing this administrative regulation. Furthermore, this administrative regulation will allow for improved treatment adherence and removing a barrier to care for many low-income recipients, DMS anticipates that these costs may be neutralized by improved and earlier care.

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 Medicaid Services Division of Fiscal Management (Amendment)

#### 907 KAR 10:830. Acute care inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 142.303, 205.510(16), 205.565, 205.637, 205.638, 205.639, 205.640, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(i), 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), 216.380(12), 42 C.F.R. 447.200, 447.250, 447.252, 447.253, 447.271, 447.272, 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 the Department for Medicaid Services' reimbursement provisions and requirements for acute care inpatient hospital services provided to a Medicaid recipient who is not enrolled with a managed care organization.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(3) "Capital cost" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "CMS" means the Centers for Medicare and Medicaid Services.

(5) "CMS IPPS Pricer Program" means the software program published on the CMS Web site of <http://www.cms.hhs.gov>, which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.

(6) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(7) "Critical access hospital" or "CAH" means a hospital:

(a) Meeting the licensure requirements established in 906 KAR



1:110; and

(b) Designated as a critical access hospital by the department.

(8) "Department" means the Department for Medicaid Services or its designated agent.

(9) "Diagnosis code" means a code:

(a) Maintained by the Centers for Medicare and Medicaid Services (CMS) to group and identify a disease, disorder, symptom, or medical sign; and

(b) Used to measure morbidity and mortality.

(10) "Diagnosis related group" or "DRG" means a clinically similar grouping of services that can be expected to consume similar amounts of hospital resources.

(11) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(12) "DRG base payment" means the sum of the operating base payment and capital base payment, calculated as described in Section 2(4)(b) and (c) of this administrative regulation.

(13) "DRG geometric mean length-of-stay" means an average hospital length-of-stay, expressed in days, for each DRG, with the geometric mean calculated by taking the *n*th (number of values in the set) root of the product of all length-of-stay values within a given DRG.

(14) "Enrollee" means a recipient who is enrolled with a managed care organization.

(15) "Enrollee day" means a day of an inpatient hospital stay of a Medicaid recipient who is enrolled with a managed care organization.

(16) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(17) "Fixed loss cost threshold" means an amount, established annually by CMS, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(18) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(19) "Graduate medical education program" means a Medicare-approved education and training program for interns and residents in medicine, osteopathy, dentistry, or podiatry.

(20) "Hospital-acquired condition" means a condition:

(a)1. Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; and

(b) That is recognized by the Centers for Medicare and Medicaid Services as a hospital acquired condition.

(21) "Indirect medical education costs" means additional costs of serving Medicaid recipients, incurred by teaching hospitals, to provide training and education to interns and residents in graduate medical education programs, which are not reimbursed through direct graduate medical education payments.

(22) "Long-term acute care hospital" means a long term care hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(23) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(24) "Medicaid fee-for-service" means a service associated with a Medicaid recipient who is not enrolled with a managed care organization.

(25) "Medicaid fee-for-service covered day" means an inpatient hospital day associated with a Medicaid recipient who is not enrolled with a managed care organization.

(26) "Medicaid shortfall" means the difference between a provider's allowable cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

(27) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(28) "Medicare-dependent hospital" means a hospital designated as a Medicare dependent hospital by the Centers for

Medicare and Medicaid Services.

(29) "Medicare IPPS Final Rule Data Files and Tables" means information related to Medicare hospital reimbursement that is:

(a) Published annually by the Centers for Medicare and Medicaid Services; and

(b) Located online at the Centers for Medicare and Medicaid Services acute inpatient PPS Web site located at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.

(30) "Medicare operating and capital cost-to-charge ratios" means two (2) hospital-specific calculations:

(a) Completed by Medicare using CMS 2552 cost report information;

(b) In which:

1. Medicare operating costs are divided by total applicable charges to determine a Medicare operating cost-to-charge ratio; and

2. Medicare capital costs are divided by total applicable charges to determine a Medicare capital cost-to-charge ratio; and

(c) That are published annually by CMS in an impact file released with the Medicare IPPS Final Rule Data Files and Tables for a given federal fiscal year.

(31) "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

(32) "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

(33) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(34) "Per diem rate" means the per diem rate paid by the department for:

(a) Inpatient care in an in-state psychiatric or rehabilitation hospital;

(b) Inpatient care in a long-term acute care hospital;

(c) Inpatient care in a critical access hospital;

(d) Psychiatric, substance use disorder, or rehabilitation services in an in-state acute care hospital which has a distinct part unit; or

(e) A psychiatric or rehabilitation service in an in-state acute care hospital.

(35) "Psychiatric hospital" means a hospital that meets the licensure requirements as established in 902 KAR 20:180.

(36) "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

(37) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

(38) "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification paid under the DRG methodology relative to the average resources required for all DRG discharges paid under the DRG methodology for the same period.

(39) "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

(40) "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(ii)(C).

(41) "Sole community hospital" means a hospital that is currently designated as a sole community hospital by the Centers for Medicare and Medicaid Services.

(42) "State university" means the University of Kentucky or the University of Louisville.

(43) "State university teaching hospital" means a hospital that is owned or operated by a state university, or a state university-related party organization, as allowed by 42 C.F.R. 413.17, with a state university affiliated graduate medical education program.

(44) "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis.

(45) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning October 1 of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(46) "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(ii).

(47) "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) Has at least fifty (50) percent of its Medicaid population as residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1)(a) The department shall reimburse an in-state acute care hospital for an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, on a fully-prospective per discharge basis.

(b) The department's reimbursement pursuant to this administrative regulation shall approximate ninety-five (95) percent of a hospital's Medicare reimbursement excluding the following Medicare reimbursement components:

1. A Medicare low-volume hospital payment;
2. A Medicare end stage renal disease payment;
3. A Medicare new technology add-on payment;
4. A Medicare routine pass-through payment;
5. A Medicare ancillary pass-through payment;
6. A Medicare value-based purchasing payment or penalty;

7. A Medicare readmission penalty in accordance with paragraph (c) of this subsection;

8. A Medicare hospital-acquired condition penalty in accordance with paragraph (c) of this subsection;

9. Any type of Medicare payment implemented by Medicare after October 1, 2015; or

10. Any type of Medicare payment not described in this administrative regulation.

(c) The department's:

1. Never event and hospital-acquired condition provisions established in Section 3 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation; and

2. Readmission provisions established in Section 12 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation.

(2)(a) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:

1. A DRG base payment; and
2. If applicable, a cost outlier payment.

(b) The resulting payment shall be limited to ninety-five (95) percent of the calculated value.

(c) If applicable, a transplant acquisition fee payment shall be added pursuant to subsection (11)(b) of this section.

(3)(a) The department shall assign a DRG classification to each unique discharge billed by an acute care hospital.

(b)1. The DRG assignment shall be based on the most recent Medicare Severity DRG (MS-DRG) grouping software released by the Centers for Medicare and Medicaid Services beginning with version 32 on October 1, 2015 unless CMS releases version 33 on October 1, 2015.

2. If CMS releases version 33 on October 1, 2015, the department shall make interim payments for dates of service beginning October 1, 2015 based on version 32 and then retroactively adjust claims for dates of service beginning October 1, 2015 using version 33.

3. The grouper version shall be updated in accordance with Section 8 of this administrative regulation.

(c) In assigning a DRG for a claim, the department shall exclude from consideration any secondary diagnosis code associated with a never event.

(4)(a) A DRG base payment shall be the sum of the operating base payment and the capital base payment calculated as described in paragraphs (c) and (d) of this subsection.

(b) All calculations in this subsection shall be subject to special

rate-setting provisions for sole community hospitals and Medicare dependent hospitals as described in Sections 5 and 6 of this administrative regulation.

(c)1. The operating base payment shall be determined by multiplying the hospital-specific operating rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific operating indirect medical education (IME) factor determined in accordance with subparagraph 7. of this paragraph.

3. Beginning October 1, 2015, the hospital-specific operating rate referenced in subparagraph 1. of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4. through 6. of this paragraph.

4. The Medicare IPPS standard amount established for operating labor costs shall be multiplied by the wage index associated with the final Core Based Statistical Area (CBSA) assigned to the hospital by Medicare, inclusive of any Section 505 adjustments applied by Medicare.

5. The resulting product of subparagraph 4. of this paragraph shall be added to the Medicare IPPS standard amount for non-labor operating costs.

6. The operating rate shall be updated in accordance with Section 8 of this administrative regulation.

7.a. Beginning October 1, 2015, the hospital-specific operating IME factor shall be taken from the Federal Fiscal Year 2016 Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables published by CMS.

b. The operating IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(d)1. The capital base payment shall be determined by multiplying the hospital-specific capital rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific capital indirect medical education factor determined in accordance with subparagraph 6. of this paragraph.

3. Beginning October 1, 2015, the hospital-specific capital rate referenced in subparagraph 1. of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4. and 5. of this paragraph.

4. The Medicare IPPS standard amount established for capital costs shall be multiplied by the geographic adjustment factor (GAF) associated with the final CBSA assigned to the hospital by Medicare.

5. The capital rate shall be updated in accordance with Section 8 of this administrative regulation.

6.a. Beginning October 1, 2015, the hospital-specific capital IME factor shall be taken from the Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables published by CMS.

b. The capital IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. Effective beginning May 10, 2019 pursuant to federal approval, the department shall make an annual IME payment to state university teaching hospitals, in addition to the adjustments specified in paragraphs (c)2. and (d)2. of this subsection, equal to:

a. The total of all operating base payments, as determined under paragraph (c)1. of this subsection, received by the hospital during the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with subparagraph 2. of this paragraph; plus

b. The total of all capital base payments, as determined under paragraph (d)1. of this subsection, received by the hospital during the previous year multiplied by the sum of one (1) and the adjusted hospital-specific education (IME) factor determined in accordance with subparagraph 2. of this paragraph; plus

c. The total of all inpatient operating and capital base hospital payments received from managed care organizations in the previous year multiplied by the sum of one (1) and the adjusted

hospital-specific education (IME) factor determined in accordance with subparagraph 2. of this paragraph; minus

d. The amount of IME adjustments to the operating base rate received during the previous year pursuant to paragraph (c)2. of this subsection; minus

e. The amount of IME adjustments to the capital base rate received during the previous year pursuant to paragraph (d)2. of this subsection; minus

f. The amount of IME adjustments received from managed care organizations during the previous year.

2. The adjusted hospital-specific operating IME factor shall be calculated pursuant to 42 C.F.R. 412.105(d); however, the count of full-time equivalent (FTE) residents in the resident-to-bed ratio in the formula described within 42 C.F.R. 412.105(d) shall be substituted with the number of FTE residents reported on Worksheet E Part A, Lines 10 and 11, Column 1 of the Medicare cost report.

(5)(a) The department shall make a cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each DRG as established in paragraphs (b) to (e) of this subsection.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for a cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge:

a. For purposes of comparing the discharge cost to the outlier threshold; and

b. By multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2.a. A Medicare operating and capital-related cost-to-charge ratio shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS.

b. The Medicare operating and capital cost-to-charge ratios shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2.a. Beginning October 1, 2015, the fixed loss cost threshold shall equal the Medicare fixed loss cost threshold established for Federal Fiscal Year 2016.

b. The fixed loss cost threshold shall be updated in accordance with Section 8 of this administrative regulation.

(f)1. For specialized burn DRGs as established by Medicare, a cost outlier payment shall equal ninety (90) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

2. For all other DRGs, a cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

(6)(a) The department shall establish DRG relative weights obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

(b) Relative weights shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(7) The department shall separately reimburse for a mother's stay and a newborn's stay based on the DRGs assigned to the mother's stay and the newborn's stay.

(8)(a) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(b) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

(c)1. The department shall calculate an average daily

discharge rate by dividing the DRG base payment by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric length-of-stay shall be obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

3. The geometric length-of-stay values shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(d) Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e) For a hospital receiving a transferred patient, the department shall reimburse the standard DRG payment established in subsection (2) of this section.

(9)(a) The department shall reimburse a transferring hospital for a transfer from an acute care hospital to a qualifying post-acute care facility for selected DRGs in accordance with paragraphs (b) through (d) of this subsection as a post-acute care transfer.

(b) The following shall qualify as a post-acute care setting:

1. A skilled nursing facility;

2. A cancer or children's hospital;

3. A home health agency;

4. A rehabilitation hospital or rehabilitation distinct part unit located within an acute care hospital;

5. A long-term acute care hospital; ~~or~~

6. A psychiatric hospital or psychiatric distinct part unit located within an acute care hospital; or

7. A hospice provider.

(c) A DRG eligible for a post-acute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(5)(J).

(d)1. The department shall pay each transferring hospital an average daily rate for each day of a stay.

2. A transfer-related payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

3. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay up to the full DRG base payment.

4. A DRG that is referenced in paragraph (b) of this subsection and not referenced in subparagraph 2. of this paragraph shall receive twice the average daily rate for the first day of the stay and the average daily rate for each following day of the stay prior to the transfer.

5. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e)1. The average daily rate shall be the base DRG payment allowed divided by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric mean length-of-stay shall be determined and updated in accordance with subsection (8)(c) of this section.

(10) The department shall reimburse a receiving hospital for a transfer to a rehabilitation or psychiatric distinct part unit the facility-specific distinct part unit per diem rate, in accordance with 907 KAR 10:815, for each day the patient remains in the distinct part unit.

(11)(a) The department shall reimburse for an organ transplant on a prospective per discharge method according to the recipient's DRG classification.

(b)1. The department's organ transplant reimbursement shall include an interim reimbursement followed by a final reimbursement.

2. The final reimbursement shall:

a. Include a cost settlement process based on the Medicare 2552 cost report form; and

b. Be designed to reimburse hospitals for ninety-five (95) percent of organ acquisition costs.

3.a. An interim organ acquisition payment shall be made using a fixed-rate add-on to the standard DRG payment using the rates established in subclauses (i), (ii), (iii), (iv), and (v) of this clause:

- (i) Kidney Acquisition - \$65,000;
- (ii) Liver Acquisition - \$55,000;
- (iii) Heart Acquisition - \$70,000;
- (iv) Lung Acquisition - \$65,000; or
- (v) Pancreas Acquisition - \$40,000.

b. Upon receipt of a hospital's as-filed Medicare cost report, the department shall calculate a tentative settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

c. Upon receipt of a hospital's finalized Medicare cost report, the department shall calculate a final reimbursement, which shall be a cost settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

d. The final cost settlement shall reflect any cost report adjustments made by CMS.

Section 3. Never Events. (1) For each diagnosis on a claim, a hospital shall specify on the claim whether the diagnosis was present upon the individual's admission to the hospital.

(2) In assigning a DRG for a claim, the department shall exclude from the DRG assignment consideration of any secondary diagnosis code associated with a hospital-acquired condition.

(3) A hospital shall not seek payment for treatment for or related to a never event through:

- (a) A recipient;
- (b) The Cabinet for Health and Family Services for a child in the custody of the cabinet; or
- (c) The Department for Juvenile Justice for a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for treatment for or related to a never event.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

- (1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and
- (2) Exclude a service furnished by a home health agency, a skilled nursing facility, or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 5. Reimbursement for Sole Community Hospitals. An operating rate for sole community hospitals shall be calculated as described in subsections (1) and (2) of this section.

(1)(a) For each sole community hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables.

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) The higher of the two (2) rates compared in paragraph (a) of this subsection shall be utilized as the operating rate for sole community hospitals.

Section 6. Reimbursement for Medicare Dependent Hospitals. (1)(a) For a Medicare-dependent hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) The HSP rate shall be extracted from the Federal Fiscal

Year 2016 Medicare IPPS Final Rule Data Files and Tables.

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) If the Section 2(4)(c) rate is higher, it shall be utilized as the hospital's operating rate for the period.

(c)1. If the rate referenced in subsection (1) of this section is higher, the department shall calculate the arithmetic difference between the two (2) rates.

2. The difference shall be multiplied by seventy-five (75) percent.

3. The resulting product shall be added to the Section 2(4)(c) rate to determine the hospital's operating rate for the period.

(d) If CMS terminates the Medicare-dependent hospital program, a hospital that is a Medicare-dependent hospital at the time that CMS terminates the program shall receive operating rates as calculated in Section 2(4)(c) of this administrative regulation.

Section 7. Direct Graduate Medical Education Costs at In-state Hospitals with Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education (DGME) costs is not provided to the department, the department shall not reimburse eligible in-state hospitals for direct graduate medical education costs.

(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall provide a base DGME payment to in-state hospitals for the direct costs of a graduate medical education program approved by Medicare as established in this subsection.

(a) A base DGME payment shall be made:

- 1. Separately from the per discharge and per diem payment methodologies; and
- 2. On an annual basis corresponding to the hospital's fiscal year.

(b) The department shall determine an annual base DGME payment amount for a hospital as established in subparagraphs 1. through 4. of this paragraph.

1. Total direct graduate medical education costs shall be obtained from a facility's as-filed CMS 2552 cost report, worksheet E-4, line 25.

2.a. The facility's Medicaid utilization shall be calculated by dividing Medicaid fee-for-service covered days during the cost report period, as reported by the Medicaid Management Information System, by total inpatient hospital days, as reported on worksheet E-4, line 27 of the CMS 2552 cost report.

b. The resulting Medicaid utilization factor shall be rounded to six (6) decimals.

3. The total graduate medical education costs referenced in subparagraph 1. of this paragraph shall be multiplied by the Medicaid utilization factor calculated in subparagraph 2. of this paragraph to determine the total graduate medical education costs related to the fee-for-service Medicaid program.

4. Medicaid program graduate medical education costs shall then be multiplied by ninety-five (95) percent to determine the annual base DGME payment amount.

(3) Effective beginning May 10, 2019 pursuant to federal approval, the department shall provide a supplemental direct graduate medical education (supplemental DGME) payment for the direct costs of graduate medical education incurred by eligible in-state hospitals as established in paragraph (a) of this subsection.

(a) In-state hospitals eligible for supplemental DGME shall include:

- 1. Those hospitals receiving direct graduate medical education payments from the department as of April 1, 2019; and
- 2. Any hospital that sponsors a graduate medical education program affiliated with a state university on or after April 1, 2019.

(b) A supplemental DGME payment shall be made:

- 1. Separately from the per discharge and per diem payment methodologies;
- 2. In addition to any base DGME payment made pursuant to

subsection (2) of this section; and

3. On an annual basis corresponding to the hospital's fiscal year.

(c) The annual supplemental DGME payment shall be calculated by the department by subtracting any base DGME payments made by the department pursuant to subsection (2) of this section, any DGME payments received through outpatient cost settlements, and any DGME payments received from Medicaid managed care organizations from the total DGME amount determined under paragraph (d) of this subsection.

(d) The total DGME amount shall equal the product of:

1. Total DGME costs, obtained from Worksheet B, Part 1, Line 118, Columns 21 and 22 of the CMS 2552 cost report; and

2. The hospital's Medicaid utilization, calculated by dividing the total number of Medicaid inpatient days, including both fee for service and managed care days, by total inpatient days.

(e) The supplemental DGME payment shall be calculated prior to the determination of applicable supplemental payments described in Section 14 of this administrative regulation. Only the portion of the supplemental DGME payment associated with Medicaid fee for service days shall count towards the upper payment limit described in Section 18 of this administrative regulation.

Section 8. Reimbursement Updating Procedures. (1)(a) The department shall annually update the Medicare grouper software to the most current version used by the Medicare program. The annual update shall be effective October 1 of each year, except as provided in paragraph (b) of this subsection.

(b) If Medicare does not release a new grouper version effective October 1 of a given year:

1. The current grouper effective prior to October 1 shall remain in effect until a new grouper is released; and

2. When the new grouper is released by Medicare, the department shall update the Medicare grouper software to the most current version used by the Medicare program.

(c) The department shall not update the Medicare grouper software more than once per federal fiscal year, which shall be October 1 through September 30 of the following year.

(2) At the time of the grouper update referenced in subsection (1) of this section, all DRG relative weights and geometric length-of-stay values shall be updated to match the most recent relative weights and geometric length-of-stay values effective for the Medicare program.

(3)(a) Annually, on October 1, all values obtained from the Medicare IPPS Final Rule Data Files and Tables shall be updated to reflect the most current Medicare IPPS final rule in effect.

(b)1. Within thirty (30) days after the Centers for Medicare and Medicaid Services publishes the Medicare IPPS Final Rule Data Files and Tables for a given year, the department shall send a notice to each hospital containing the hospital's data from the Medicare IPPS Final Rule Data Files and Tables to be used by the department to establish diagnosis related group rates on October 1.

2. The notice referenced in subparagraph 1. of this paragraph shall request that the hospital:

a. Review the information; and

b. If the hospital discovers that the data in the notice sent by the department does not match the data published by the Centers for Medicare and Medicaid Services, notify the department of the discrepancy prior to October 1.

(4) All Medicare IPPS final rule values utilized in this administrative regulation shall be updated to reflect any correction notices issued by CMS, if applicable.

(5) Except for an appeal in accordance with Section 22 of this administrative regulation, the department shall make no other adjustment.

Section 9. Universal Rate Year. (1) A universal rate year shall be established as October 1 of one (1) year through September 30 of the following year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 10. Cost Reporting Requirements. (1)(a) An in-state hospital participating in the Medicaid Program shall submit to the department, in accordance with the requirements in this section:

1. A copy of each Medicare cost report it submits to CMS;

2. An electronic cost report file (ECR);

3. The Supplemental Medicaid Schedule KMAP-1; and

4. [The Supplemental Medicaid Schedule KMAP-4; and

5.] The Supplemental Medicaid Schedule KMAP-6.

(b) A document listed in paragraph (a) of this subsection 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.

(c) 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 payments 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 to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 11. Unallowable Costs. (1) The following shall not be allowable costs 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 1. and 2. 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. Readmissions. (1) An unplanned inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for an unplanned readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 13. Reimbursement for Out-of-State Hospitals. (1) The department shall reimburse an acute care out-of-state hospital for inpatient care on a fully prospective per discharge basis except for the following hospitals:

(a) A children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state; and

(b) Vanderbilt Medical Center.

(2) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an out-of-state acute care hospital the total hospital-specific per discharge payment shall be calculated in the same manner as an in-state hospital as described in Section 2(2) of this administrative regulation with modifications to rates used as described in subsections (3) through (7) of this section.

(3) The DRG payment parameters listed in this subsection shall be modified for out-of-state hospitals not specifically excluded in subsection (1) of this section.

(a) The operating rate used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital operating rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent, excluding any adjustments made for:

1. Sole community hospitals pursuant to Section 5 of this administrative regulation; or

2. Medicare-dependent hospitals pursuant to Section 6 of this administrative regulation.

(b) The capital rate used in the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital capital rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent.

(c) The DRG relative weights used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation and the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall be reduced by twenty (20) percent.

(d) The following provisions shall not be applied:

1. Medicare indirect medical education cost or reimbursement;

2. Organ acquisition cost settlements;

3. Disproportionate share hospital distributions; and

4. Any adjustment mandated for in-state hospitals pursuant to KRS 205.638.

(e) The Medicare operating and capital cost-to-charge ratios used to estimate the cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be determined by calculating the arithmetic mean of all in-state cost-to-charge ratios established in accordance with Section 2(5)(d) of this administrative regulation.

(4) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, the average operating rate and average capital rate paid to in-state children's hospitals.

(5) The department shall reimburse for inpatient care provided by Vanderbilt Medical Center using the hospital-specific Medicare base rate extracted from the CMS IPPS Pricer Program in effect at the time that the care was provided multiplied by eighty-five (85) percent.

(6) The out-of-state hospitals referenced in subsections (4) and (5) of this section shall not be eligible to receive indirect medical education reimbursement, organ acquisition cost settlements, or disproportionate share hospital payments.

(7)(a) The department shall reimburse a hospital referenced in subsection (4) or (5) of this section a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG.

(b) A cost outlier shall be subject to quality improvement organization review and approval.

(c) The department shall determine the cost outlier threshold for an out-of-state claim regarding a hospital referenced in subsection (4) or (5) of this section using the same method used to determine the cost outlier threshold for an in-state claim.

Section 14. Supplemental Payments. (1) Payment of a supplemental payment established in this section shall be contingent upon the department's receipt of corresponding federal

financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:

1. A hospital that qualifies as an in-state non-state owned pediatric teaching hospital in an amount:

a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid fee-for-service recipients under the age of eighteen (18) plus an additional \$250,000 (\$1,000,000 annually); and

b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid fee-for-service recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a state university teaching hospital in an amount:

a. Equal to the difference between payments made in accordance with Sections 2 and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;

b. That is prospectively determined subject to a year-end reconciliation; and

c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and

3. A hospital that qualifies as an urban trauma center hospital in an amount:

a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;

b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;

c. That is prospectively determined with an end of the year settlement; and

d. That is consistent with the requirements of 42 C.F.R. 447.271;

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital system:

1. In an amount that is equal to the lesser of:

a. The difference between what the department pays for inpatient services pursuant to Sections 2 and 7 of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or

b. \$7.5 million per year in aggregate;

2. For a service provided on or after July 1, 2005; and

3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds; and

(c) Base a quarterly payment to a hospital in the Appalachian Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System.

(4) An overpayment made to a hospital under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the hospital.

(5) For the purpose of this section, Medicaid patient days shall not include enrollee days.

(6) A payment made under this section shall not duplicate a payment made via 907 KAR 10:820.

(7) A payment made in accordance with this section shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 15. Certified Public Expenditures. (1)(a) The department shall reimburse an in-state public government-owned or operated hospital the full cost of a Medicaid fee-for-service inpatient service provided during a given state fiscal year via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

(b) A payment referenced in paragraph (a) of this subsection shall be limited to the federal match portion of the hospital's uncompensated care cost for inpatient Medicaid fee-for-service recipients.

(2) To determine the amount of costs eligible for a CPE, a hospital's allowed charges shall be multiplied by cost-center specific cost-to-charge ratios from the hospital's 2552 cost report.

(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 costs remains, the department shall reconcile any difference with the provider.

Section 16. 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 17. New Provider, Change of Ownership, or Merged Facility. (1)(a) The department shall reimburse a new acute care hospital based on the Medicare IPPS Final Rule Data Files and Tables inputs described in this administrative regulation in effect at the time of the hospital's enrollment with the Medicaid program.

(b) If applicable rate information does not exist in the Medicare IPPS Final Rule Data Files and Tables for a given period for an in-state acute care hospital, the department shall use, for the in-state acute care hospital, the average of all in-state acute care hospitals for the operating rate, capital rate, and outlier cost-to-charge ratio, excluding any adjustments made for sole community hospitals or Medicare dependent hospitals.

(2) 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.

Section 18. Department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 19. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 10:012; and

(2) This administrative regulation.

Section 20. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 21. Matters Subject to an Appeal. A hospital may appeal whether the Medicare data specific to the hospital that was extracted by the department in establishing the hospital's reimbursement was the correct data.

Section 22. Appeal Process. (1) An appeal shall comply with the requirements and provisions established in this section.

(2)(a) A request for a review of an appealable issue shall be received by the department within sixty (60) calendar days of the date of receipt by the provider of the department's notice of rates set under this administrative regulation.

(b) The request referenced in paragraph (a) of this subsection shall:

1. Be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, 6th Floor, Frankfort, Kentucky 40621-0002; and

2. Contain the specific issues to be reviewed with all supporting documentation necessary for the departmental review.

(3)(a) The department shall review the material referenced in subsection (2) of this section and notify the provider of the review results within thirty (30) days of its receipt except as established in paragraph (b) of this subsection.

(b) If the provider requests a review of a non-appealable issue under this administrative regulation, the department shall:

1. Not review the request; and

2. Notify the provider that the review is outside of the scope of this section.

(4)(a) A provider may appeal the result of the department's review, except for a notification that the review is outside the scope of this section, by sending a request for an administrative hearing to the Office of the Ombudsman and Administrative Review within thirty (30) days of receipt of the department's notification of its review decision.

(b) A provider shall not appeal a notification that a review is outside of the scope of this section.

(5)(a) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(b) Pursuant to KRS 13B.030, the secretary of the Cabinet for Health and Family Services delegates to the Cabinet for Health and Family Services, Office of the Ombudsman and Administrative Review the authority to conduct administrative hearings under this administrative regulation.

(c) A notice of the administrative hearing shall comply with KRS 13B.050.

(d) The administrative hearing shall be held in Frankfort, Kentucky no later than ninety (90) calendar days from the date the request for the administrative hearing is received by the Office of the Ombudsman and Administrative Review.

(e) The administrative hearing date may be extended beyond the ninety (90) calendar days by:

1. A mutual agreement by the provider and the department; or

2. A continuance granted by the hearing officer.

(f)1. If the prehearing conference is requested, it shall be held at least thirty (30) calendar days in advance of the hearing date.

2. Conduct of the prehearing conference shall comply with KRS 13B.070.

(g) If a provider does not appear at the hearing on the scheduled date, the hearing officer may find the provider in default pursuant to KRS 13B.050(3)(h).

(h) A hearing request shall be withdrawn only under the following circumstances:

1. The hearing officer receives a written statement from a provider stating that the request is withdrawn; or

2. A provider makes a statement on the record at the hearing that the provider is withdrawing the request for the hearing.

(i) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(j) The hearing officer shall:

1. Preside over the hearing; and

2. Conduct the hearing in accordance with KRS 13B.080 and 13B.090.

(k) The provider shall have the burden of proof concerning the appealable issues under this administrative regulation.

(l)1. The hearing officer shall issue a recommended order in accordance with KRS 13B.110.

2. An extension of time for completing the recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

(m)1. A final order shall be entered in accordance with KRS 13B.120.

2. The cabinet shall maintain an official record of the hearing in compliance with KRS 13B.130.

3. In the correspondence transmitting the final order, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140, 13B.150, and 13B.160.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Supplemental Medicaid Schedule KMAP-1", 2013;
- (b) ["Supplemental Medicaid Schedule KMAP-4", 2013;
- (c)] "Supplemental Medicaid Schedule KMAP-6", 2013; and
- (c)[(d)] "CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At 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/Pages/regsmaterials.aspx>.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2021

FILED WITH LRC: September 8, 2021 at 8 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement provisions and requirements for care provided by inpatient acute care hospitals to Medicaid recipients who are not enrolled with a managed care organization. Managed care organizations are not required to reimburse in the same manner as DMS for services provided by an inpatient acute care hospital.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements for care provided by inpatient acute care hospitals to Medicaid recipients who are not enrolled with a managed care organization.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing a reimbursement model for care provided by inpatient acute care hospitals to Medicaid recipients.

(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 reimbursement model for care provided by inpatient acute care hospitals to Medicaid recipients.

(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 amendments change the administrative regulation by allowing for a hospice provider to be an allowable post-acute care setting.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to allow Medicaid recipients to be discharged into a hospice setting if that is an appropriate post-acute setting.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by allowing Medicaid recipients to better receive post-acute care in the most appropriate setting.

(d) How the amendment shall assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes by allowing for Medicaid recipients to be placed in a hospice care setting, if appropriate.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: DMS anticipates that Fee-for-Service Medicaid recipients and hospice programs will be impacted by this administrative regulation. There are approximately 21 hospice providers enrolled in the Medicaid 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. Hospice providers will need to enroll in the Medicaid program and coordinate with hospitals in order to serve as a discharge location.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): DMS does not anticipate that these entities will incur direct costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Medicaid recipients will be able to be discharged into appropriate post-acute care settings, including hospice providers.

(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.

(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 of general fund appropriations.

(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 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 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) and 42 C.F.R.447.205.

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."

42 C.F.R. 447.205 mandates that the state provide public notice of reimbursement changes.

4. Shall this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter 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) shall be impacted by this administrative regulation? The Department for Medicaid Services (DMS) shall 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 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 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 these amendments will generate no additional revenue in the first year.

(b) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates that this administrative regulation will generate no additional revenue in subsequent years.

(c) How much shall it cost to administer this program for the first year? The amendment does not result in additional costs to the Department for Medicaid Services for the first year.

(d) How much shall it cost to administer this program for subsequent years? The amendment does not result in additional costs to the Department for Medicaid Services for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

#### 922 KAR 1:565. Service array for a relative or fictive kin caregiver.

RELATES TO: KRS 2.015, 45.237-45.241, 156.496, 194A.005(1), [194A.050(1),] 199.011, 199.462, 199.470-199.590, 205.211, Chapter 387, 403.270-403.355, 405.024, 527.100, 527.110, 600.020, 605.120, [605.130(7), 605.150(1),] 610.110, 620.020(1), 620.090, 620.140, 620.142, 620.170, 42 U.S.C. 601-619 [600-619], 671, 673, 675, D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017)

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement provisions of the chapter, including KRS 605.130(7), which authorizes the cabinet to perform such other services as may be deemed necessary for the protection of children. KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This administrative regulation establishes the service array available to a relative or fictive kin caregiver pursuant to KRS 620.142(1).

Section 1. Definitions. (1) "Absent parent search" means cabinet-initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 194A.005(1), 199.011(3), and 600.020(7).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Child" means a:

(a) Child defined by KRS 199.011(4) and 600.020(9);

(b) Person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the eligibility requirements with the financial resources to find and afford quality child care, as established in 922 KAR 2:160.

(6) "Child who is a candidate for foster care" is defined by 42 U.S.C. 675(13).

(7) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(8) "Kentucky Transitional Assistance Program" or "KTAP" ["K-TAP"] means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care, as established in 921 KAR 2:006.

(9) "Parent" is defined by 42 U.S.C. 675(2).

(10) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Identification of a Relative or Fictive Kin. (1) If a relative or fictive kin placement is in the best interest of a child upon removal from the child's home of origin, the cabinet shall:

(a) Use an absent parent search in accordance with 922 KAR 1:140, Section 3, to locate a relative;

(b) Discuss a prospective relative or fictive kin placement with the:

1. Child's parent; and

2. Child, based upon the age and development of the child; or  
(c) Require the parent or other person exercising custodial control or supervision to provide a list of possible persons to be considered pursuant to KRS 620.140(1)(c).

(2) Cabinet staff shall make reasonable attempts to:

(a) Contact the relative or fictive kin; and  
(b) Assess the relative's or fictive kin's fitness to serve as a placement resource for the child in accordance with Section 3 of this administrative regulation.

(3) The cabinet shall:

(a) Disclose legal and service options available to a prospective relative or fictive kin:

1. Who is being assessed as a placement resource; and  
2. Prior to the time a child is placed in the relative's or fictive kin's home; and

(b) Obtain written acknowledgement of the disclosure of legal and service options from the relative or fictive kin.

Section 3. Fitness of the Relative or Fictive Kin. (1) To support a child's health, safety, and wellbeing in placement with a relative or fictive kin caregiver, based upon the legal option selected by the relative or fictive kin, the cabinet shall:

(a) Complete a safety check and review with consideration given to the relative's or fictive kin's:

1. Willingness and ability to:

a. Protect the child from abuse or neglect;

b. Participate in the child's case permanency plan;

c. Access:

(i) Transportation;

(ii) Telephone;

(iii) Medical and dental services;

(iv) First aid supplies; and

(v) School;

d. Provide full-time care;

e. Provide for the child's sleeping and eating;

f. Maintain adequate heat and ventilation in the home;

g. Use active smoke detectors in the home; and

h. Assure the child's inaccessibility to:

(i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12), applies;

(ii) Alcoholic beverages;

(iii) Poisonous materials;

(iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;

(v) Unsupervised contact with the birth parent, if prohibited; and

(vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family; and

3. Fitness in accordance with 922 KAR 1:490; or

(b) Conduct a home study and background checks in accordance with 922 KAR 1:350 and 922 KAR 1:490 in consideration of the relative or fictive kin as a prospective foster or adoptive home.

(2) A relative or fictive kin caregiver who seeks approval as a foster or adoptive parent shall meet the training requirements established in 922 KAR 1:495.

(3) The cabinet shall:

(a) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive head trauma in accordance with KRS 199.462; and

(b) Provide information to the relative or fictive kin on how to recognize and report child abuse and neglect.

(4) To the extent funds are available, the cabinet shall make available to a relative or fictive kin caregiver training:

(a) For foster parents, adoptive parents, and respite care providers in accordance with 922 KAR 1:495; and

(b) Developed to address the needs of relative and fictive kin caregivers, including management of the relationship with the child's parent.

(5) A relative's or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.

Section 4. Relative or Fictive Kin Placement Support Benefit.

(1) To the extent that funds are available, the cabinet shall provide, if requested, a one (1) time relative or fictive kin placement support benefit:

(a) To facilitate the cabinet's placement of a child with a nonparental relative or fictive kin ~~[as an alternative to the child's placement in foster care];~~

(b) If a court of competent jurisdiction has granted temporary custody of the child to the relative, fictive kin, or the cabinet due to:

1. Child abuse or neglect ~~[by the child's biological or adoptive parent];~~ or

2. The death of both parents;

(c) That will provide for a child's immediate needs, such as:

1. Clothing;

2. School supplies;

3. Additional furniture; or

4. A deposit for a larger apartment; and

(d) That is equal to or does not exceed the amount for the appropriate number of eligible children as follows:

Number of Eligible Children	Payment Amount
1	\$350
2	\$700
3	\$1,050
4	\$1,400
5	\$1,750
6 or more	\$2,100

(2)(a) The relative or fictive kin placement support benefit shall be issued by check or electronic fund transfer directly to:

1. The relative or fictive kin caregiver with whom the child is placed; or

2. A vendor providing the needed service or item listed in subsection (1)(c) of this section.

(b) Prior to ~~[Before]~~ the provision of the relative or fictive kin placement support benefit, the relative, fictive kin, or ~~[the]~~ vendor shall provide tax status and contact information for accounting of the benefit's disbursement.

(3)(a) In accordance with Kentucky's Title IV-A Temporary Assistance for Needy Families Block Grant state plan, the cabinet shall prioritize a child for the relative placement support benefit if the child is:

1. ~~[(a)]~~ Placed with a relative whose household income is at or below 200 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services; or  
2. ~~[(b)]~~ Determined eligible for KTAP ~~[K-TAP]~~ pursuant to 921 KAR 2:006 and 921 KAR 2:016.

(b) Pursuant to 42 U.S.C. 601, Temporary Assistance for Needy Families Block Grant funds shall not be provided to a fictive kin caregiver.

(4) A relative or fictive kin caregiver shall not be eligible for an initial clothing allowance as a foster parent if the relative or fictive kin receives the relative or fictive kin placement support benefit.

Section 5. Legal Options. (1) The following legal options shall be available to a prospective relative or fictive kin caregiver:

(a) Family-arranged care through:

1. A written ~~[prevention]~~ plan in accordance with 922 KAR 1:330;

2. An affidavit to make health care treatment and school-related decisions for the child in accordance with KRS 405.024; or

3. A power of attorney for temporary delegation of parental rights and responsibilities in accordance with KRS 403.352 and 403.353;

(b) Court-ordered custody to the relative or fictive kin caregiver in accordance with KRS 403.270-403.355, 620.090, or 620.140(1)(c);

(c) Court-ordered custody to the cabinet in accordance with KRS 620.090, 620.140(1)(c), or 620.170;

(d) Adoption in accordance with KRS 199.470-199.590 or 922 KAR 1:100; or

(e) Guardianship in accordance with KRS Chapter 387.

(2) Considerations in assessing the legal options for a relative or fictive kin caregiver shall include:

(a) The likelihood of the child's reunification with the child's home of origin, including the child's permanency goal in accordance with 922 KAR 1:140;

(b) The relationship that the relative or fictive kin caregiver has with the child's home of origin or parent;

(c) The ability of the relative or fictive kin caregiver to:

1. Manage parental visitation; and

2. Ensure the child's safety;

(d) The relative or fictive kin caregiver's financial situation and need for additional resources to support the safety, permanency, and wellbeing of the child;

(e) The level of involvement and types of services that will be needed from the cabinet for [tø] the caregiver and the child to ensure the safety, permanency, and wellbeing of the child; and

(f) The level of support and types of services that will be needed if:

1. The caregiver assumes legal responsibility for the child; or

2. Reunification with the child's home of origin is not possible for the child.

(3) Permanency services for a child in the custody of the cabinet shall be in accordance with 922 KAR 1:140.

Section 6. Service Options. (1) The array of monetary supports on behalf of a child placed with a relative or fictive kin caregiver shall include:

(a) The Relative or Fictive Kin Placement Support Benefit in accordance with Section 4 of this administrative regulation;

(b) CCAP in accordance with 922 KAR 2:160;

(c) Child support if application is made or intergovernmental process applies in accordance with 921 KAR 1:380;

(d) KTAP [K-TAP] if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;

(e) The Kinship Care Program in accordance with 922 KAR 1:130;

(f) Health benefits for the child:

1. In accordance with 907 KAR 20:005; or

2. If application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;

(g) Foster care per diem in accordance with:

1.a. 922 KAR 1:350; or

b. D.O. v. Glisson, 847 F.3d 374 (6th Cir. 2017), cert. denied, 17-17, 2017 WL 2869916 (U.S. Oct. 10, 2017); and

2. The terms and conditions specified in the individual agreement between the cabinet and the foster parent;

(h) Adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060;

(i) To the extent funds are available, post-permanency services, including:

1. Subsidized guardianship under 42 U.S.C. 671 and 673 once the benefit is available; or

2. Post-adoption placement stabilization services in accordance with 922 KAR 1:530; or

(j) The Supplemental Nutrition Assistance Program if application is made and approved in accordance with 921 KAR 3:030.

(2) To the extent funds are available, effective October 1, 2019, the cabinet shall provide prevention and family services and programs in accordance with 42 U.S.C. 671(e) to a child who is a candidate for foster care, including:

(a) Mental health and substance abuse prevention and treatment services; or

(b) In-home parent skill-based programs.

(3) To the extent funds are available, the cabinet or its designee shall provide the following services for a relative or fictive kin caregiver:

(a) A hotline;

(b) Online portal;

(c) Crisis intervention;

(d) Support group;

(e) Advocacy;

(f) Caregiver training;

(g) Community education; and

(h) [(g)] Referral to community resource or provider, such as:

1. Family Resource and Youth Service Centers established in accordance with KRS 156.496;

2. The Health Access Nurturing Development Services (HANDS) Program in accordance with 902 KAR 4:120;

3. The Special Supplemental Nutrition Program for Women, Infants, and Children or "WIC program" in accordance with 902 KAR Chapter 18;

4. Kentucky's Early Intervention Program, First Steps, in accordance with 902 KAR Chapter 30;

5. Mental health programming; or

6. Caregiver programming made available through the Department for Aging and Independent Living or its designee.

(4) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-45.241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 7. Complaint and Service Appeals. (1) A relative or fictive kin caregiver may submit a service complaint or an appeal concerning a protection and permanency service in accordance with 922 KAR 1:320.

(2) An appeal concerning CCAP shall be made in accordance with 921 KAR 2:055, 922 KAR 2:020, or 922 KAR 2:260.

(3) An appeal regarding KTAP [K-TAP] shall be made in accordance with 921 KAR 2:055.

(4) An appeal concerning the Supplemental Nutrition Assistance Program shall be made in accordance with 921 KAR 3:060 or 921 KAR 3:070.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 23, 2021

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service array for a relative or fictive kin caregiver of a child in the state's custody.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service array for a relative or fictive kin caregiver required by KRS 620.142(1).

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 620.142(5) requires the cabinet to promulgate administrative regulations developing custodial, permanency, and service options that shall be available to a relative or fictive kin caregiver. This administrative regulation conforms to the content of the authorizing statutes through its establishment of the service array for a relative or fictive kin caregiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of a service array for a relative or fictive kin caregiver.

(2) If 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 includes that fictive kin caregivers may receive the one-time placement support benefit that was previously available to only relative caregivers, in compliance with the amendment to KRS 620.142(1) accomplished through House Bill 492 (2021 Regular Session). As included in the amendment, federal law prohibits the provision of Temporary Assistance for Needy Families (TANF) Block Grant funds to fictive kin caregivers or reimbursement to the state for this purpose; therefore, this support benefit shall be provided to fictive kin caregivers to the extent that this provision is appropriated through General Funds. The amendment makes other minor technical updates.

(b) The necessity of the amendment to this administrative regulation: House Bill 492 was passed in the 2021 Regular Session and included that the one-time placement support benefit provided to relative caregivers of children in the state's custody (out of home care) also be available to fictive kin caregivers. Federal TANF funds cannot be provided to a caregiver who is not a relative or reimbursed to the state for this purpose; therefore, this provision must be paid through the General Fund appropriation. One million dollars has been appropriated to this program for each year and the appropriation has been exhausted by relative caregivers alone. The cabinet anticipates a need for this appropriation to be increased in order to continue providing this support to relative and fictive kin caregivers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 620.142(1) was amended to include that the one-time placement support benefit provided to relative caregivers of children in out of home care be available to fictive kin caregivers as well.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary for consistency with enacted legislation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of August 1, 2021, there were 1,430 children in the state's custody placed with a relative or fictive kin caregiver (including relative or fictive kin foster parents). These relative and fictive kin caregivers could apply for and be approved to receive this one-time placement support benefit to assist with one-time costs associated with accepting the placement of the 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: Someone who meets the definition of being fictive kin to a child who has been removed from their home and placed in the state's custody must accept placement of the child. The fictive kin caregiver may choose to apply for the support benefit and, if so, shall provide tax status and contact information, as currently required of relative caregivers.

(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 to the relative or fictive kin caregiver in order to receive this support benefit.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): This one-time support benefit is provided to assist with costs associated with accepting placement of a child, such as the cost of a bed or crib, clothes, car seat, etc.

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

(a) Initially: The cost of providing this benefit to fictive kin is difficult to estimate given that the number of fictive kin caregivers accepting placement varies from year to year and because relative or fictive kin caregivers may choose to not receive this benefit. As of August 1, 2021, there were 1,430 children in the custody of the state, placed with a relative or fictive kin caregiver (including relative or fictive kin foster parents). One million dollars in General Funds is appropriated to this program each year and the appropriation has been exhausted by relative caregivers alone. The cabinet anticipates a need for this appropriation to be increased in order to continue providing this support to relative and fictive kin caregivers.

(b) On a continuing basis: The cabinet anticipates that providing this support to relative and fictive kin caregivers will exceed the one million dollar appropriation received for this program. TANF funds may not be used to reimburse the state for benefits provided to fictive kin caregivers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The one million dollar per year General Fund appropriation specifically for the Relative Placement Support Benefit. This funding is used as Maintenance of Effort General Funds applied towards TANF funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no associated increase in fees. The cabinet anticipates a General Fund increase in funding for this program may 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 or increase any fees.

(9) TIERING: Is tiering applied? No, this administrative regulation is applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601-619, 671, 673, 675

2. State compliance standards. KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619, 671, 673, 675

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 those required by the federal mandate. It does vary in providing cash assistance to fictive kin caregivers pursuant to state law, KRS 620.142(1).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter requirements than those required by federal mandates.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 government-supported programming for relative and fictive kin caregivers will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.130(7), 605.150(1), 620.142(5), 42 U.S.C. 601-619, 671, 673, 675

3. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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 anticipated 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 anticipated to generate revenue.

(c) How much will it cost to administer this program for the first year? The many services contained in this administrative regulation are provided and funded through different programs and varying funding streams, exceeding millions of dollars. The cost of this amendment is anticipated to exceed the one million dollars currently appropriated to this program in General Funds each year.

(d) How much will it cost to administer this program for subsequent years? The many services contained in this administrative regulation are provided and funded through different programs and varying funding streams, exceeding millions of dollars. The cost of this amendment is anticipated to exceed the one million dollars currently appropriated to this program in General Funds each year and an increase in program funding may be necessary if relative and fictive kin caregiver placements increase.

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*.

**GENERAL GOVERNMENT CABINET**  
**Department of State**  
**Office of Business Services**  
**(Repealer)**

**30 KAR 1:011. Repeal of 30 KAR 1:010, 30 KAR 1:020, 30 KAR 1:040, and 30 KAR 1:050.**

RELATES TO: KRS 14A.1-070(17), KRS 14A.2-010(10), KRS 14A.2-060, KRS 14A.2-130, KRS 14A.2-140, KRS 14A.2-160, and KRS 14A.3-010.

STATUTORY AUTHORITY: KRS 14A.1-030, KRS 13A.120 and KRS 13A.310

NECESSITY, FUNCTION, AND CONFORMITY: The regulations repealed herein have been superseded by statute, which renders them redundant in violation of KRS 13A.120(e). KRS 13A.310(1) establishes a duty to repeal an ordinary administrative regulation if it is desired that it no longer be effective.

Section 1. The following administrative regulations are hereby repealed.

- (1) 30 KAR 1:010, Certificates of existence or authorization; status of good standing;
- (2) 30 KAR 1:020, Statements, reports and documents; filing requirements;
- (3) 30 KAR 1:040, Indistinguishable names; and
- (4) 30 KAR 1:050, Dishonored checks.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: August 27, 2021

FILED WITH LRC: August 27, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A 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 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7439, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation repeals regulations that are redundant to statutory provisions.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 13A.120 and KRS 13A.310.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to existing statutory provisions by recognizing their preemptive effect.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation repeals regulations redundant to existing statutory provisions.

(2) If 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: This amendment will not impact any individuals, businesses, organizations, of state and local governments.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated there will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated there will be a small benefit of uniformity and fidelity to the preemptive statutory provisions.

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

(a) Initially: There will be no costs to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing appropriations and fund sources for the Office of the Secretary of State.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and 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 not impact the units, parts or divisions of 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. This administrative regulation is authorized by KRS 14A.1-030.

3. Estimate the effect of this administrative regulation on the

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 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? There will be no additional cost to administer this program for the first year.

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No fiscal impact is anticipated.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

# **SECRETARY OF STATE** **(New Administrative Regulation)**

## **30 KAR 006:011. Kentucky address confidentiality program.**

RELATES TO: KRS 14.300, 14.302, 14.304, 14.306, 13.310

STATUTORY AUTHORITY: KRS 14.304(2), (4), 14.306(3), (5), 14.318(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.318(2) authorizes the Secretary of State to promulgate administrative regulations implementing KRS 14.300 to 14.310, 14.314, and 14.316. This administrative regulation implements KRS 14.300, 14.302, 14.304, 14.306, and 14.310.

Section 1. Definitions. (1) "Address" is defined by KRS 14.300(1).

(2) "Applicant" is defined by KRS 14.300(2).

(3) "Filer" means a person who is:

(a) A:

1. Parent or guardian acting on behalf of a minor;

2. Guardian acting on behalf of a person who is declared incompetent; or

3. Designee of an applicant or a parent or guardian of a minor or a guardian of a person declared incompetent who cannot apply independently; and

(b) Applying to the Secretary of State to have an address designated by the Secretary of State serve for voting purposes as the address of the minor, incompetent person, or applicant.

(4) "Program Participant" is defined by KRS 14.300(5).

Section 2. Requirements for Application for Certification to Participate in the Address Confidentiality Program. (1) Application for certification to participate in the address confidentiality program shall be made to the Secretary of State by submitting a completed Application for Certification to Participate in Address Confidentiality Program.

(2) The Application for Certification to Participate in Address Confidentiality shall be:

(a) Notarized; and

(b) In English.

Section 3. Certification in the Address Confidentiality Program.

(1) The Secretary of State shall approve an Application for Certification to Participate in Address Confidentiality Program and

certify the applicant as a program participant if the applicant and the Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.

(2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in Address Confidentiality Program was denied or the applicant was certified as a program participant.

(a) If an Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.

(b) If an applicant is certified as a program participant, the Secretary of State shall:

1. Assign to the program participant a participant number and designated address to be used for voting purposes; and

2. Issue to the program participant an Address Confidentiality Program Participant Card reflecting the participant number, designated address to be used for voting purposes, and date on which certification expires.

(3) If an applicant is certified as a program participant, participation in the address confidentiality program shall be effective as of the date of the notification of certification.

## **Section 4. Change of Program Participant's Name or Address.**

(1) A program participant or a filer shall notify the Secretary of State of a change in the program participant's name or address by submitting to the Office of the Secretary of State a completed Address Confidentiality Program Participant Name or Address Change form.

(2) The Address Confidentiality Program Participant Name or Address Change form shall:

(a) Be in writing;

(b) Be in English;

(c) Be signed by the program participant or a filer;

(d) Include both the program participant's new information and information as certified; and

(e) Be considered filed on the day the Address Confidentiality Program Name or Address Change form is date-stamped received by the Office of the Secretary of State.

Section 5. Withdrawal from Participation in the Address Confidentiality Program. (1) A program participant or filer wishing to withdraw from participation in the address confidentiality program shall submit to the Secretary of State a Withdrawal from Participation in Address Confidentiality Program form.

(2) The Withdrawal from Participation in Address Confidentiality Program form shall be:

(a) In writing;

(b) In English;

(c) Signed by the program participant or a filer; and

(d) Notarized or signed by a representative of any office designated pursuant to KRS 14.310 as a referring agency who assisted in the completion of the Withdrawal from Participation in Address Confidentiality Program form.

Section 6. Confirmation by the Secretary of State of a Withdrawal from Participation in the Address Confidentiality Program. (1) Upon receiving a Withdrawal from Participation in Address Confidentiality Program form, the Secretary of State shall mail to the program participant or filer a written confirmation of withdrawal.

(2) The written confirmation shall notify the program participant or filer:

(a) Of the date on which a Withdrawal from Participation in Address Confidentiality Program form was date stamped received by the Office of the Secretary of State; and

(b) That program participation shall be terminated ten (10) days following the date of the written confirmation of withdrawal, unless the program participant or a filer notifies the Secretary of State on or before that date that the withdrawal request was not legitimate because it was not voluntarily submitted by the program participant or a filer.

Section 7. Application for Renewal of Certification in the Address Confidentiality Program. (1) A program participant or filer wishing to renew certification in the address confidentiality program shall submit to the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires an Application for Certification to Participate in Address Confidentiality Program pursuant to Section 2 of this administrative regulation.

(2) The Application for Certification to Participate in Address Confidentiality Program shall be considered timely submitted for purposes of renewal if it is date-stamped received by the Office of the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires.

Section 8. Review by the Secretary of State of a Renewal Application for Certification to Participate in Address Confidentiality Program. (1) The Secretary of State shall approve a renewal Application for Certification to Participate in Address Confidentiality Program if the applicant and Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.

(2) The Secretary of State shall notify the program participant or filer whether the renewal Application for Certification to Participate in Address Confidentiality Program was denied or the program participant's certification was renewed within five (5) business days after it is date-stamped received by the Secretary of State.

(a) If a renewal Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the program participant or filer of the reason for denial.

(b) If a program participant's certification is renewed, the Secretary of State shall issue to the program participant a new Address Confidentiality Program Participant Card pursuant to Section 3(2)(b)2 of this administrative regulation, and the renewal shall be effective as of the date of the notification of renewal.

Section 9. Appeal from Cancellation of Certification in Address Confidentiality Program. (1) A program participant or filer wishing to appeal from a cancellation of certification in the address confidentiality program shall submit to the Secretary of State an Appeal from Cancellation of Certification in Address Confidentiality Program form.

(2) The Appeal from Cancellation of Certification in Address Confidentiality Program shall be considered timely submitted if it is date-stamped received by the Secretary of State within thirty (30) days of the date of the notice of certification cancellation.

(3) The Appeal from Cancellation of Certification in Address Confidentiality Program shall:

(a) Be in writing;

(b) Be in English;

(c) Be signed by the program participant or filer; and

(d) Include information as to why certification in the address confidentiality program should not be cancelled.

(4) If an Appeal from Cancellation of Certification in Address Confidentiality Program is not timely submitted, cancellation of certification in the address confidentiality program shall be effective upon the expiration of thirty (30) days after the date of the notice of certification cancellation.

Section 10. Review by the Assistant Secretary of State of an Appeal from Cancellation of Certification in Address Confidentiality Program. (1) The Assistant Secretary of State shall approve or deny an Appeal from Cancellation of Certification in Address Confidentiality Program within five (5) business days after it is date-stamped received by the Office of the Secretary of State.

(a) The Assistant Secretary of State shall approve an Appeal from Cancellation of Certification in Address Confidentiality Program if he or she determines that grounds for cancellation pursuant to KRS 14.306 do not exist.

(b) The Assistant Secretary of State shall deny an Appeal from Cancellation of Certification in Address Confidentiality Program if he or she determines that grounds for cancellation pursuant to

KRS 14.306 exist.

(2) The Assistant Secretary of State shall provide to the program participant or filer written notice of the decision regarding an Appeal from Cancellation of Certification in Address Confidentiality Program.

(3) If an Appeal from Cancellation of Certification in Address Confidentiality Program is timely submitted and denied pursuant to this section, cancellation of certification in the address confidentiality program shall be effective on the date on which the notice of denial is mailed.

(4) The decision of the Assistant Secretary of State shall conclude the appeal procedures pursuant to KRS Chapter 14 and this administrative regulation.

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

(a) "Application for Certification to Participate in Address Confidentiality Program", June 2014;

(b) "Address Confidentiality Program Participant Card", March 2014;

(c) "Address Confidentiality Program Participant Name or Address Change", June 2014;

(d) "Withdrawal from Participation in Address Confidentiality Program", June 2014; and

(e) "Appeal from Cancellation of Certification in Address Confidentiality Program", March 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at <http://www.sos.ky.gov>.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: September 13, 2021

FILED WITH LRC: September 15, 2021 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2021, at 10:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer Scutchfield, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email [jscutchfield@ky.gov](mailto:jscutchfield@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Address Confidentiality Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for Address Confidentiality Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 14.300, 14.302, 14.304, 14.306 and 14.310, this administrative regulation is necessary to establish the procedures for the Address Confidentiality Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for the Address Confidentiality 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: 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: This regulation affects citizens of the Commonwealth that are impacted by domestic violence or others facing physical or mental abuse if their address were public record.

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

(a) List 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 identified in question (3) will have to familiarize themselves with this regulation and contact our office with questions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Secretary of State will incur costs with mailing and printing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be protected from persons who pose them danger by not allowing those people to access their location.

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

(a) Initially: The cost is minimal.

(b) On a continuing basis: The cost is minimal.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the 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 will impact the Office of the Secretary of State and the State Board of Elections.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 14.300, 14.302, 14.304, 14.306 and 14.310.

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

(a) How much 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.

(b) How 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 administration cost is minimal.

(d) How much will it cost to administer this program for subsequent years? The administration cost will be minimal.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 603 KAR 3:100. Noxious weeds and invasive plants to be eradicated from rights-of-way.

RELATES TO: KRS 176.051

STATUTORY AUTHORITY: KRS 176.051 NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.051 requires the Transportation Cabinet to eradicate noxious weeds and invasive plants from state-owned rights-of-way and establishes a list of noxious weeds and invasive plants that shall be eradicated by the department. KRS 176.051(4)(a) authorizes the cabinet to promulgate an administrative regulation to add or remove noxious weeds and invasive plants from the list established in KRS 176.051(1). This administrative regulation adds and deletes noxious weeds and invasive plants from the list established in KRS 176.051(1) in consideration of the criteria established in KRS 176.051(4)(a)1. through 4.

Section 1. (1) Noxious weeds and invasive plants shall be added to the list established in KRS 176.051(1), including:

(a) Spotted knapweed;

(b) Cutleaf teasel; and

(c) The thistles *Cirsium arvense* and *Carduus nutans*, commonly known as Canada thistles and Musk (nodding) thistles, respectively.

(2) Noxious weeds and invasive plants shall be deleted from the list established in KRS 176.051(1), including:

(a) Giant foxtail; and

(b) The thistles *Cirsium arvense* and *Carduus nutans*, commonly known as Canada thistles and nodding thistles, respectively.

Section 2. Review. The department shall review the list of noxious weeds and invasive plants in this administrative regulation as established in KRS 176.051(4)(b).

JIM GRAY, Secretary

JAMES E. BALLINGER, State Highway Engineer

APPROVED BY AGENCY: September 10, 2021

FILED WITH LRC: September 15, 2021 at 9:36 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 November 22, 2021 via video teleconference. Members of the public wishing to attend may utilize the following link:

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

<https://bluejeans.com/964977600/1619>

Or Telephone:

+1.408.419.1715(UnitedStates(SanJose))

+1.408.915.6290 (United States(San Jose))

Meeting ID: 964 977 600

Participant Passcode: 1619

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 November 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: Larisa Plecha, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email [larisa.plecha@ky.gov](mailto:larisa.plecha@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, pursuant to KRS 176.051, establishes additional noxious weeds and invasive plants to be removed from the rights-of-way by the Department of Highways.

(b) The necessity of this administrative regulation: This administrative regulation is in addition to the requirements of KRS 176.051 and contributes to the maintenance of rights-of-way throughout the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, pursuant to KRS 176.051, supplements the list of noxious weeds and invasive plants that the Department of Highways will remove from rights-of-way throughout the state. It also enables the Department to review and potentially modify the list every four (4) years, if needed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation, pursuant to KRS 176.051, supplements the list of noxious weeds and invasive plants that the Department of Highways will remove from rights-of-way throughout the state. It also enables the Department to review and potentially modify the list every four (4) years, if needed.

(2) If 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: KYTC Department of Highways and Division of Maintenance.

(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 KYTC Division of Maintenance and Department of Highways will eradicate these noxious weeds and invasive plants from the rights-of-ways throughout the state. In four years, this list will be reviewed pursuant to KRS 176.051 and the regulation will be amended if needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This administrative regulation is not expected to generate additional cost to KYTC.

(c) As a result of compliance, what benefits will accrue to the entities: Noxious weeds and invasive plants will be removed from the rights-of-way.

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

administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation is not expected to generate additional cost to KYTC.

(b) On a continuing basis: This administrative regulation is not expected to generate additional cost to KYTC.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road 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: This administrative regulation is not expected to necessitate an increase in funding, nor does it create or increase any fees.

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

(9) TIERING: Is tiering applied? No tiering is applied. KRS 176.051 has determined the noxious weeds to be eradicated by the Department of Highways and this administrative regulation, pursuant to KRS 176.051, is adding noxious weeds to the list. There is no disproportionate impact on any classes of regulated entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.051.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is 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 incur additional cost.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to incur additional cost.

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 (+/-): This administrative regulation is not expected to incur additional cost.

Other Explanation: n/a

#### **PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)**

#### **804 KAR 4:212. In-State Distilled Spirits Supplier License.**

RELATES TO: KRS 243.030(35)

STATUTORY AUTHORITY: KRS 241.060; KRS 243.030(35)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060

authorizes the board to promulgate reasonable regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

trafficking of alcoholic beverages. KRS 243.030(35) authorizes the board to promulgate administrative regulations to provide for special licenses that the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine. This regulation provides for the creation of an in-state distilled spirits supplier license to regulate the traffic in distilled spirits by resident owners and suppliers of distilled spirits brands.

Section 1. Definition. "In-state distilled spirits supplier" means a resident brand owner and supplier of distilled spirits products who does not operate a distillery, but through other legal means creates distilled spirits products to sell under its own brand name.

Section 2. License. (1) An in-state distilled spirits supplier license shall authorize the licensee to:

(a) Sell distilled spirits under brands that the licensee owns, for which the licensee is the primary source of supply, or in which the licensee has an exclusive interest, at wholesale to wholesalers in the Commonwealth; and

(b) Advertise distilled spirits brands that the licensee is authorized to sell in accordance with KRS 244.130.

(2) An in-state distilled spirits supplier license shall not authorize the licensee to purchase, transport, store, or possess distilled spirits for the purposes of sale.

Section 3. Qualifications. (1) To qualify for an in-state distilled spirits supplier license, the applicant shall:

(a) Reside in Kentucky;

(b) Be the owner, the primary source of supply, or have an exclusive interest in a particular brand of distilled spirits;

(c) Obtain a federal wholesaler's basic permit;

(d) Register with the Kentucky Department of Revenue; and

(e) Comply with all federal and state laws and regulations.

(2) An applicant that wishes to sell 50,000 or more gallons of distilled spirits shall:

(a) Complete the online application for an in-state distilled spirits supplier license via the department's Online Portal at: <https://abc-portal.ky.gov/s/>; and

(b) Pay an annual fee equal to the amount of the fee for the out-of-state distilled spirits and wine supplier's license under KRS 243.030(30).

(3) An applicant that wishes to sell less than 50,000 gallons of distilled spirits shall:

(a) Complete the online application for a limited in-state distilled spirits supplier license via the department's Online Portal at: <https://abc-portal.ky.gov/s/>; and

(b) Pay an annual fee equal to the amount of the fee for the limited out-of-state distilled spirits and wine supplier's license under KRS 243.030(31).

Section 4. Prohibited substantial interests. An in-state distilled spirits supplier license applicant and in-state distilled spirits supplier licensee shall comply with 804 KAR 4:015 and for that purpose shall be considered a "manufacturer" as defined in 804 KAR 4:015.

Section 5. Brand Registration. In accordance with 804 KAR 4:410 and KRS 244.440, an in-state distilled spirits supplier licensee shall register with the department all brands the licensee intends to sell in Kentucky.

Section 6. Taxes. An in-state distilled spirits supplier licensee shall pay all applicable taxes for the sales of its products.

Section 7. Direct Shipper Licenses. This regulation shall not be interpreted to relate to direct shipper licenses.

Section 8. Incorporation by Reference. (1) "Online In-State Distilled Spirits Supplier License Application", June 2021, is incorporated by reference.

(2) "Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply)", September 2021, depicting the application process through the department's

online portal, is incorporated by reference.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ALLYSON C TAYLOR, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: August 31, 2021

FILED WITH LRC: September 14, 2021 at 12:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m., EST on November 22, 2021 at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. At the time of filing this proposed administrative regulation, the Commonwealth of Kentucky is facing a pandemic of COVID-19 which may affect in-person services at state government offices. The physical location listed in this notice is a state government office, and the public hearing will be held at this location if the location is open to in-person services on November 22, 2021, but if the location is closed to in-person services on November 22, 2021, then the public hearing on this administrative regulations shall be held by video teleconference at 9:00 AM on November 22, 2021. The primary location for the video teleconference will be at 500 Mero Street, Room 127CW. However, in light of the COVID-19 pandemic, proper health precautions to mitigate the spread of COVID-19 may preclude the provision of adequate public viewing space within the primary location. In such event, instructions for accessing the video teleconference a link will be provided on the website of the Department of Alcoholic Beverage Control, <http://abc.ky.gov>, by which members of the public will be able to view the video teleconference of the public hearing remotely. Individuals interested in being heard at this hearing shall notify this agency of their intention to attend and comment in writing 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 cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments shall be accepted through 11:59 p.m. on November 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: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email [Joshua.Newton@ky.gov](mailto:Joshua.Newton@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a license for in state non-producing distillers and outlines the process for applying it. The new license types are called "in-state supplier license" and a "limited in-state supplier license."

(b) The necessity of this administrative regulation: Many entities in Kentucky are participating in the alcohol industry as non-producing distillers. There is currently no specific license for this type of entity. Historically, some have applied for and been granted other license types to which these activities do not apply. As there is not a current license type for non-producing distillers, it is necessary to create one by regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.030 outlines various distilled spirits and wine licenses and also allows the Alcoholic Beverage Control Board to create necessary license types by regulation. This administrative regulation creates a new license type for non-distilling producers located within Kentucky. Specifically, it creates

an in-state supplier license and limited in-state supplier license which will allow for appropriate licensing for non-distilling producers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: There are many non-producing distillers operating in Kentucky. Historically, because there is no specific license for non-distilling producers, these entities have applied for and been given different licenses like wholesaler licenses (which are inappropriate for producers) or supplier licenses (which may only be granted to out of state applicants). This administrative regulation will allow for these entities to be properly licensed and incur the correct rights and responsibilities.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of individuals or businesses that will be affected by this regulation is unknown. Non-distilling producers licensed under other license-types will not be affected other than their current license being renamed to reflect in-state supplier status, which for some will result in reduced license fees. There should be no effect on state or local governments or other organizations.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not be required to undertake any action to comply with this regulation. Those licensed under other license types will simply surrender their current license and receive a new license with the correct title. Their rights and responsibilities will not change. Some will pay a lower rate when they renew the license, depending on the type of license they received originally.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Licensees will incur no additional costs in complying with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Those currently licensed under an incorrect license type will likely pay less to renew under the new license type, when renewal is necessary. For example, some non-producing distillers are licensed as wholesalers. That license type is \$2,060 per year. The newly created in-state supplier license will cost the business \$1,550 or \$260 per year, depending on production amounts. Further, those licensed under the new license type will be considered "manufacturers" and will incur all the benefits associated with that label, including the ability to apply for a direct to consumer shipping license.

(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 implementation of this regulation.

(b) On a continuing basis: There is no cost associated with implementation of this 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 implementation of this regulation and therefore, no funding is 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 required to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this will affect all regulated entities equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 243.030(35), 241.060(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will be generally revenue neutral in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The specific dollar estimate of revenue this administrative regulation will generate cannot yet be determined as the amount of new non-distilling producers seeking to be licensed as in-state suppliers is unknown.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)

#### 804 KAR 4:221. Alternating proprietorship agreements.

RELATES TO: KRS 243.220

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060

authorizes the board to promulgate reasonable regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages. This regulation provides for the sharing of a licensed premises between two or more licensees in accordance with an alternating proprietorship agreement.

Section 1. Definition. "Alternating proprietorship agreement" means a written agreement under which two or more licensees share possession or ownership of a licensed premises and alternate exclusive use of the premises over the term of the agreement.

Section 2. A licensed premises may meet the requirements of KRS 243.220 if it is owned or possessed for a term not less than the license period by two or more eligible licensees under an

alternating proprietorship agreement.

Section 3. A licensee may not enter into an alternating proprietorship agreement with any other licensee with whom the licensee would have a prohibited interlocking substantial interest under 804 KAR 4:015.

Section 4. Licensees who share a licensed premises in accordance with an alternating proprietorship agreement shall individually meet any requirements of their licenses, including, but not limited to, production and record-retention requirements.

Section 5. This administrative regulation shall not be interpreted to relate to direct shipper licenses.

Section 6. Federal Law. This administrative regulation shall not exempt a person from complying with any applicable federal laws.

ALLYSON C TAYLOR, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: August 31, 2021

FILED WITH LRC: September 2, 2021 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on November 22, 2021 at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. At the time of filing this proposed administrative regulation, the Commonwealth of Kentucky is facing a pandemic of COVID-19 which may affect in-person services at state government offices. The physical location listed in this notice is a state government office, and the public hearing will be held at this location if the location is open to in-person services on November 22, 2021, but if the location is closed to in-person services on November 22, 2021, then the public hearing on this administrative regulations shall be held by video teleconference at 9:00 a.m. on November 22, 2021. The primary location for the video teleconference will be at 500 Mero Street, Room 127CW. However, in light of the COVID-19 pandemic, proper health precautions to mitigate the spread of COVID-19 may preclude the provision of adequate public viewing space within the primary location. In such event, instructions for accessing the video teleconference a link will be provided on the website of the Department of Alcoholic Beverage Control, <http://abc.ky.gov>, by which members of the public will be able to view the video teleconference of the public hearing remotely. Individuals interested in being heard at this hearing shall notify this agency of their intention to attend and comment in writing 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 cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments shall be accepted through 11:59 p.m. on November 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: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email [Joshua.Newton@ky.gov](mailto:Joshua.Newton@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation permits and defines alternating proprietorship agreements so that two or more licensees may share possession or ownership of a licensed premises and alternate exclusive use of the premises.

(b) The necessity of this administrative regulation: KRS 243.220 requires a licensed premise to be owned or leased by the licensee for the term of the license. This regulation allows licensees to enter into agreements to share a licensed premise and identify when each

will have sole use of it. This is beneficial to smaller businesses who will now be able to share in the costs of maintaining a premise they may not need to use full-time.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation permits sharing of a licensed premise by two or more licensees and outlines how they may accomplish that. KRS 241.060 authorizes the board to promulgate reasonable regulations governing licensing and traffic of alcoholic beverages. This regulation is in conformity with the governing statute in outlining how a premise may be licensed to more than one licensee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 243.220 prohibits a premise from being licensed unless the applicant has ownership or possession of the premise under a written agreement for the term of the license. This regulation outlines how two or more licensees may share a premise to be licensed and the written agreement required.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of licensees that will be affected by the regulation is unknown as it will allow current licensees to share premises under a written agreement and may open the door to others who would like to obtain a license but haven't had the financial ability or logistical need to own or lease a premises individually. Because the regulation does not change production limits or the prohibition on interlocking substantial interests, it will not adversely affect the industry or the consumer. There are no affects to state or local government operations.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not be required to undertake any action to comply with this regulation unless they want to enter into an alternating proprietorship agreement and combine licensed premises. Those wishing to enter into such agreements will continue to operate under the laws they were subject to before implementation of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no additional costs association with compliance with this regulation, though many licensees may receive a cost benefit by sharing space.

(c) As a result of compliance, what benefits will accrue to the entities: If the regulated entities choose to combine premises they may receive a cost benefit in the reduction of overhead costs for their operations.

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

(a) Initially: There is no additional cost associated with implementation of this regulation.

(b) On a continuing basis: There is no additional cost associated with implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is additional no cost associated with implementation of this regulation and no funding is required.

(7) Provide an assessment of whether an 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 implementation of this regulation and no increase in fees or funding will be necessary for its implementation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this will affect all regulated entities equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Joshua Newton

(1) What 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 Alcoholic Beverage Control and local Alcoholic Beverage Control administrators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 243.220, 241.060(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The specific dollar estimate of revenue this administrative regulation will generate cannot yet be determined. However, if new businesses are able to open due to the cost sharing this regulation will allow, then revenues associated with new businesses and alcohol taxes may be realized for both 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? The specific dollar estimate of revenue this administrative regulation will generate in subsequent years cannot yet be determined. However, if new businesses are able to open due to the cost sharing this regulation will allow, then revenues associated with new businesses and alcohol taxes may be realized for both state and local governments.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### **PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)**

#### **804 KAR 4:251. Special temporary licenses.**

RELATES TO: KRS 243.260

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.260 provides for the issuance of a special temporary license in wet territory to any regularly organized fair, exposition, racing association, or other party, when, in the opinion of the board a necessity therefore exists. This administrative regulation establishes application procedures and requirements for special temporary licenses.

Section 1. Definition. "Organized civic or community-sponsored event" means a public gathering of broad appeal where citizens are invited and encouraged to attend without significant cost of

admission that is sponsored or acknowledged by the city or county government in which the event is conducted, including any convention, conference, celebration, pageant, parade, festival, fair, public display, commemoration, or other type of public assemblage conducted for the benefit and enjoyment of the general public.

Section 2. An applicant for a special temporary license pursuant to KRS 243.260 shall complete the online application process and submit their application electronically at the Kentucky Alcoholic Beverage Control portal: <https://abcportal.ky.gov/BELLEExternal>. The applicant shall complete and submit their application no later than five (5) working days prior to the date for which the license is requested.

Section 3. An applicant for a special temporary license pursuant to KRS 243.260 shall provide supplemental information as the board shall deem necessary for proper review of the application.

Section 4. For purposes of the issuance of special temporary licenses pursuant to KRS 243.260, necessity, in the opinion of the board, shall limit applicants to:

(1) A regularly organized fair, exposition, racing association, nonprofit organization, or political campaign function; or

(2) A for-profit individual, corporation, or organization if the license will be used in conjunction with an organized civic or community sponsored event.

Section 5. For-profit individual, corporate, or organizational applicants for a temporary license in conjunction with an organized civic or community sponsored event shall submit written or documentary evidence of the civic nature of the event, including promotional materials or news articles evidencing the local government's knowledge of, and support for, the event for which the applicant seeks a temporary license.

Section 6. Incorporation by Reference. (1) "Online Special Temporary License Application", February 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ALLYSON C TAYLOR, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: September 2, 2021 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on November 22, 2021 at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. At the time of filing this proposed administrative regulation, the Commonwealth of Kentucky is facing a pandemic of COVID-19 which may affect in-person services at state government offices. The physical location listed in this notice is a state government office, and the public hearing will be held at this location if the location is open to in-person services on November 22, 2021, but if the location is closed to in-person services on November 22, 2021, then the public hearing on this administrative regulations shall be held by video teleconference at 9:00 a.m. on November 22, 2021. The primary location for the video teleconference will be at 500 Mero Street, Room 127CW. However, in light of the COVID-19 pandemic, proper health precautions to mitigate the spread of COVID-19 may preclude the provision of adequate public viewing space within the primary location. In such event, instructions for accessing the video teleconference a link will be provided on the website of the Department of Alcoholic Beverage Control, <http://abc.ky.gov>, by which members of the public will be able to view the video teleconference of the public hearing remotely. Individuals interested in being heard at this hearing shall notify this

agency of their intention to attend and comment in writing 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 cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments shall be accepted through 11:59 p.m. on November 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: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email Joshua.Newton@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, form and process to apply for a special temporary license.

(b) The necessity of this administrative regulation: The special temporary license was created by statute in KRS 243.260, and this regulation sets the requirements, form and process to apply.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the Board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocations of licenses. This administrative regulation provides detailed requirements to apply for a special temporary license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is required for the issuance of special temporary licenses, as it describes the requirements for the successful application for a special temporary license.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The special temporary license affects an unknown of individuals, businesses, organizations, and state and local governments. The administrative regulation affects all nonprofit and for-profit businesses and organizations who wish to hold fairs, festivals, and other celebrations in which alcoholic beverages may be served. It affects all local governments in wet territories as it permits licensure and the payment of licensee fees to local governments for special temporary licenses. Additionally, it affects the Department of Alcoholic Beverage Control, and local alcoholic beverage control boards.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not be required to undertake any action to comply with this regulation unless they apply for a special temporary license. Any entities who wish to hold special events permitting the sale of alcoholic beverages will have to complete an online application, pay a license fee, and disclose a number of documents. For-profit entities applying for licenses will be required to submit documentation of the event and local government support for it.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities: Compliance with this administrative regulation will cost each entity at least the amount of the application fee under KRS 243.030(15), but additional costs are unknown at this time.

(c) As a result of compliance, what benefits will accrue to the entities: If the regulated entities comply with the regulation, they will have submitted a complete application for a special temporary event license, which, if granted, will result in the issuance of a license to sell alcoholic beverages at retail at their qualifying event.

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

(a) Initially: There will be no additional cost to implement this administrative regulation as the form has already been developed.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this administrative regulation will be funded by the statutory licensing fees paid by applicants under this regulation and the Department's ordinary operational budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this will affect all regulated entities equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1), KRS 243.260

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The specific dollar estimate of revenue this administrative regulation will generate cannot yet be determined. However, the events for which this regulation permits licensing will often bring in enough revenue to offset any expenditures.

(b) How 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 specific dollar estimate of revenue this administrative regulation will generate cannot yet be determined. Licensed events may range from small community events to city- or county-wide events, and the amount of revenue each may generate is therefore difficult to estimate.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs to administer this program for the future.

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

Revenues (+/-):

Expenditures (+/-):  
Other Explanation:

**PUBLIC PROTECTION CABINET**  
**Department of Alcoholic Beverage Control**  
**(New Administrative Regulation)**

**804 KAR 4:480. License surrender.**

RELATES TO: KRS 243.520, 243.100

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060

authorizes the board to promulgate reasonable regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages. This regulation empowers the Board to continue administrative proceedings to adjudicate violations of KRS Chapters 241 to 244 by licensees and former licensees despite the surrender of their licenses in order to ensure that licensees who violate alcoholic beverage control laws may be held accountable and duly prevented from becoming licensed again for two years in accordance with KRS 243.100.

Section 1. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license. The Board shall retain the authority to enforce relevant provisions and penalties of KRS Chapters 241 to 244 against any individual or business entity who is under investigation for or charged with a violation of those chapters, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law

Section 2. This administrative regulation shall not be interpreted to relate to direct shipper licenses.

ALLYSON C TAYLOR, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: August 31, 2021

FILED WITH LRC: September 2, 2021 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on November 22, 2021 at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. At the time of filing this proposed administrative regulation, the Commonwealth of Kentucky is facing a pandemic of COVID-19 which may affect in-person services at state government offices. The physical location listed in this notice is a state government office, and the public hearing will be held at this location if the location is open to in-person services on November 22, 2021, but if the location is closed to in-person services on November 22, 2021, then the public hearing on this administrative regulations shall be held by video teleconference at 9:00 a.m. on November 22, 2021. The primary location for the video teleconference will be at 500 Mero Street, Room 127CW. However, in light of the COVID-19 pandemic, proper health precautions to mitigate the spread of COVID-19 may preclude the provision of adequate public viewing space within the primary location. In such event, instructions for accessing the video teleconference a link will be provided on the website of the Department of Alcoholic Beverage Control, <http://abc.ky.gov>, by which members of the public will be able to view the video teleconference of the public hearing remotely. Individuals interested in being heard at this hearing shall notify this agency of their intention to attend and comment in writing 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 cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments shall be accepted through 11:59 p.m. on November 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: Joshua Newton, General Counsel,  
Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE  
#226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502)  
564-4850, email [Joshua.Newton@ky.gov](mailto:Joshua.Newton@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation empowers the Board to continue administrative proceedings to adjudicate violations of KRS Chapters 241 to 244 by licensees and former licensees despite the surrender of their licenses in order to ensure that licensees who violate alcoholic beverage control laws may be held accountable and duly prevented from becoming licensed again for two years in accordance with KRS 243.100.

(b) The necessity of this administrative regulation: KRS 243.100 prohibits a licensee whose license has been revoked for violations of alcoholic beverage control laws from obtaining another license for two years. However, no statutory provision exists to explain what happens to proceedings against licensees facing revocation if they surrender their license before issuance of a final order. This regulation enables the Board to hold licensees accountable for violations despite surrender of their license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the statutory requirements of KRS 243.100 by allowing the Board to identify a licensee who should be prohibited from obtaining a license to traffic in alcohol for two years after violating alcoholic beverage laws, rather than merely surrendering the current license to avoid official action and then immediately reapplying for another one. This is a common practice that prevents the Board from enforcing the legislative intent of KRS 243.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Board in enforcing the legislative intent of KRS 243.100 that licensees who violate alcoholic beverage laws shall not obtain a license for two years.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will only affect licensees who violate alcoholic beverage laws and seek to avoid responsibility by surrendering their license. The number licensees affected is uncertain but this regulation should act as a deterrent to violations because it will ensure that those precluded from licensing under KRS 243.100 are actually prohibited.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not be required to undertake any action to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Compliance with this administrative regulation will present no cost to those licensees complying with alcoholic beverage laws but will merely prohibit those who should be prohibited from licensing from receiving future licenses.

(c) As a result of compliance, what benefits will accrue to the entities: No benefits will accrue to licensed entities.



(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 the administrative body to implement this regulation.

(b) On a continuing basis: There are no ongoing costs to the administrative body as a result of implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Because there is no cost associated with implementation and enforcement of this administrative regulation, no funding will be required.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this will affect all regulated entities equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and local Alcoholic Beverage Control administrators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 243.100, 241.060(1).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with administration of this 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:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Office of Dementia Services (New Administrative Regulation)

#### 910 KAR 4:010. Alzheimer's and dementia services curriculum review and approval.

RELATES TO: KRS Chapter 216.710-216.716, 216.935-216.939, P.L. 116-131

STATUTORY AUTHORITY: 194A.050(1), 216.713

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.713 requires the Cabinet for Health and Family Services to establish the submission and approval process for training curriculum utilized by agencies that provide services to individuals who exhibit symptoms of Alzheimer's disease or other dementias.

Section 1. Definitions. (1) "Department" means the Department for Aging and Independent Living or "DAIL".

(2) "Provider agency" means a home health agency, personal services agency, or assisted-living community that employs, directly or by contract, aides or other non-licensed personnel whose work involves extensive contact with individuals who exhibit symptoms of Alzheimer's disease or other dementias.

Section 2. Curriculum approval. Curriculum approval shall be granted when it meets the requirements of 216.713(1)-(3).

Section 3. Submission of curriculum. (1) All provider agencies shall submit to the department the agency's proposed training curriculum:

(a) Upon development of the curriculum and prior to implementation of the training;

(b) By notification of the standardized curriculum being utilized and verifying the curriculum is being utilized in its entirety without alterations; or

(c) If the training was in place prior to July 15, 2021, the provider agency may continue to use the curriculum until the curriculum is either:

1. Officially approved by the department for permanent use; or

2. Determined not to meet the criteria for approval by the department.

(2) Standardized curricula, utilized by provider agencies that are not altered, may be utilized prior to official approval by the department, if submitted pursuant to subsection (b) or (c) of this section.

(3) The provider agency may submit curriculum for review by:

(a) Mail to the Department for Aging and Independent Living, Office of Dementia Services, 275 E Main St. 3 E-E, Frankfort, Kentucky 40621;

(b) Hand delivered to the department; or

(c) By electronic submission.

VICTORIA ELRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 16, 2021

FILED WITH LRC: August 25, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend

the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Phyllis W. Sosa Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for submitting curricula for cabinet approval that will meet the minimum training requirements for direct-care staff serving individuals exhibiting symptoms of Alzheimer's or other dementias as established pursuant to KRS 216.713.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the training requirement set forth in KRS 216.713.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 216.713 by establishing the process of submission and approval of direct-care training curricula for provider staff who serve individuals exhibiting symptoms of Alzheimer's or other dementias.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the procedure to obtain curriculum approval for use as well as mandates DAIL to maintain a list of approved standardized curricula from which provider agencies can choose. This will ensure that provider agency staff will receive dementia-specific training that influences the quality of their care.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any of the 217 certified personal services agencies and 133 assisted-living facilities that serve individuals who exhibit symptoms of Alzheimer's and other dementias. It will also affect citizens experiencing symptoms of Alzheimer's and other dementias as well as their family caregivers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each provider agency will be required to submit for DAIL approval the training curriculum they intend to use to train their direct-care providers who serve individuals with Alzheimer's disease or other dementias, or they may indicate which of the DAIL approved standardized curriculum they intend to use.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As there are numerous free dementia specific curricula already endorsed by the Alzheimer's Association, that will be considered as approved standardized curriculum, no additional expense is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agency staff will be more prepared to serve people experiencing symptoms of Alzheimer's

disease and other dementias, which will improve the quality of care given to this population.

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

(a) Initially: It is estimated that the Office of Dementia Services Staff Assistant position will spend approximately 30% of his/her time analyzing and approving curricula. Since this position is not yet filled, this fiscal year's cost will be approximately \$21,000.

(b) On a continuing basis: The estimated annual cost will be approximately \$28,000 (based on 30% of a grade 17 salary). There may be a reduction in the percentage of time the department staff will spend in reviewing and approving curriculum after the first year. This will be dependent upon the number of new agencies submitting curriculum for approval and the number of existing providers that submit updated curriculum for review.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this administrative regulation will initially be funded by the Older Americans Act of 1965, as amended through P.L. 116-131 (3/25/2020). Ongoing funding will be identified after the Office of Dementia Services Staff Assistant position is filled.

(7) Provide an assessment of whether an 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 to implement this new administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no newly established fees or existing fees that will be affected by the establishment of this administrative regulation.

(9) TIERING: Is tiering applied? Tiering will not be applied. The administrative regulation is applied equally statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title VII E, Older Americans Act of 1965, as amended through P.L. 116-131 (3/25/2020)

2. State compliance standards. KRS 194A.050(1), 216.710-216.716, 216.935-216.939

3. Minimum or uniform standards contained in the federal mandate. Title VII E, Older Americans Act of 1965, as amended through P.L. 116-131 (3/25/2020)

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.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no imposed stricter standards, or additional or different responsibilities or requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Cabinet for Health and Family Services, Department for Aging and Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 216.710-216.716, 216.935-216.939

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 for subsequent years.

(c) How much will it cost to administer this program for the first year? It is estimated that the Office of Dementia Services Staff Assistant position will spend approximately 30% of his/her time analyzing and approving curricula. Since this position is not yet filled, this fiscal year's cost will be approximately \$21,000.

(d) How much will it cost to administer this program for subsequent years? The estimated annual cost will be approximately \$28,000 (based on 30% of a grade 17 salary). The percentage of time this position will be reviewing and approving curriculum may reduce in subsequent years unless providers change the curriculum being utilized.

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 September 14, 2021

**Call to Order and Roll Call**

The 2nd August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 17, 2021, at 10:00 AM, in Room 149 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

**Present were:**

**Members:** Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Ralph Alvarado and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

**Guests:** Todd Allen, Jean Glass, Lu Young, Department of Education; Audrey Gilbert, Pragya Upreti, (High School Students) Kentucky Student Voice Team; Shannon Stocker, Parent; Elizabeth Park, FCPS Parent; Karen Worthen, Citizen; Ray Arnold (& kids), Parents in Madison County; Chuck Eddy, Self; Rebecca Blankenship, Parent; Tony Wheatley, Self & Children of Kentucky; Katie Basham, Parent; Jarrod Burgess, Teachers & Students; Sarah Durand, Bluegrass Institute for Public Policy; Rita Yates, Children and Kentucky Prayer Coalition; Chris Henning, District 2 & Self; Dawn Perkins, Founder of Let Them Play Movement; Terri Conen, Self; Marcie Timmerman, Parent, Advocate; Wes Duke, Eric Friedlander, Department for Public Health; and Senator Danny Carroll.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

**The Administrative Regulation Review Subcommittee conducted a supplemental meeting on Tuesday, August 17, 2021, and submits this report:**

**The subcommittee determined that the following effective emergency administrative regulations were deficient pursuant to KRS 13A.030(2)(a):**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:  
Board of Education: Department of Education**

**702 KAR 1:195E. Face coverings in school facilities.** Todd Allen, general counsel; Dr. Jason Glass, commissioner; and Professor Lu Young, board chair, represented the department. Ray Arnold, parent; Nathan Arnold, student; Lincoln Arnold, student; Katie Basham, parent; Rebecca Blankenship, parent; Chuck Eddy, citizen; Audrey Gilbert, high school student, Kentucky Student Voice Team; Cassidy Stocker, student; Shannon Stocker, parent; Marcie Timmerman, parent advocate; Pragya Upreti, high school student, Kentucky Student Voice Team; and Kristen Worthen, parent, appeared in support of this administrative regulation. Jarrod Burgess, parent; Terri Conen, parent; Sarah Durand, Bluegrass Institute for Public Policy; Chris Henning, citizen; Elizabeth Park, attorney; Dawn Perkins, founder, Let them Play; Dr. Chuck Thurston, board-certified emergency room physician; Delvin Williams, parent; and Rita Yates, Kentucky Prayer Coalition, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Dr. Glass stated that the policy of universal face coverings in schools had generated significant differences of opinion. The Kentucky Board of Education used data in determining the appropriateness of this policy. Because of the evolving of the virus, rather than begin a new policy, this administrative regulation established a return to universal face coverings in schools, which was the policy during the previous school year. Face covering policies had been effective in order to continue in-person instruction for students, teachers, and staff. This was a difficult decision for the board, and the board considered local control and decision-making and personal health decisions were important values; however, the board was required to balance those values with the need to protect the health and safety of students, especially our most vulnerable students. Universal face coverings in Kentucky schools would help reduce viral transmission rates and protect Kentucky's medical resources.

Professor Young stated that, while face coverings alone were not a singularly effective strategy against coronavirus, a layered mitigation approach led to returning students to a safe, in-person learning environment. Vaccinations of school personnel, social

distancing, hand hygiene, sanitation, and universal face coverings in schools formed a comprehensive mitigation strategy. Universal face coverings in schools should reduce the number of students and school personnel who would be required to quarantine after viral exposure. The Kentucky Board of Education was statutorily required to promulgate administrative regulations as necessary or advisable. Based on expert guidance from the Centers for Disease Control and Kentucky public health officials, the Kentucky Board of Education determined unanimously that this administrative regulation was necessary and advisable. The board had no intent to extend the face covering policy longer than was necessary to reduce viral transmission, quarantine days, and sick days that kept students from in-person instruction.

Pragya Upreti stated that she was a senior at Lafayette High School and a co-leader of the Kentucky Student Voice Team. The team strongly supported a universal face covering policy for schools as established in this administrative regulation. The Kentucky Student Voice Team conducted a survey of 10,000 students from 119 Kentucky Counties. The survey demonstrated that students' shared experiences pertaining to virtual instruction included a devolution in academic standards and achievement; increased responsibilities at home and work; social isolation; technological challenges, such as inconsistent Wi-Fi services; challenges regarding planning for future education; and physical, financial, and emotional instability. Returning to in-person instruction also included challenges, including anxiety pertaining to students without face coverings in various situations.

Audrey Gilbert stated that she was a junior at Frankfort High School and a co-leader of the Kentucky Student Voice Team. Because Frankfort High School eliminated the virtual option for students for this coming academic year, many students had anxiety about becoming infected with or transmitting coronavirus and returning to in-person instruction, and dealing with encounters with students without face coverings. The Kentucky Board of Education's administrative regulation addressed the anxiety of many students. Mandating universal face coverings in schools would keep schools open for in-person instruction, while failure to do so would put schools and communities at risk.

Shannon Stocker stated that her daughter, student Cassidy Stocker, was currently battling brain cancer, was in active

chemotherapy treatment, and was immunocompromised. There were many medically fragile students in Kentucky. Cassidy stated that she experienced anxiety about becoming infected with coronavirus if this administrative regulation were lifted. Ms. Stocker stated that this administrative regulation was used by Cassidy's oncology team to decide that Cassidy would be able to return to in-person instruction. Universal face coverings in schools was not a personal choice because refusal to observe these requirements put the community at risk. Medically fragile students deserved the protection of this administrative regulation.

Kristen Worthen stated that her family kept her school-aged children home last school year in order to protect their medically fragile brother from infection by coronavirus. The children's education suffered during virtual instruction. The delta variant was impacting children more than at any other time during the pandemic, and face coverings were an effective mitigation method; therefore, this was not the time to lift this administrative regulation. Without a requirement in place, it stood to reason that COVID-cautious families would wear face coverings and other families would not, which would place all at risk.

Katie Basham, public school parent, stated that her 11 year old son was too young to be vaccinated against coronavirus. Pre-pandemic Kentucky led the nation in schoolchildren being raised by grandparents and great grandparents, who might be at increased risk of negative outcomes from infection by coronavirus. These caregivers deserved the opportunity to raise their charges in a healthy environment. Some school districts were already seeing the beginning of staffing shortages, which could be exacerbated if Kentucky eliminated universal face coverings in schools. For the health and safety of Kentucky's children, please uphold this administrative regulation.

Rebecca Blankenship stated that, as stepmother to seven children, five of whom were school aged, she supported this administrative regulation. Because many children were too young to be vaccinated against coronavirus, it was too early to relax universal face covering requirements for schools. If we fail to vote to uphold this administrative regulation, we should be prepared to accept the list of Kentuckians who would die as a result, including teachers, parents, grandparents, and children.

Chuck Eddy requested that the subcommittee uphold this administrative regulation. Coronavirus was contagious, transmissible, and deadly, and because of the delta variant, more schoolchildren were becoming infected. Approximately 620,000 Americans and at least 7,451 Kentuckians had died from coronavirus. Face coverings were an important and necessary way to reduce the spread and to allow in-person instruction. Half of the children in schools were under 12 years old and ineligible for vaccination. 2,100 new cases of coronavirus were reported in Kentucky on August 16, 2021. 548 of those cases were persons under 18 years of age. Twenty-five percent of new cases were children.

Chris Henning, Bullitt County resident, stated that universal face coverings for schools was a bad decision. There was extensive data to support not requiring that schoolchildren wear face coverings. The Declaration of Independence listed repeated injuries and usurpations by the British Crown, including two that were synonymous with the actions of Governor Beshear and the Kentucky Department of Education. He has refused his ascent to the laws and combined with others to subject us to a jurisdiction foreign to our Constitution and acknowledged by our laws, giving his ascent to their acts as pretended legislation. Citizens should have the equal choice to wear a face covering or not in order to adhere to the principles of liberty. As a veteran of this nation, Mr. Henning found it shameful that we were not following our founding documents. Our oath stated that we were to follow the Constitution. Have courage and stop being afraid. If face coverings worked, why haven't face coverings worked?

Dr. Chuck Thurston stated that he had worked as a physician for almost half a century in nine (9) states and in many countries. He spent the last year as a COVID ICU hospitalist managing ventilators and pronouncing hundreds of people deceased. He worked at Billie Jean King, 471 FEMA Hospital, in New York City, where hydroxychloroquine was used and, to his knowledge, no one died. He proceeded to work in the Rio Grande area, where hydroxychloroquine was not used and there was a 75 to 95 percent death rate. All the patients who died had been wearing face coverings. Dr. Thurston states that face masks do not work especially since most are not N95 masks or properly worn. All of his patients who died in El Paso were allergic or had a relative who was allergic to Lisinopril. The primary mode of coronavirus spread was not respiratory, but through touch. Face coverings would not help the medically fragile or immunocompromised. Our creator endowed us with the rights and mechanisms to sabotage viruses. Viruses did not mutate; they were sabotaged by the cell. Social distancing and face coverings eliminated that sabotage of the virus by the cell.

Elizabeth Park stated that she approached this matter from a product liability and product safety perspective. If we assumed that face coverings worked and could protect the medically fragile, was it safe for healthy children to wear face coverings for long periods of time? Face coverings were intended for brief use, not for use for nine hour periods. This might constitute product misuse. Research indicated questions regarding the safety of extended face covering use, but not enough investigation had been conducted. There might be long-term neurological effects that show up later in life from oxygen deprivation and too much carbon dioxide.

Marcie Timmerman stated that she was a public school parent, a PTA member, and a person with a disability and an autoimmune disorder. Her ability to work was directly related to upholding this administrative regulation. She was not equipped to home school. Her son was a second grader who was too young for vaccination against coronavirus but who had no difficulties wearing a face covering. Because her medication for her autoimmune disorder significantly weakened her immune system, she was especially susceptible to death from coronavirus infection, even after vaccination, including boosters. This administrative regulation made it possible to send her son to school for in-person instruction; therefore, she and many parents, teachers, and schoolchildren supported universal face coverings in schools during the pandemic.

Ray Arnold stated that he felt great after being vaccinated and hoped to be able to vaccinate his children before universal face coverings in schools was lifted. Parents in Madison County had been unable to vote for school board members since the pandemic began; therefore, parents had no real choice regarding school mitigation measures to prevent coronavirus. In Mr. Arnold's opinion, most parents believed that coronavirus was a serious threat. Students who lived in poverty had been unable to participate effectively in virtual instruction. There might be potential legal liability related to schools losing insurance coverage. He asked the subcommittee to table this discussion until the court system resolved this dispute or until Kentucky was out of the coronavirus red zone. Nathan Arnold, aged 11, wanted to wear face coverings in school even though he was anxious about going to school amid the pandemic even with face covering requirements in place. Lincoln Arnold, aged eight, presented artwork he had produced that depicted a person with a face covering and a person without a face covering.

Delvin Williams stated that he had three children in the school system. Cloth face coverings had been proven to be insufficient protection against coronavirus. While most schoolchildren wore the cloth face coverings; even, N95 face coverings were insufficient protection against viruses. As was stated in earlier testimony, this country was founded on freedom, and we should have freedom of choice whether our children would wear a face

covering in school or not. His children would prefer not to wear the face coverings, but had complied in order to avoid school disciplinary action. He was opposed to this administrative regulation. This should be a personal choice, and he believed that most people agreed.

Terri Conen stated that she was a mother of two students from McClean County. The members of the Kentucky Board of Education were not elected and had been appointed by Governor Beshear. This gave the appearance that the school board might not be acting solely in the interest of the children, but might be a partisan arm of the Governor. Members of Ms. Conen's small rural community rarely wore face coverings throughout the pandemic, but coronavirus outbreaks had been few. According to the Cabinet for Health and Family Services' Web site, McClean County had a total case rate of zero and two-tenths percent, while Jefferson County's rate was listed at seventeen and 17.3 percent. Imposing the same restrictions on rural and urban areas was ill considered. There were costs to this policy, including effects on children from not seeing each other's faces, treating each other like lepers to be avoided, and fearing reactions from adults if they coughed or sneezed. How were children expected to learn to enunciate? These policies could have long-term effects that were not being considered in this debate. Ms. Conen advocated for a class-action lawsuit against policy makers if there were negative long-term effects for children because of these policies.

Jarrod Burgess stated that his wife was a public school teacher and he had two children in the public school system in Western Kentucky. He agreed with Commissioner Glass that there was a wide difference of opinion about this policy. Freedom and the United States Constitution was not open to opinion; these were rights given by God. Mr. Burgess said that officials were taking away his right to determine what was best for his children. He had the liberty to raise his children the way he saw fit.

Rita Yates, Kentucky Prayer Coalition, stated that she was speaking on behalf of the children who did not have a voice in this debate. Ms. Yates was retired critical care nurse for almost 30 years and was trained in the proper use of face coverings. There was a lot of improper use by the public of personal protective equipment, including pulling at a face covering and not being changed frequently. The standards established by the Kentucky Board of Education allowed for almost anything tied to the face to constitute a face covering. Face coverings did not protect against coronavirus. Proper hand hygiene and keeping hands away from the face were more protective than misused face coverings. Coronavirus was a real disease that was best avoided by being conscious of our environment and using protective equipment properly. Sweden was the only western country that did not shut down, mandate face coverings, or close schools and not one child perished. We had the liberty to choose for ourselves and should have the right to choose what was best for our children. She stated that the lawlessness of Kentucky's Governor should not go unchecked, as he was under an injunction by the Boone County Circuit Court.

Dawn Perkins, founder of Let them Play, stated that, beginning August 2020, children's anxiety levels became concerning to her. If we could play sports, we could go to school. Student athletes were students first. No one addressed mental health or overall wellbeing. Children were educated virtually, and all sports were put on hold. Let them Play became involved with House Bills 208 and 563 and Senate Bill 128 from the Regular Session of the General Assembly. Let them Play believed that unproven face coverings might have mental health effects on children. The Governor had dismissed our children and the leadership in local districts in the name of public health. This administrative regulation was rushed quickly and unexpectedly through the back door and was unnecessary because a 30 day mandate was already in place. Superintendents had been overruled by the Kentucky Board of Education. Children's needs varied by region, and this policy should be a decision for local districts. Where was

the end game and where were the children's mental health briefings?

Sarah Durand of the Bluegrass Institute for Public Policy, stated that coronavirus posed a smaller risk to children than influenza. The Kentucky Board of Education had never issued a face covering mandate for influenza. This administrative regulation was filed as an emergency to avoid public comment and to usurp local control. Educators had access to this vaccine before higher-risk groups in order to avoid the current situation. Some school boards and superintendents weighed the minimal health risks to children against the negative psychological and learning consequences and chose to leave face covering decisions to parents. It was not the role of the Kentucky Board of Education, the Governor, or the Centers for Disease Control to make health decisions for her children. Face coverings had negative impacts on children. This administrative regulation should be found deficient because it did not meet the criteria for an emergency. It should go through the proper process required by law, which provided for adequate vetting of this policy.

In response to a question by Co-Chair West, Dr. Glass stated that individual rights ended at the point where the rights of others became affected. Established speed limits and restaurant health and safety precautions, for example, were appropriate. The Kentucky Board of Education was operating pursuant to the authority established by KRS 156.160, which directed the board to promulgate administrative regulations that were "necessary or advisable for the protection and physical welfare of public schoolchildren." This authority was separate from the Governor's authority pursuant to KRS Chapter 39A, which authorized Executive Orders. The Kentucky Board of Education was appropriately appointed, confirmed, and empowered to promulgate this administrative regulation. There was a comment period for this emergency administrative regulation, and appropriate notice was conducted in accordance with state law. Experimental and correlational studies, including a study by researchers at Duke University, demonstrated that face coverings were effective reducing the probability of transmission and should be used in combination with other virus-mitigation strategies. In Sweden, face coverings had been voluntary, rather than mandatory, and Sweden had the worst per-capita coronavirus mortality in Europe. The American Academy of Pediatrics stated that face coverings could be worn safely by children two years and older, including most children with underlying health conditions. This administrative regulation considered short-term and long-term impacts of this policy and weighed those concerns against protecting the health and safety of students and the preservation of their opportunities for in-person instruction, which were the primary values. Mr. Allen stated that the board complied with KRS Chapter 13A, which provided for a public comment process for this administrative regulation.

In response to questions by Co-Chair West, Dr. Glass stated that face coverings could be worn by most young children safely for the school day. Face coverings were used effectively last academic year, and the board was unaware of any claims of negative effects. Professor Young stated that this administrative regulation authorized face covering removal outdoors and at times of social distancing. The Kentucky Board of Education members were not health experts; therefore, the board relied on expert medical advice and data. Dr. Glass stated that face coverings were also authorized for removal for articulation in learning to read. Mr. Allen stated that this administrative regulation was authorized by KRS 156.160, not the Governor's Executive Order.

Co-Chair West stated that, pursuant to Senate Bill 2 from the 2021 Regular Session of the General Assembly, the Governor had a limited amount of time to promulgate an administrative regulation to effectuate an Executive Order. If this administrative regulation was promulgated solely based on the authority established by KRS 156.160 and the Governor's Executive Order

did not have an administrative regulation promulgated thereto, the Executive Order would become null and void. Mr. Allen stated that the authority the board relied upon to promulgate this administrative regulation was KRS 156.160, not the Governor's Executive Order issued pursuant to KRS Chapter 39A.

In response to questions by Co-Chair West, Dr. Glass stated that a noncompliant school would be assessed based on the level of noncompliance. Individual student noncompliance would be addressed through the school's code of conduct procedures, the same as in the previous academic year. Noncompliance by staff would be addressed through established human resources procedures and possibly through licensure board disciplinary action. Institutional noncompliance by a board, district, or superintendent would be addressed based on the penalties established in the Executive Order or through licensure disciplinary action. If many students became quarantined or ill due to noncompliance, attendance data, which was tied to funding, would be affected. There might also be repercussions related to maintaining liability insurance. Professor Young stated that this administrative regulation did not establish special enforcement. Noncompliance would be addressed as would be noncompliance with other administrative regulations promulgated by the board. Mr. Allen stated that Section 2 of this administrative regulation required superintendents to develop and implement procedures to ensure compliance. If penalties were implemented, notice and due process procedures would apply. In the interim between academic years, more information was available to develop a layered mitigation method to operate schools safely. Schools did not have adequate space for social distancing; however, the board had learned that social distancing could be relaxed if face coverings were worn. Professor Young stated that in-person instruction in a safe environment was the board's primary priority to return students to school for this academic year.

In response to questions by Co-Chair Hale, Dr. Glass stated that, as requested by the Local Superintendents Advisory Council, the board considered tabling this policy and working with localized models. Based on the board's mandate established in KRS 156.160, the board determined that this was not a local matter because most of Kentucky (all except six (6) counties) was in the coronavirus (COVID-19) red zone. The board was unaware of any response from the Local Superintendents Advisory Council. The board believed that, due to the delta variant and the fast-approaching beginning of the academic year, the situation was too dire to table. Dr. Glass hoped that the face covering policy would not need to be in place for the entire school year, and the board planned to lift the policy once it was safe to do so. This administrative regulation was in place for 270 days as established in KRS Chapter 13A, and the board established in their motion a trigger to lift this policy if appropriate. Mr. Allen stated that this administrative regulation could be withdrawn at any time if it became safe to lift this policy.

Senator Alvarado stated that he was a board-certified pediatrician. Coronavirus would not be ending; this virus would continue, like influenza. The Kentucky Board of Education consisted of unelected individuals, while local school boards were elected.

In response to questions by Senator Alvarado, Dr. Glass stated that he believed the parents of Kentucky, the superintendents, and the local school boards loved their children and that he cared about the wellbeing of all Kentucky children.

Senator Alvarado stated that the board did not seem to trust parents and neither did the Governor. Why was the board not asking for input from experts, such as pediatricians? Many superintendents were not commenting on this policy because they were in fear of retribution against their jobs or their districts' funding. This was a matter of process and policy, not an opposition to face coverings themselves.

In response to questions by Senator Alvarado, Mr. Glass stated that staff of the Kentucky Department of Education were not medical experts; therefore, they relied on expert advice from the Centers for Disease Control, the American Academy of Pediatrics, the American Medical Association, and the Kentucky Department for Public Health.

Senator Alvarado stated that Governor Beshear, in his veto response to House Bill 1 from the 2021 Regular Session of the General Assembly, had indicated that Centers for Disease Control guidelines were not intended to be prescriptive for administrative regulations or law. In response to a question by Senator Alvarado, Dr. Glass agreed that some countries had more experience dealing with the delta variant than the United States. Senator Alvarado stated that The World Health Organization and the United Nations Children's Fund recommended adherence to local standards related to mitigation against coronavirus infection. There was limited research on face coverings for children under six years of age; therefore, the Centers for Disease Control and the United Nations Children's Fund recommended that children under six years of age should not be required to wear face coverings. They additionally listed factors to consider before requiring face coverings for children six to 11 years of age. Medically fragile children were at risk from influenza, as well as coronavirus. Vaccination, not face coverings, was the solution to increasing population immunity.

In response to questions by Senator Alvarado, Mr. Glass stated that he was unaware of how many teachers had been vaccinated against coronavirus (COVID-19). The board was not currently considering mandatory vaccinations for teachers and school staff. Senator Alvarado stated that this was an issue for local districts.

Representative Marzian stated that House Bill 1 from the 2021 Regular Session of the General Assembly authorized Kentucky to match the Centers for Disease Control guidelines for addressing coronavirus. She worked thirty-eight years in nursing, including being an ICU nurse. Nursing staff were exhausted and frustrated from the current caseload due to coronavirus, much of which was unnecessary and the result of vaccine hesitancy and the refusal to wear face coverings. Concerns about the effect of face coverings on children's mental health should also apply to children's mental health in situations of child abuse and domestic abuse, especially because Kentucky ranked first in national incidents of child abuse and domestic abuse. She thanked the board for this policy on behalf of her district.

Senator Yates thanked Senator Alvarado for raising the issue of using the Centers for Disease Control guidelines. House Bill 1 from the 2021 Regular Session of the General Assembly authorized Kentucky to match the Centers for Disease Control guidelines. In response to questions by Senator Yates, Mr. Glass stated that the board's decision to promulgate this administrative regulation was unanimous. The board consisted of diverse members from both parties. Face coverings were a mitigation method, and Kentucky should be doing whatever was practical to maintain in-person instruction this academic year. Many students experienced difficulties with virtual instruction. The Kentucky Chamber of Commerce was in support of this administrative regulation for economic reasons. Senator Yates thanked the subcommittee for raising this issue for discussion. He noted that this subcommittee could not stop this administrative regulation from remaining in effect.

Senator Alvarado stated that House Bill 1 from the 2021 Regular Session of the General Assembly gave local districts the option whether or not to match Centers for Disease Control guidelines.

Representative Bridges stated that Dr. Glass referenced people in the schools knowing best and the phrase, "in good faith." In response to questions by Representative Bridges, Dr. Glass stated that people in the schools knew what to do in terms of mitigating against coronavirus. He had been appointed by the

Kentucky Board of Education, who were in turn appointed by Governor Beshear and confirmed by the Kentucky Local superintendents were better suited to make these decisions than appointed members of a board, who were not working directly with schools and students. The recommendations of superintendents went unconsidered, and some were fearful of retribution. He questioned whether the actions of the board were sincerely for the health and wellbeing of the children or whether this policy was the directive of a higher governing power.

In response to questions by Co-Chair West, Dr. Glass stated that this administrative regulation was promulgated pursuant to KRS 156.160, not under authorization of the Governor's Executive Order.

Co-Chair West stated that this subcommittee could not strike down an administrative regulation. KRS Chapter 13A authorized three actions the subcommittee could take which are to request deferral, request withdrawal, or find an administrative regulation deficient. An administrative regulation found deficient could remain effective upon decision by the Governor. Deficient administrative regulations could then be found null and void by the legislature. A finding of deficiency indicated the intent of legislators regarding that policy.

In response to a question by Co-Chair West, Dr. Glass stated that the department declined to withdraw this administrative regulation. Professor Young stated that the board also declined to withdraw this administrative regulation.

Senator Alvarado made a motion, seconded by Representative Bridges, to find this administrative regulation deficient. Co-Chair West opened the floor for discussion on the motion.

Senator Alvarado stated that he was not opposed to face coverings and that he supported vaccinations. He believed that this policy should be for the local level. Many experts stated that it was inappropriate for very young children down to the age of (2) years old to wear face coverings. It was in many cases easier to potty train a two (2) year old in a month than to train a two (2) year old to safely wear a face covering.

Co-Chair Hale stated that he was not opposed to face coverings. He encouraged those who wanted to wear face coverings to wear them properly. He was not opposed to vaccinations and believed vaccinations were the solution to public immunity but also believed vaccination to be a personal health choice. Local school boards and superintendents were the appropriate people to direct these policies, not the unelected Kentucky Board of Education appointed by the Governor. Many superintendents and school boards were in disagreement with this policy and feared retribution for their opposition. House Bill 1 from the 2021 Regular Session of the General Assembly was passed by the legislature, vetoed by the Governor, and that veto was overridden by the General Assembly. Because the Governor did not like that legislation, he began litigation. Those bills had been with the courts without a ruling for months. This agency was flouting the decisions made by the legislature. These decisions represented the voice of the people of Kentucky. The Governor was also an elected representative; however, one (1) person did not have the ability to overrule the legislative process. A finding of deficiency of this administrative regulation would be equally ignored by the Governor and the Kentucky Board of Education. Legislators had a duty, and the Executive Branch was not implementing the decisions made by the General Assembly.

Representative Frazier stated that either we had a representative government with local officials who had the power to act locally or we did not.

Representative Bridges stated that there were no guidelines or metrics. What positivity rate would trigger this policy to be lifted by the board? The board should establish definitions and guidelines

for consideration by local districts. Pertaining to transmission rates, students did not mingle among schools as, for example, restaurant patrons. This was a matter for local districts, and counties with a shared border were zoned differently with regard to coronavirus positivity rates. Freedom was not a baseless consideration.

Co-Chair West stated that this subcommittee was about due process and the rule of law. The Constitution and the rule of law applied, especially during time of a pandemic. This administrative regulation was not passed by the General Assembly and received no due diligence. The biggest concern was that this administrative regulation had no penalty provisions for noncompliance and no provisions for due process; therefore, he advocated that this administrative regulation be found deficient. The department was making the rules and penalties up as they went. Previous administrative regulations pertaining to face coverings were found deficient by this subcommittee based on these same concerns. This administrative regulation was arbitrary, and our Constitution and the Kentucky Bill of Rights, Section 2, disallowed arbitrary power.

A roll call vote was conducted and, with five votes to find this administrative regulation deficient and two votes against deficiency, this administrative regulation was found deficient.

Representative Marzian explained her no vote. This was a case of political theatre, not healthcare. Sixty-nine percent of Americans supported face covering mandates. This was a matter of protecting our children's health and ensuring in-person instruction. Coronavirus would not be limited by county boundaries. It would continue to spread, and medical resources would collapse.

#### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology**

902 KAR 2:213E. Childcare standards for covering the face in response to declared national or state public health emergency. Wes Duke, general counsel, and Eric Friedlander, secretary, represented the division. Chuck Eddy, citizen, appeared in support of this administrative regulation. Melanie Barker, owner of ABC Children's Academy and developer of the Kentucky Association of Childcare Owners; Senator Danny Carroll, daycare operator; and Tony Wheatley, parent and member of Constitutional Kentucky; appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Friedlander stated that the policy of universal face coverings in childcare facilities was recommended by the Centers for Disease Control and the American Academy of Pediatrics and was an important strategy to reduce transmission of coronavirus and keep children present in preschool and childcare settings. Vaccines were the solution to establishing general public immunity. He urged everyone to get vaccinated. Currently, most children were too young for vaccination. Until vaccination was available for younger children, the goal was to use mitigation methods to keep them as safe as possible. Mitigation methods for childcare settings included sanitization, hygiene, face coverings, and social distancing. Kentucky was experiencing spikes in infection, hospitalizations, and ICU. There was a concern that medical resources were quickly being outpaced by patients infected with coronavirus. There were currently seventeen children hospitalized in Kentucky because of coronavirus. That was more hospitalized children in Kentucky than at any other time during the pandemic. This was a matter of our common humanity. He thanked parents of medically fragile children because it was a very difficult task.

Chuck Eddy supported this administrative regulation for childcare facilities, including requiring face coverings for children two years and older. Twenty-five percent of yesterday's newly reported coronavirus patients were for children under the age of 18. Children could transmit the virus to parents and grandparents who



are caregivers to children. Coronavirus was easily transmissible, highly contagious, and deadly. Failure to uphold this policy would likely result in the closure of childcare facilities. These closures would have negative impacts on the economy and on the parents who would miss work to care for these children.

Melanie Barker, owner of ABC Children's Academy and developer of the Kentucky Association of Childcare Owners, stated that two and three year olds could not consistently wear face coverings properly. Children older than three were somewhat better at wearing face coverings, but enforcement was still impractical. It was impossible to keep the face coverings sanitary and to enforce the requirements. It was good to encourage face coverings, but not practical to force this mandate. The majority of time in childcare settings was now spent enforcing the face covering requirements, rather than in educating. A cardiologist client stated to her that this mandate was inappropriate for young children aged two to four. This policy should be lifted immediately.

Tony Wheatley, parent to five daughters, two of whom were medically fragile, stated that he was with Constitutional Kentucky and that he and his daughters would never wear a face covering if they had a choice. Children could not wear face coverings properly for long periods of time. He was trying to develop an alternative school, and 1,100 families had expressed interest in attending an alternative school. Citizens should have the right to wear a face covering or not and should have the right to determine whether or not their children would wear a face covering. He thanked the subcommittee for defending the Constitution.

Senator Danny Carroll, daycare operator, stated that it was counterintuitive to expect a two or three year old to wear a face covering properly. Four and five (5) year olds were somewhat more able to wear the face coverings. He reiterated the earlier testimony of Melanie Barker. This policy was making the situation worse, not better, and would mean the entire day would be spent putting face coverings back on and washing hands. That would be the extent of the development for the children each day. This policy was neither productive nor safe because broken face coverings included parts, such as rubber bands, that were dangerous for young children. He was not opposed to face coverings, but this was a decision for parents. It was unclear whether or not the administration had consulted childcare providers to determine if this policy was practical. This policy was more stringent than Centers for Disease Control guidelines, which stated that only unvaccinated children two years of age and older should wear the face coverings. This situation would have been better addressed with a team approach from both branches of government that included input from childcare providers. This policy was inconsistent and unfair to parents and especially to young children.

In response to a question by Co-Chair West, Mr. Friedlander stated that the department was attempting to implement the recommendations from the Centers for Disease Control and the American Association of Pediatrics.

In response to questions by Senator Alvarado, Mr. Friedlander stated that this administrative regulation required face coverings for children two years of age and older as they were able to wear them. Senator Alvarado stated that he had concerns about hazards, such as choking, related to face coverings worn by very young children.

In response to questions by Senator Alvarado, Mr. Friedlander stated that the Department for Public Health was not responsible for licensing childcare facilities, with the exception of some food establishment components. The Office of Inspector General, in collaboration with the Department for Community Based Services, was responsible for licensing childcare facilities. The department had consulted across the cabinet, including the Division of Childcare, through the general counsel regarding this policy. Mr.

Friedlander and Mr. Duke were unaware whether or not childcare operators were consulted regarding this policy. Neither had directly consulted childcare operators. Mr. Duke stated that the cabinet had broad authority pursuant to KRS 214.020, 211.180, and several other statutes, regarding communicable diseases in the Commonwealth, including quarantine and other authority. The Kentucky Board of Education seemed better suited to promulgate an administrative regulation establishing universal face coverings in schools; however, if necessary, it could be argued that the Department for Public Health also had authority to do so, as would local health departments through local ordinances. Waivers regarding the choking and suffocation risks to young children wearing face coverings were required last year. Because there was an exemption for children who could not wear face coverings safely, the waivers were not being used this year. A good faith effort pertaining to encouraging young children wearing face coverings would be similar to a good faith effort with encouraging them to wear shoes. The department had tried to be reasonable with this administrative regulation.

In response to questions by Co-Chair West, Mr. Duke stated that the cabinet had no intention this year to require waivers regarding the choking and suffocation risks to young children wearing face coverings. Childcare facilities themselves, as a contractual matter, did not seem to be prohibited from requiring the waivers. Mr. Friedlander stated that a willfully noncompliant childcare facility was subject to licensure action in conjunction with due process as established in KRS Chapter 13B. Mr. Duke stated that childcare requirements were enforced pursuant to 922 KAR 2:190, which established a hearing process. The cabinet intended to work closely with childcare facilities to assist with compliance, answer questions, and alleviate fears of overbearing enforcement. The goal was health and safety. This administrative regulation did not cross reference 922 KAR 2:190 or KRS Chapter 13B. The cabinet decided to use the authority already existing in 922 KAR 2:190 and KRS Chapter 13B. Because Senate Bills 1 and 2 and House Joint Resolution 77 from the 2021 Regular Session of the General Assembly were part of pending litigation, with competing injunctions in place, it was difficult to determine the outcome. The cabinet would comply with any Kentucky Supreme Court order. The cabinet did not believe that the preliminary injunction by the Boone Circuit Court made this administrative regulation void for lack of legal authority because there was a competing injunction by the Franklin Circuit Court. Both injunctions were awaiting a decision by the Kentucky Supreme Court.

In response to questions by Senator Alvarado, Mr. Duke stated that "childcare center" and "family home" were defined in another existing administrative regulation. This policy would not include, for example, children in Sunday school. Mr. Friedlander stated that there were developmental and behavioral affects from dealing with coronavirus across all age spectrums.

In response to questions by Co-Chair Hale, Mr. Friedlander stated that this policy was necessary because the delta variant was causing an unprecedented spike in infections, hospitalizations, and ICU use. More children were being affected than at any time during the pandemic. Vaccines were the solution, but they were not yet available for young children.

In response to questions by Co-Chair West, Mr. Friedlander stated that there was ongoing research regarding the effects of face covering mandates. This situation would be studied for many years. So far, the preponderance of the evidence was on the side of wearing face coverings because of their efficacy in reducing the transmission of disease. There had been spread of coronavirus within childcare facilities because the delta variant was far more contagious. Co-Chair West stated that after previous face covering mandates were implemented, there were significantly more coronavirus cases. He stated that he hoped that this would not be the case with these mandates.

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

Co-Chair Hale made a motion, seconded by Senator Alvarado, to find this administrative regulation deficient. Co-Chair West opened the floor for discussion on the motion.

Co-Chair West stated that this administrative regulation was the same as those face covering mandates previously found deficient by this subcommittee. This administrative regulation was silent regarding penalties and due process. The message that this sent to childcare providers was that failure to comply would result in a lost license. While the cabinet said it would work with providers, this administrative regulation did not include provisions for that. As Attorney General Daniel Cameron stated, the Governor, like everyone else, was bound to the law. The Governor was enjoined and prohibited from issuing this administrative regulation. Because the Constitution and the rule of law still applied, Co-Chair West advocated that this administrative regulation be found deficient.

A roll call vote was conducted and, with five votes to find this administrative regulation deficient and two votes against deficiency, this administrative regulation was found deficient.

Senator Alvarado explained his yes vote. He stated that children aged two to five were too young for requirements for face coverings. This administrative regulation did not include the latitude the cabinet had stated it would employ. This promised latitude was not uncommon in healthcare settings, but was sometimes abandoned in situations of noncompliance.

Representative Bridges explained his yes vote. The word, "preponderance," which meant "a greater weight," had been used today; however, the preponderance should rest with the health and safety concerns for children. Senator Alvarado was an expert in this area and, if he believed that this was inappropriate, then Representative Bridges agreed that this age group was too young to require face coverings.

Other Business: Co-Chair West welcomed new subcommittee member, Senator Ralph Alvarado.

The subcommittee adjourned at 1:45 p.m. The next meeting of this subcommittee was tentatively scheduled for September 14, 2021, at 1 p.m.

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of September 14, 2021**

**Call to Order and Roll Call**

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 14, 2021 at 1 p.m. in Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken.

**Present were:**

**Members:** Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Ralph Alvarado and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

**Guests:** Cassie Trueblood, Education Professional Standards Board; Bill Pauley, Sandy Williams, Kentucky Infrastructure Authority; Eden Davis, Larry Hadley, Board of Pharmacy; LeeAnn Diakov, Michael Rodman, Board of Medical Licensure; Christi Moffett, Board of Embalmers and Funeral Directors; Dave Dreves, Steven Fields, Chris Garland, Rich Storm, Department of Fish and Wildlife Resources; Carlos Cassady, Trevor Earl, Motor Vehicle Commission; Todd Allen, Tracy Goff-Herman, Greta Hylton, Robin Kinney, Matt Ross, David Wickersham, Department of Education; Morgan Eaves, Sam Flynn, John Ghaelian, Douglas Gott, Dale Hamblin, Robert Walker, Department of Workers' Claims; Ed O'Daniel, APCIA; Sharon Clark, Abigail Gall, Chad Thompson, Department of Insurance; Lee Guice, Veronica Judy-Cecil, Lisa Lee, Amy Richardson, Johnathan Scott, Department for Medicaid Services; Nancy Hagerman, Melissa Saladonis, Cincinnati Children's Hospital; Dr. John Blackburn, Kentucky Society of Anesthesiologists; Brian Rothman, VUMC; Donald Combs III, Dr. Curtis Koons, Pikeville Medical Center; Donna Little, Kentucky Hospital Association; Laura Begin, Lily Patteson, Misty Sammons, Steven Veno, Department for Community Based Services.

**The Administrative Regulation Review Subcommittee met on Tuesday, September 14, 2021, and submits this report:**

**The following administrative regulation was considered for discussion only:**

**LABOR CABINET: Department of Workers' Claims**

803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions. Sam Flynn, general counsel; John Ghaelian, general counsel; Dale Hamblin, assistant general counsel; and Robert Walker, interim commissioner, represented the department. Ed O'Daniel, American Property Casualty Insurance Association, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Hale, Mr. Walker stated that the most important change proposed in this administrative regulation, was establishing a medical director position. The medical director would be a substitute for the appeals and reconsideration processes, which was intended to streamline and expedite treatment for injured workers.

In response to questions by Co-Chair West, Mr. Walker stated that the current process for appeals and reconsideration often delayed treatment by three (3) to six (6) months. A medical director should be able to address the issues so that an injured worker could get treatment within weeks, rather than months. A medical director could proactively contact injured workers who did not have representation to assist these workers with further petition of cases. Mr. Flynn stated that the medical director would not add a layer of bureaucracy and would remove and streamline a complex process.

In response to questions by Senator Alvarado, Mr. Walker stated that injured workers could continue to appeal decisions after the medical director through the Workers' Compensation Board and, afterward, through the court of appeals. This was different from a medical review board with one (1) decision maker, which had been deemed unconstitutional by the Kentucky Supreme Court, because injured workers would have access to the court system much more quickly. Mr. Hamblin stated that this situation might also be different because injured workers were automatically entitled to treatment. The question before the medical director was limited to the appropriateness of the proposed treatment. Mr. Flynn stated that workers' compensation provisions were established statutorily, not by the Kentucky Constitution directly. Senator Yates stated that workers' compensation treatment for injuries was different from medical malpractice cases related to direct compensation.

In response to a question by Co-Chair Hale, Mr. O'Daniel stated that he was concerned that this administrative regulation might conflict with statutory guidelines for treatment. The threshold

for a requirement for utilization review has been \$3,000. This administrative regulation proposed to change that threshold to \$1,000, which could result in a dramatic increase in cases for review. Medical directors in other states did not have to address each case directly. This requirement could create a backlog of cases and increase employer costs. Mr. O'Daniel requested that this administrative regulation be paused.

In response to a question by Co-Chair West, Mr. Flynn and Mr. Walker stated that this administrative regulation had not been discussed in any other legislative committee.

Co-Chair West stated concerns regarding this administrative regulation. A medical director actively seeking appeals would result in more claim cases. Decision making seemed consolidated into one (1) person, which could cause swings in decisions. The medical director might be swayed by political matters. This administrative regulation represented a major programmatic change and had not been reviewed or approved by the General Assembly.

**Administrative Regulations Reviewed by this Subcommittee:**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:**  
**Education Professional Standards Board: Administrative**  
**Certificates**

16 KAR 2:220E. Emeritus Certificate. Cassie Trueblood, counsel and policy advisor, represented the board.

16 KAR 2:230E. Exception Certificate.

**FINANCE AND ADMINISTRATION CABINET: Kentucky**  
**Infrastructure Authority**

200 KAR 17:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program. Bill Pauley, staff attorney, and Sandy Williams, deputy executive director, represented the authority.

In response to questions by Representative Bridges, Ms. Williams stated that the administrative fee established in this emergency administrative regulation was intended to finance administration of the program for six (6) years as federally authorized. The administrative regulation pertaining to broadband had not been filed or presented to the Kentucky Infrastructure Authority board. Representative Bridges stated that the board should, in order to maximize funds, consider using a single computer and accounting system for both the Drinking Water and Wastewater

Grant Program and the program related to the new broadband fund. Ms. Williams stated that the recommendation would be taken into consideration by the board. Mr. Pauley stated that the concerns about redundancy and streamlining were good ideas and it was important to note that the American Rescue Plan Act authorized the administrative fee established in this emergency administrative regulation. Representative Bridges stated that Senate Bill 36 from the 2021 Regular Session of the General Assembly limited administrative funding to the allocated \$75,000.

In response to questions by Co-Chair West, Ms. Williams stated that Senate Bill 36 from the 2021 Regular Session of the General Assembly authorized \$25 million from the American Rescue Plan Act for broadband development. Those funds were separate from the funds for the Drinking Water and Wastewater Grant Program, although both were authorized through the American Rescue Plan Act. The authority had already received over 400 applications for over \$7 million in funds for this program. This emergency administrative regulation did not directly cite the American Rescue Plan Act. Regarding the administrative fee, Mr. Pauley stated that this emergency administrative regulation referenced “as allowed by law.” Co-Chair West stated that a direct citation would be best in this circumstance because it was possible that the statute was limiting what was authorized, but not mandated, by the act.

In response to a question by Co-Chair Hale, Ms. Williams stated that the authority would defer if necessary but would prefer to allow this emergency administrative regulation to move forward and to add the necessary citation to the ordinary administrative regulation. Representative Marzian stated that this emergency administrative regulation would also be reviewed by the subject matter committee of appropriate jurisdiction.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to align eligibility criteria with Senate Bill 36 from the 2021 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendments were approved.

#### **BOARDS AND COMMISSIONS: Board of Pharmacy**

201 KAR 2:270. Expungement. Eden Davis, general counsel, and Larry Hadley, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:360. Naloxone dispensing.

In response to questions by Senator Alvarado, Ms. Davis stated that because pharmacies always gave patients the option for more information at dispensing, the board was proposing to delete safety information requirements. Senator Alvarado stated that, because naloxone could cause pulmonary edema and because the person acquiring the naloxone was not the same person to whom it would be administered, the safety information requirements should be retained. Mr. Hadley stated that the board would consider revising these provisions.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:420. Administration of vaccines.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

201 KAR 9:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. LeeAnn Diakov, general counsel, and Michael Rodman, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Embalmers and Funeral Directors**

201 KAR 15:040E. Examination. Christi Moffett, executive director, represented the board.

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

201 KAR 15:110E. Funeral establishment criteria.

201 KAR 15:125E. Surface transportation permit.

#### **TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Re-sources: Fish**

301 KAR 1:012. Boating, swimming and water skiing and other activities on department-owned or controlled lakes. Dave Dreves, fisheries director; Steven Fields, staff attorney; Chris Garland, division director; and Rich Storm, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:016. Use of lands and waters on lakes owned or controlled by the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:018. Use of boating access areas.

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.

301 KAR 1:019. Cedar Creek Lake.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:031. Land between the Lakes provisions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:050. Small state-owned lakes, special administrative requirements of.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:082. Frog season; limits.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:120. Live fish scales and handling; licensure.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:125. Transportation of fish.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.

In response to questions by Co-Chair Hale, Mr. Dreves stated that special fish permits for Kentucky and Barkley Lakes included, for example, permits for roe-bearing species such as paddlefish. He did not believe that the department received the maximum number of special permit applications for these lakes, which was twenty-five (25).

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:152. Harvest and sale of Asian carp.

In response to questions by Co-Chair Hale, Mr. Dreves stated that Kentucky had a large contingent of commercial fishing of Asian carp. Approximately 9 million pounds had been harvested this year. Most of the harvested Asian carp was used to make fish meal; therefore, little storage was necessary. There were processors available to store fish harvested for human consumption or bait.

A motion was made and seconded to approve the following amendments: to amend Section 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:210. Free fishing days.

### Game

301 KAR 2:015. Feeding of wildlife.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:041. Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season.

301 KAR 2:050. Land between the Lakes hunting requirements.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and

Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:084. Importation of game birds.

301 KAR 2:111. Deer and turkey hunting on special areas.

301 KAR 2:230. Shoot-to-retrieve field permits and procedures.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 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.

301 KAR 2:260. Crow hunting season.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 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: Motor Vehicle Commission

605 KAR 1:030. Applications. Carlos Cassady, executive director, and Trevor Earl, counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add Section 7 to incorporate by reference the Application for Motor Vehicle Dealer License. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:035. Facilities requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:215. Licensing fees.

In response to a question by Co-Chair West, Mr. Earl stated that the fees established in this administrative regulation had been previously established by KRS 190.030. These fees were the same amount as those previously established by statute; therefore, this was not a fee increase.

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.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Exceptional and Handicapped Programs

707 KAR 1:340. Procedural safeguards and state complaint procedures. Todd Allen, general counsel, and Greta Hylton, associate commissioner, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; NECESSITY, FUNCTION, AND CONFORMITY; and STATUTORY AUTHORITY paragraphs; and Sections 2, 3, 5, 6, 8, and 14 through 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.

### LABOR CABINET: Department of Workers' Claims

803 KAR 25:165. Electronic data interchange vendor approval. Sam Flynn, general counsel; John Ghaelian, general

counsel; Dale Hamblin, assistant general counsel; and Robert Walker, interim commissioner, represented the department.

A motion was made to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

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 25:175. Filing of insurance coverage and notice of policy change or termination.

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.

803 KAR 25:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage.

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.

#### **PUBLIC PROTECTION CABINET: Department of Insurance: Fees and taxes**

806 KAR 4:010. Fees of the Department of Insurance. Shannon Clark, commissioner; Abigail Gall, regulation coordinator; and Chad Thompson, general counsel, represented the department.

In response to a question by Co-Chair West, Ms. Clark stated that the department would provide follow-up information to this subcommittee regarding how many pharmacy benefit managers were active in Kentucky.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to comply with KRS 304.4-010. Without objection, and with agreement of the agency, the amendments were approved.

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

806 KAR 9:025. Licensing process.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 and 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.

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

806 KAR 12:120. Suitability in annuity transactions.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Rates and Rating Organizations**

806 KAR 13:150. Property and casualty rate and rule filings.

A motion was made and seconded to approve the following amendments: (1) to amend Section 9 to comply with KRS 304.4-010; and (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, and 4 through 6 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 17:070. Filing procedures for health insurance rates.

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 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:085. Minimum standards for short-term nursing home insurance policies.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5, 8, 9, and 11 through 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to comply with KRS 304.14-660. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:100. Certificate of filing for provider-sponsored networks.

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 and 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:150. Health benefit plan rate filing requirements.

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 7 and 9 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:260. Conversion policy minimum benefits.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs 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.

806 KAR 17:290. Independent External Review Program.

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 and 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.

806 KAR 17:370. Standardized health claim attachments.

## VOLUME 48, NUMBER 4– OCTOBER 1, 2021

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:450. Insurance purchasing outlet requirements.

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 4, 7, 8, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:511. Repeal of 806 KAR 017:095, 806 KAR 017:170, and 806 KAR 017:510.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 1 to delete 806 KAR 17:005 and 806 KAR 17:180 from repeal; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Liability Self-insurance Groups**

806 KAR 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Payment and Services**

907 KAR 3:005. Coverage of physicians' services. Jonathan Scott, regulatory and legislative advisor, represented the department.

907 KAR 3:010. Reimbursement for physicians' services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 3:060. Ambulance provider assessment program.

### **Department for Community Based Services: Family Support**

921 KAR 1:020. Child Support Enforcement Program; confidentiality, program administration contracts, and agreements. Laura Begin, regulation coordinator; Lily Patteson, division director; and Steve Veno, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:390. Child Support Enforcement Program paternity establishment.

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.

921 KAR 1:400E. Establishment, review, and modification of child support and medical support orders.

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

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

### **Supplemental Nutrition Assistance Program**

921 KAR 3:027. Technical requirements.

### **Energy Assistance Program/Weatherization**

921 KAR 4:116E. Low Income Home Energy Assistance Program or "LIHEAP".

**The following administrative regulations were deferred or removed from the September 14, 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.

### **Forms and Procedures**

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

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

### **Voting**

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

### **DEPARTMENT OF LAW: Attorney General**

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

### **FINANCE AND ADMINISTRATION CABINET: State-owned Buildings and Grounds**

\* 200 KAR 3:020E. Use of state-owned facilities and grounds. (\*Impacted by 2021 Legislation)

### **Kentucky Infrastructure Authority**

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

### **BOARDS AND COMMISSIONS: Board of Dentistry**

201 KAR 8:520. Fees and fines.

### **Board of Embalmers and Funeral Directors**

201 KAR 15:030E. Fees.

### **Board of Nursing**

201 KAR 20:471. Repeal of 201 KAR 020:470.

201 KAR 20:472. Initial approval for dialysis technician training programs.

201 KAR 20:474. Continuing approval and periodic evaluation of dialysis technician training programs.

201 KAR 20:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

### **Board of Chiropractic Examiners**

201 KAR 21:035. Seal.

201 KAR 21:054. Emergency orders.

201 KAR 21:070. Licensing examination requirements.

201 KAR 21:090. Pre-chiropractic education requirements.

201 KAR 21:100. Minimum standards for recordkeeping or itemized statements.

**Board of Licensure for Professional Art Therapists**

201 KAR 34:070. Inactive status.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:**

**Board of Education: School Terms, Attendance, and Operation**

702 KAR 7:150. Home or hospital instruction.

**Office of Learning Support Services**

704 KAR 7:121. Repeal of 704 KAR 007:120. Todd Allen, general counsel, and Greta Hylton, associate commissioner, represented the board.

In response to a question by Co-Chair Hale, Mr. Allen requested that this emergency administrative regulation be deferred to the October meeting of this subcommittee. A motion was made and seconded for deferral. Without objection, and with agreement of this subcommittee, the emergency administrative regulation was deferred.

**LABOR CABINET: Department of Workplace Standards: Labor Standards; Wages and Hours**

803 KAR 1:005. Employer-employee relationship.

803 KAR 1:025. Equal pay provisions, meaning and application.

803 KAR 1:060. Overtime pay requirements.

803 KAR 1:063. Trading time.

803 KAR 1:065. Hours worked.

803 KAR 1:066. Recordkeeping requirements.

803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen.

803 KAR 1:075. Exclusions from minimum wage and overtime.

803 KAR 1:080. Board, lodging, gratuities and other allowances.

803 KAR 1:090. Workers with disabilities and work activity centers' employee's wages.

**Occupational Safety and Health**

803 KAR 2:325. General industry standards.

**PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts**

806 KAR 17:240. Data reporting requirements.

806 KAR 17:270. Telehealth claim forms and records.

806 KAR 17:280. Registration, utilization review, and internal appeal.

806 KAR 17:470. Data reporting to an employer-organized association health benefit plan.

**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 Public Health: Communicable Diseases**

\* 902 KAR 2:212E. Covering the face in response to declared national or state public health emergency. (\*Impacted by 2021 Legislation)

**Department of Medicaid Services: Division of Policy and Operations**

907 KAR 23:020E. Reimbursement for outpatient drugs.

**Department for Community Based Services: Supplemental Nutrition Assistance Pro-gram**

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.

**Child Care**

922 KAR 2:160E. Child Care Assistance Program.

**The subcommittee adjourned at 2:55 p.m. The next meeting of this subcommittee was tentatively scheduled for October 12, 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 HEALTH, WELFARE, AND  
FAMILY SERVICES  
Meeting of August 26, 2021**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of August 26, 2021, having been referred to the Committee on August 4, 2021, pursuant to KRS 13A.290(6):

**August 4, 2021**

201 KAR 002:061 Proposed  
201 KAR 026:115 Proposed  
201 KAR 026:121 Proposed  
201 KAR 026:125 Proposed  
201 KAR 026:130 Proposed  
201 KAR 026:155 Proposed  
201 KAR 026:171 Proposed  
201 KAR 026:180 Proposed  
201 KAR 026:185 Proposed  
201 KAR 026:190 Proposed  
201 KAR 026:200 Proposed  
201 KAR 026:230 Proposed  
201 KAR 026:250 Proposed  
201 KAR 026:280 Proposed  
201 KAR 026:290 Proposed  
201 KAR 026:310 Proposed  
201 KAR 032:030 Proposed  
201 KAR 032:035 Proposed  
201 KAR 032:060 Proposed  
201 KAR 035:010 Proposed  
201 KAR 035:020 Proposed  
201 KAR 035:025 Proposed  
201 KAR 035:040 Proposed  
201 KAR 035:050 Proposed  
201 KAR 035:055 Proposed  
201 KAR 035:070 Proposed  
201 KAR 035:075 Proposed  
201 KAR 035:080 Proposed  
907 KAR 001:038 Proposed  
922 KAR 001:490 Proposed  
922 KAR 002:300 Proposed  
922 KAR 005:020 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 26, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON TRANSPORTATION  
Meeting of September 20, 2021**

The IJC on Transportation met on 9/20/21 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on 7/8/2021, pursuant to KRS 13A.290(6):

605 KAR 001:215 E

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 9/20/21 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND  
FAMILY SERVICES  
Meeting of September 22, 2021**

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 9/20/21 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of September 22, 2021, having been referred to the Committee on September 1, 2021, pursuant to KRS 13A.290(6):

**September 1, 2021**

202 KAR 007:201 Proposed  
202 KAR 007:301 Proposed  
202 KAR 007:330 Proposed  
202 KAR 007:401 Proposed  
202 KAR 007:540 Proposed  
202 KAR 007:601 Proposed  
902 KAR 002:221 Emergency  
908 KAR 001:390 Proposed  
921 KAR 003:026 Emergency  
921 KAR 003:027 Emergency

The following administrative regulations were deferred pursuant to KRS 13A.300:

201 KAR 009:290 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 22, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

## CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 48<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2021 through June 2022.

### Locator Index - Effective Dates

D - 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

D - 16

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

### Certifications Index

D - 27

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

### Technical Amendment Index

D - 27

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

D - 28

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
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 <i>Register</i> 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 <i>Register</i> 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 <a href="#">Administrative Registers of Kentucky</a> .					
<b>SYMBOL KEY:</b>					
* Statement of Consideration not filed by deadline			Replaced	341	8-26-2021
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			201 KAR 035:055E	47 Ky.R. 1886	3-5-2021
*** Withdrawn before being printed in Register			201 KAR 035:070E	47 Ky.R. 1889	3-5-2021
IJC Interim Joint Committee			Am Comments	2550	5-13-2021
(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.			Replaced	342	8-26-2021
			201 KAR 035:075E	47 Ky.R. 1893	3-5-2021
			Am Comments	2554	5-13-2021
			Replaced	345	8-26-2021
			201 KAR 035:080E	47 Ky.R. 1895	3-5-2021
			Am Comments	2556	5-13-2021
			Replaced	346	8-26-2021
			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
			48 Ky.R.		
			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
			Replaced	48 Ky.R. 354	8-12-2021
			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
			As Amended	760	
			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
016 KAR 002:220E	48 Ky.R. 253	6-25-2021			
016 KAR 002:230E	48 Ky.R. 255	6-25-2021			
30 KAR 006:011E	48 Ky.R. 1093	9-15-2021			
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			
Replaced	2573	8-31-2021			
101 KAR 002:210E	48 Ky.R. 1095	9-15-2021			
200 KAR 002:006E	47 Ky.R. 1730	1-29-2021			
Replaced	1811	8-31-2021			
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			
Am Comments	1098				
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				
Replaced	334	8-26-2021			
201 KAR 035:020E	47 Ky.R. 1874	3-5-2021			
Am Comments	2538	5-13-2021			
As Amended	48 Ky.R. 16				
Replaced	68	8-26-2021			
201 KAR 035:025E	47 Ky.R. 1878	3-5-2021			
Am Comments	2542	5-13-2021			
Replaced	338	8-26-2021			
201 KAR 035:040E	47 Ky.R. 1880	3-5-2021			
Am Comments	2544	5-13-2021			
Replaced	340	8-26-2021			
201 KAR 035:050E	47 Ky.R. 1884	3-5-2021			
Am Comments	2547	5-13-2021			

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Replaced	2001	6-16-2021	Amended	48 Ky.R. 462	
907 KAR 023:020E	48 Ky.R. 283	6-29-2021	016 KAR 009:090		
Am Comments	1099		Amended	47 Ky.R. 2619	
921 KAR 001:400E	48 Ky.R. 286	6-29-2021	As Amended	48 Ky.R. 766	
921 KAR 002:0115E	48 Ky.R. 289	7-1-2021	030 KAR 001:011	48 Ky.R. 1431	
921 KAR 003:025E			030 KAR 003:010		
Resubmitted	47 Ky.R. 1535	1-15-2021	Amended	48 Ky.R. 1215	
As Amended	2342	4-13-2021	030 KAR 003:020		
921 KAR 003:026	48 Ky.R. 9	6-11-2021	Amended	48 Ky.R. 1217	
921 KAR 003:027E	48 Ky.R. 10	6-11-2021	030 KAR 003:030		
921 KAR 004:116E	48 Ky.R. 295	7-1-2021	Amended	48 Ky.R. 1218	
922 KAR 001:490E			030 KAR 006:011	48 Ky.R. 1432	
Resubmitted	47 Ky.R. 1737	2-8-2021	031 KAR 003:010		
Am Comments	2344	4-12-2021	Amended	47 Ky.R. 2621	
As Amended	2560	5-11-2021	031 KAR 004:195	48 Ky.R. 707	
Replaced	48 Ky.R. 377	8-26-2021	031 KAR 004:200	48 Ky.R. 708	
922 KAR 002:160E	48 Ky.R. 299	7-1-2021	031 KAR 005:025	48 Ky.R. 709	
Am Comments	1102		040 KAR 001:040	48 Ky.R. 712	
922 KAR 002:415E	47 Ky.R. 1928	3-15-2021	040 KAR 003:020		
As Amended	2523	4-13-2021	Amended	48 Ky.R. 850	
Withdrawn		5-10-2021	040 KAR 006:010		
			Amended	48 Ky.R. 852	
			040 KAR 006:020		
			Amended	48 Ky.R. 856	
			040 KAR 006:030	48 Ky.R. 1062	
			101 KAR 001:335		
			Amended	48 Ky.R. 1220	
			101 KAR 001:345		
			Amended	48 Ky.R. 1223	
			101 KAR 001:365		
			Amended	48 Ky.R. 1224	
			101 KAR 001:367		
			Amended	48 Ky.R. 1226	
			101 KAR 001:375		
			Amended	48 Ky.R. 1229	
			101 KAR 001:395		
			Amended	48 Ky.R. 1230	
			101 KAR 001:400		
			Amended	48 Ky.R. 1232	
			101 KAR 002:095		
			Amended	47 Ky.R. 1807	
			As Amended	2573	8-31-2021
			101 KAR 002:210		
			Amended	48 Ky.R. 1233	
			103 KAR 001:160	47 Ky.R. 1710	
			As Amended	2356	8-3-2021
			103 KAR 008:080		
			Amended	48 Ky.R. 465	
			103 KAR 016:270		
			Amended	48 Ky.R. 466	
			103 KAR 016:320		
			Amended	48 Ky.R. 484	
			103 KAR 016:352		
			Amended	48 Ky.R. 486	
			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		
<b>ORDINARY ADMINISTRATIVE REGULATIONS</b>					
011 KAR 016:001					
Amended	48 Ky.R. 1203				
011 KAR 016:010					
Amended	48 Ky.R. 1205				
013 KAR 001:020					
Amended	47 Ky.R. 1797				
As Amended	2565	8-31-2021			
013 KAR 003:010					
Amended	48 Ky.R. 842				
013 KAR 003:020					
Amended	48 Ky.R. 843				
013 KAR 003:030					
Amended	48 Ky.R. 844				
013 KAR 003:040					
Amended	48 Ky.R. 846				
013 KAR 003:050					
Amended	48 Ky.R. 847				
013 KAR 003:060					
Amended	48 Ky.R. 849				
013 KAR 004:010					
Amended	47 Ky.R. 1805				
As Amended	2572	8-31-2021			
016 KAR 002:180					
Amended	48 Ky.R. 444				
016 KAR 002:220	48 Ky.R. 704				
016 KAR 002:230	48 Ky.R. 705				
016 KAR 003:060					
Amended	47 Ky.R. 2614				
As Amended	48 Ky.R. 763				
016 KAR 002:040					
Amended	48 Ky.R. 1207				
016 KAR 002:050					
Amended	48 Ky.R. 1210				
016 KAR 003:070					
Amended	48 Ky.R. 445				
016 KAR 004:020					
Amended	48 Ky.R. 1213				
016 KAR 004:050					
Amended	48 Ky.R. 447				
016 KAR 005:010					
Amended	48 Ky.R. 449				
016 KAR 005:020					
Amended	47 Ky.R. 2616				
As Amended	48 Ky.R. 764				
016 KAR 006:010					

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 497		As Amended	48 Ky.R. 770	
103 KAR 030:120			201 KAR 015:030		
Amended	48 Ky.R. 501		Amended	48 Ky.R. 517	
103 KAR 030:140			201 KAR 015:040		
Amended	48 Ky.R. 504		Amended	48 Ky.R. 519	
103 KAR 030:190			201 KAR 015:050		
Amended	48 Ky.R. 506		Amended	48 Ky.R. 521	
103 KAR 030:250			201 KAR 015:110		
Amended	48 Ky.R. 509		Amended	48 Ky.R. 524	
105 KAR 001:210			201 KAR 015:125		
Amended	48 Ky.R. 858		Amended	48 Ky.R. 527	
105 KAR 001:270			201 KAR 020:057		
Amended	47 Ky.R. 2623		Amended	48 Ky.R. 529	
As Amended	48 Ky.R. 767		201 KAR 020:065		
105 KAR 001:310			Amended	47 Ky.R. 1819	
Amended	48 Ky.R. 866		As Amended	2578	6-16-2021
105 KAR 001:330			201 KAR 020:215		
Amended	48 Ky.R. 873		Amended	48 Ky.R. 533	
200 KAR 002:006			201 KAR 020:3202		
Amended	47 Ky.R. 1811	8-31-2021	Amended	48 Ky.R. 537	
200 KAR 003:020			201 KAR 020:370		
Amended	48 Ky.R. 510		Amended	47 Ky.R. 1823	
200 KAR 017:100	48 Ky.R. 215		As Amended	2581	6-16-2021
201 KAR 001:100			201 KAR 020:411		
Amended	47 Ky.R. 1816		Amended	47 Ky.R. 1824	
As Amended	2575		As Amended	2582	6-16-2021
201 KAR 002:030			201 KAR 020:471	48 Ky.R. 218	
Amended	48 Ky.R. 1235		201 KAR 020:472	48 Ky.R. 220	
201 KAR 002:040			201 KAR 020:474	48 Ky.R. 224	
Amended	47 Ky.R. 2029		201 KAR 020:476	48 Ky.R. 227	
As Amended	48 Ky.R. 22	7-21-2021	201 KAR 020:478	48 Ky.R. 230	
201 KAR 002:050			201 KAR 020:506		
Amended	48 Ky.R. 877		Amended	47 Ky.R. 2036	7-21-2021
201 KAR 002:061			201 KAR 020:660		
Amended	47 Ky.R. 2421		Amended	47 Ky.R. 1827	
As Amended	48 Ky.R. 310	8-26-2021	As Amended	2584	6-16-2021
201 KAR 002:074			201 KAR 021:035		
Amended	48 Ky.R. 1237		Amended	48 Ky.R. 105	
201 KAR 002:076			201 KAR 021:054		
Amended	48 Ky.R. 879		Amended	48 Ky.R. 106	
201 KAR 002:171	47 Ky.R. 2179		201 KAR 021:070		
As Amended	48 Ky.R. 23	7-21-2021	Amended	48 Ky.R. 108	
201 KAR 002:205			201 KAR 021:090		
Amended	47 Ky.R. 2031		Amended	48 Ky.R. 109	
As Amended	48 Ky.R. 23	7-21-2021	201 KAR 021:100		
201 KAR 002:270			Amended	48 Ky.R. 110	
Amended	48 Ky.R. 100		201 KAR 022:045		
As Amended	1112		Amended	48 Ky.R. 541	
201 KAR 002:360			201 KAR 022:170		
Amended	48 Ky.R. 101		Amended	47 Ky.R. 1424	6-16-2021
As Amended	1112		201 KAR 023:070		
201 KAR 002:380			Amended	47 Ky.R. 1247	
Amended	47 Ky.R. 1422		Am Comments	1744	
Am Comments	2404		As Amended	1933	6-16-2021
As Amended	2577	6-16-2021	201 KAR 023:150	47 Ky.R. 1503	
201 KAR 002:390			Am Comments	2012	
Amended	47 Ky.R. 2032		As Amended	2357	6-16-2021
As Amended	48 Ky.R. 24		201 KAR 026:115		
201 KAR 002:420	48 Ky.R. 217	7-21-2021	Amended	47 Ky.R. 2037	
As Amended	1113		As Amended	48 Ky.R. 312	8-26-2021
201 KAR 002:430	48 Ky.R. 1063		201 KAR 026:121		
201 KAR 006:020			Amended	47 Ky.R. 2039	
Amended	48 Ky.R. 515		As Amended	48 Ky.R. 313	8-26-2021
201 KAR 008:520			201 KAR 026:125		
Amended	48 Ky.R. 103		Amended	47 Ky.R. 2041	8-26-2021
201 KAR 009:270			201 KAR 026:130		
Amended	47 Ky.R. 2424		Amended	47 Ky.R. 2042	
Am Comments	48 Ky.R. 833		As Amended	48 Ky.R. 313	8-26-2021
As Amended	1113		201 KAR 026:155		
201 KAR 009:290	47 Ky.R. 2495		Amended	47 Ky.R. 2046	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	48 Ky.R. 316	8-26-2021	Amended	47 Ky.R. 2084	
201 KAR 026:171			As Amended	48 Ky.R. 341	8-26-2021
Amended	47 Ky.R. 2048		201 KAR 035:070		
As Amended	48 Ky.R. 317	8-26-2021	Amended	47 Ky.R. 2086	
201 KAR 026:180			Am Comments	48 Ky.R. 76	
Amended	47 Ky.R. 2052		As Amended	342	8-26-2021
As Amended	48 Ky.R. 320	8-26-2021	201 KAR 035:075		
201 KAR 026:185			Amended	47 Ky.R. 2091	
Amended	47 Ky.R. 2054		Am Comments	48 Ky.R. 80	
As Amended	48 Ky.R. 320	8-26-2021	As Amended	345	8-26-2021
201 KAR 026:190			201 KAR 035:080		
Amended	47 Ky.R. 2056		Amended	47 Ky.R. 2092	
As Amended	48 Ky.R. 321	8-26-2021	Am Comments	48 Ky.R. 81	
201 KAR 026:200			As Amended	346	8-26-2021
Amended	47 Ky.R. 2058		201 KAR 042:010		
As Amended	48 Ky.R. 323	8-26-2021	Amended	48 Ky.R. 1241	
201 KAR 026:230			201 KAR 042:020		
Amended	47 Ky.R. 2060		Amended	48 Ky.R. 1242	
As Amended	48 Ky.R. 324	8-26-2021	201 KAR 042:030		
201 KAR 026:250			Amended	48 Ky.R. 1244	
Amended	47 Ky.R. 2063		201 KAR 042:035		
As Amended	48 Ky.R. 326	8-26-2021	Amended	48 Ky.R. 1246	
201 KAR 026:280			201 KAR 042:040		
Amended	47 Ky.R. 2065		Amended	48 Ky.R. 1248	
As Amended	48 Ky.R. 327	8-26-2021	201 KAR 042:050		
201 KAR 026:290			Amended	48 Ky.R. 1251	
Amended	47 Ky.R. 2067		201 KAR 042:060		
As Amended	48 Ky.R. 328	8-26-2021	Amended	48 Ky.R. 1253	
201 KAR 026:301(r)	47 Ky.R. 2180		201 KAR 042:070		
Withdrawn		6-22-2021	Amended	48 Ky.R. 1255	
201 KAR 026:310			201 KAR 042:110		
Amended	47 Ky.R. 2069		Amended	48 Ky.R. 1258	
As Amended	48 Ky.R. 328	8-26-2021	201 KAR 045:130		
201 KAR 030:040			Amended	47 Ky.R. 1251	6-16-2021
Amended	47 Ky.R. 1425		201 KAR 047:010		
As Amended	1936	7-6-2021	Amended	48 Ky.R. 543	
201 KAR 030:190			201 KAR 047:030	48 Ky.R. 713	
Amended	47 Ky.R. 1428	7-6-2021	202 KAR 003:020		
201 KAR 032:030			Amended	48 Ky.R. 546	
Amended	47 Ky.R. 1611		202 KAR 007:201		
Am Comments	2608		Amended	47 Ky.R. 2428	
As Amended	48 Ky.R. 329	8-26-2021	Am Comments	48 Ky.R. 390	9-22-2021
201 KAR 032:035			202 KAR 007:301		
Amended	47 Ky.R. 1614		Amended	47 Ky.R. 2433	
As Amended	48 Ky.R. 330	8-26-2021	Am Comments	48 Ky.R. 394	9-22-2021
201 KAR 032:060			202 KAR 007:330		
Amended	47 Ky.R. 1616		Amended	47 Ky.R. 2439	
Am Comments	2610		Am Comments	48 Ky.R. 400	9-22-2021
As Amended	48 Ky.R. 332	8-26-2021	202 KAR 007:401		
201 KAR 034:070	47 Ky.R. 2497		Amended	47 Ky.R. 2445	
201 KAR 035:010			Am Comments	48 Ky.R. 406	9-22-2021
Amended	47 Ky.R. 2071		202 KAR 007:540		
Am Comments	48 Ky.R. 62		Amended	47 Ky.R. 2453	
As Amended	334	8-26-2021	Am Comments	48 Ky.R. 414	9-22-2021
201 KAR 035:020			202 KAR 007:601		
Amended	47 Ky.R. 2073		Amended	47 Ky.R. 2455	9-22-2021
Am Comments	48 Ky.R. 64		As Amended		
As Amended	335	8-26-2021	Am Comments	48 Ky.R. 416	
201 KAR 035:025			301 KAR 001:012		
Amended	47 Ky.R. 2077		Amended	48 Ky.R. 112	
Am Comments	48 Ky.R. 68	8-26-2021	As Amended	1117	
201 KAR 035:040			301 KAR 001:016		
Amended	47 Ky.R. 2078		Amended	48 Ky.R. 113	
Am Comments	48 Ky.R. 69		As Amended	1117	
As Amended	338	8-26-2021	301 KAR 001:018		
201 KAR 035:050			Amended	48 Ky.R. 117	
Amended	47 Ky.R. 2082		As Amended	1120	
Am Comments	48 Ky.R. 73		301 KAR 001:019		
As Amended	340	8-26-2021	Amended	48 Ky.R. 119	
201 KAR 035:055			As Amended	1121	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
301 KAR 001:031			Amended	48 Ky.R. 894	
Amended	48 Ky.R. 120		301 KAR 003:027		
As Amended	1121		Amended	48 Ky.R. 895	
301 KAR 001:050			301 KAR 003:030		
Amended	48 Ky.R. 122		Amended	48 Ky.R. 896	
As Amended	1122		301 KAR 003:110		
301 KAR 001:082			Amended	48 Ky.R. 898	
Amended	48 Ky.R. 123		301 KAR 004:001		
As Amended	1122		Amended	48 Ky.R. 899	
301 KAR 001:120			301 KAR 004:010		
Amended	48 Ky.R. 124		Amended	48 Ky.R. 901	
As Amended	1122		301 KAR 004:020		
301 KAR 001:125			Amended	48 Ky.R. 902	
Amended	48 Ky.R. 125		301 KAR 004:050		
As Amended	1123		Amended	48 Ky.R. 903	
301 KAR 001:140			301 KAR 004:070		
Amended	48 Ky.R. 128		Amended	48 Ky.R. 904	
As Amended	1124		301 KAR 004:100		
301 KAR 001:152			Amended	48 Ky.R. 906	
Amended	48 Ky.R. 130		301 KAR 004:110		
As Amended	1125		Amended	48 Ky.R. 908	9-22-2021
301 KAR 001:201			301 KAR 005:001		
Amended	47 Ky.R. 2627		Amended	48 Ky.R. 910	
As Amended	48 Ky.R. 782		301 KAR 005:030		
301 KAR 001:210			Amended	48 Ky.R. 911	
Amended	48 Ky.R. 132		301 KAR 005:100		
301 KAR 001:400			Amended	48 Ky.R. 913	
Amended	47 Ky.R. 2468		301 KAR 006:001		
301 KAR 002:015			Amended	48 Ky.R. 915	
Amended	48 Ky.R. 133		301 KAR 006:070		
301 KAR 002:041			Amended	48 Ky.R. 917	
Amended	48 Ky.R. 135		302 KAR 004:010	47 Ky.R. 1505	
301 KAR 002:050			As Amended	1938	7-6-2021
Amended	48 Ky.R. 138		302 KAR 022:150		
As Amended	1127		Amended	47 Ky.R. 1435	
301 KAR 002:082			As Amended	1940	7-6-2021
Amended	48 Ky.R. 881		302 KAR 079:011	47 Ky.R. 1314	
301 KAR 002:084			Am Comments	2014	
Amended	48 Ky.R. 139		As Amended	2360	7-8-2021
301 KAR 002:111			302 KAR 079:012	47 Ky.R. 1321	
Amended	48 Ky.R. 140		Am Comments	2022	
301 KAR 002:132			As Amended	2367	7-8-2021
Amended	47 Ky.R. 2632		303 KAR 001:005		
As Amended	48 Ky.R. 787		Amended	48 Ky.R. 918	
301 KAR 002:142			303 KAR 001:010		
Amended	48 Ky.R. 886		Amended	48 Ky.R. 920	
301 KAR 002:221			303 KAR 001:015		
Amended	47 Ky.R. 1253		Amended	48 Ky.R. 921	
As Amended	1937	6-3-2021	303 KAR 001:075		
301 KAR 002:224			Amended	48 Ky.R. 922	
Amended	48 Ky.R. 888		303 KAR 001:080		
301 KAR 002:228			Amended	48 Ky.R. 923	
Amended	47 Ky.R. 2469		303 KAR 001:090		
301 KAR 002:230			Amended	48 Ky.R. 925	
Amended	48 Ky.R. 142		303 KAR 001:100		
As Amended	1127		Amended	48 Ky.R. 927	
301 KAR 002:251			303 KAR 001:110	48 Ky.R. 1066	
Amended	47 Ky.R. 2637		401 KAR 039:060		
As Amended	48 Ky.R. 790		Amended	47 Ky.R. 2095	
301 KAR 002:260			401 KAR 060:005		
Amended	48 Ky.R. 144		Amended	47 Ky.R. 1443	
As Amended	1128		As Amended	1947	6-3-2021
301 KAR 002:300			401 KAR 061:036		
Amended	47 Ky.R. 2640		Amended	47 Ky.R. 1447	
As Amended	48 Ky.R. 792		Am Comments	2024	6-3-2021
301 KAR 003:010			401 KAR 063:002		
Amended	48 Ky.R. 889		Amended	47 Ky.R. 1449	
301 KAR 003:012			As Amended	1950	6-3-2021
Amended	48 Ky.R. 892		500 KAR 012:010		
301 KAR 003:026			Amended	48 Ky.R. 548	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
501 KAR 001:050 Amended	48 Ky.R. 928		502 KAR 010:090 Amended	48 Ky.R. 1273	
501 KAR 002:020 Amended	48 Ky.R. 549		502 KAR 010:110 Amended	48 Ky.R. 1276	
501 KAR 002:050 Amended	48 Ky.R. 551		502 KAR 010:120 Amended	48 Ky.R. 1278	
501 KAR 002:060 Amended	48 Ky.R. 552		502 KAR 011:010 Amended	48 Ky.R. 1280	
501 KAR 002:070 Amended	48 Ky.R. 555		502 KAR 011:060 Amended	48 Ky.R. 1282	
501 KAR 003:110 Amended	48 Ky.R. 930		502 KAR 011:070 Amended	48 Ky.R. 1284	
501 KAR 003:120 Amended	48 Ky.R. 931		502 KAR 012:010 Amended	48 Ky.R. 1286	
501 KAR 003:130 Amended	48 Ky.R. 934		502 KAR 013:010 Amended	48 Ky.R. 1289	
501 KAR 003:150 Amended	48 Ky.R. 935		502 KAR 013:030 Amended	48 Ky.R. 1291	
501 KAR 003:170 Amended	48 Ky.R. 938		502 KAR 013:040 Amended	48 Ky.R. 1292	
501 KAR 003:190 Amended	48 Ky.R. 939		502 KAR 013:050 Amended	48 Ky.R. 1294	
501 KAR 006:070 Amended	47 Ky.R. 1620		502 KAR 013:060 Amended	48 Ky.R. 1295	
As Amended	2368	8-3-2021	502 KAR 013:080 Amended	48 Ky.R. 1297	
501 KAR 006:080 Amended	47 Ky.R. 1255		502 KAR 014:010 Amended	48 Ky.R. 1298	
Am Comment	1748	7-6-2021	502 KAR 015:010 Amended	48 Ky.R. 1300	
501 KAR 006:200 Amended	48 Ky.R. 943		502 KAR 015:020 Amended	48 Ky.R. 1301	
501 KAR 006:250 Amended	48 Ky.R. 946		502 KAR 020:020 Amended	48 Ky.R. 1303	
501 KAR 007:040 Amended	48 Ky.R. 951		502 KAR 030:010 Amended	48 Ky.R. 1306	
501 KAR 007:060 Amended	48 Ky.R. 952		502 KAR 030:020 Amended	48 Ky.R. 1308	
501 KAR 007:090 Amended	48 Ky.R. 954		502 KAR 030:030 Amended	48 Ky.R. 1309	
501 KAR 007:100 Amended	48 Ky.R. 956		502 KAR 030:050 Amended	48 Ky.R. 1310	
501 KAR 007:110 Amended	48 Ky.R. 957		502 KAR 030:060 Amended	48 Ky.R. 1312	
501 KAR 007:120 Amended	48 Ky.R. 958		502 KAR 030:070 Amended	48 Ky.R. 1314	
501 KAR 007:130 Amended	48 Ky.R. 960		502 KAR 031:020 Amended	48 Ky.R. 1316	
501 KAR 007:140 Amended	48 Ky.R. 962		502 KAR 035:010 Amended	48 Ky.R. 1318	
501 KAR 007:150 Amended	48 Ky.R. 964		502 KAR 035:020 Amended	48 Ky.R. 1320	
501 KAR 014:010 Amended	48 Ky.R. 965		502 KAR 035:030 Amended	48 Ky.R. 1321	
502 KAR 010:010 Amended	48 Ky.R. 1260		502 KAR 035:040 Amended	48 Ky.R. 1322	
502 KAR 010:020 Amended	48 Ky.R. 1262		502 KAR 035:050 Amended	48 Ky.R. 1324	
502 KAR 010:030 Amended	48 Ky.R. 1263		502 KAR 040:010 Amended	48 Ky.R. 1325	
502 KAR 010:035 Amended	48 Ky.R. 1264		502 KAR 045:005 Amended	48 Ky.R. 1326	
502 KAR 010:040 Amended	48 Ky.R. 1266		502 KAR 045:015 Amended	48 Ky.R. 1328	
502 KAR 010:050 Amended	48 Ky.R. 1268		502 KAR 045:035 Amended	48 Ky.R. 1329	
502 KAR 010:060 Amended	48 Ky.R. 1269		502 KAR 045:045 Amended	48 Ky.R. 1331	
502 KAR 010:070 Amended	48 Ky.R. 1270		502 KAR 045:075 Amended	48 Ky.R. 1332	
502 KAR 010:080 Amended	48 Ky.R. 1272				



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
502 KAR 045:085			701 KAR 005:100		
Amended	48 Ky.R. 1334		Amended	47 Ky.R. 2471	
502 KAR 045:105			As Amended	48 Ky.R. 795	
Amended	48 Ky.R. 1335		701 KAR 005:160	48 Ky.R. 1075	
502 KAR 045:115			702 KAR 001:191	48 Ky.R. 1078	
Amended	48 Ky.R. 1336		702 KAR 003:060		
502 KAR 045:150			Amended	47 Ky.R. 2474	
Amended	48 Ky.R. 1338		As Amended	48 Ky.R. 347	
502 KAR 047:010			702 KAR 005:080		
Amended	48 Ky.R. 1339		Amended	47 Ky.R. 1454	
502 KAR 050:010			As Amended	1957	7-6-2021
Amended	48 Ky.R. 1340		702 KAR 007:125		
503 KAR 001:060			Amended	48 Ky.R. 995	
Amended	48 Ky.R. 966		702 KAR 007:150	48 Ky.R. 233	
503 KAR 001:080			703 KAR 005:070		
Amended	48 Ky.R. 968		Amended	47 Ky.R. 2476	
503 KAR 001:090			As Amended	48 Ky.R. 796	
Amended	48 Ky.R. 970		703 KAR 005:225		
503 KAR 001:100			Amended	47 Ky.R. 2478	
Amended	48 Ky.R. 971		As Amended	48 Ky.R. 797	
503 KAR 001:110			703 KAR 005:240		
Amended	48 Ky.R. 973		Amended	47 Ky.R. 2480	
503 KAR 001:120			As Amended	48 Ky.R. 798	
Amended	48 Ky.R. 976		703 KAR 005:270		
503 KAR 001:140			Amended	47 Ky.R. 1829	
Amended	48 Ky.R. 979		Am Comments	48 Ky.R. 83	
503 KAR 001:170			As Amended	348	
Amended	48 Ky.R. 986		703 KAR 005:280		
503 KAR 003:020			Amended	47 Ky.R. 1458	
Amended	48 Ky.R. 1342		Am Comments	2405	
503 KAR 003:030			704 KAR 007:121	48 Ky.R. 235	
Amended	48 Ky.R. 1346		704 KAR 008:110	47 Ky.R. 1508	
503 KAR 003:050			As Amended	1960	7-6-2021
Amended	48 Ky.R. 1348		707 KAR 001:340		
503 KAR 004:010			Amended	47 Ky.R. 2648	
Amended	48 Ky.R. 1350		As Amended	1131	
503 KAR 004:040			725 KAR 001:010		
Amended	48 Ky.R. 1352		Amended	48 Ky.R. 556	
503 KAR 004:050			725 KAR 001:020		
Amended	48 Ky.R. 1353		Amended	48 Ky.R. 558	
503 KAR 005:080			725 KAR 001:025		
Amended	48 Ky.R. 1355		Amended	48 Ky.R. 559	
503 KAR 005:100			725 KAR 001:030		
Amended	48 Ky.R. 1357		Amended	48 Ky.R. 561	
601 KAR 001:005			725 KAR 001:040		
Amended	47 Ky.R. 2101		Amended	48 Ky.R. 562	
601 KAR 001:113			725 KAR 001:050		
Amended	47 Ky.R. 1256		Amended	48 Ky.R. 564	
As Amended	1954	7-6-2021	725 KAR 001:061		
601 KAR 002:231	47 Ky.R. 475		Amended	48 Ky.R. 566	
601 KAR 002:233	47 Ky.R. 2499		725 KAR 002:015		
Am Comments	48 Ky.R. 429		Amended	48 Ky.R. 568	
601 KAR 023:030	47 Ky.R. 1324		725 KAR 002:080		
As Amended	1957	7-6-2021	Amended	48 Ky.R. 573	
603 KAR 003:100	48 Ky.R. 1434		739 KAR 002:060		
603 KAR 004:035			Amended	48 Ky.R. 574	
Amended	48 Ky.R. 1359		745 KAR 001:035		
603 KAR 005:360	48 Ky.R. 1067		Amended	48 Ky.R. 1362	
603 KAR 010:040	48 Ky.R. 1069		781 KAR 001:010		
605 KAR 001:030			Amended	48 Ky.R. 999	
Amended	47 Ky.R. 2643		781 KAR 001:020		
As Amended	1128		Amended	48 Ky.R. 1002	
605 KAR 001:035	47 Ky.R. 2765		781 KAR 001:030		
As Amended	1128		Amended	48 Ky.R. 1006	
605 KAR 001:130			781 KAR 001:040		
Amended	47 Ky.R. 2646		Amended	48 Ky.R. 1008	
605 KAR 001:215	47 Ky.R. 2766		781 KAR 001:050		
	48 Ky.R.		Amended	48 Ky.R. 1011	
As Amended	1130		782 KAR 001:010		
701 KAR 005:081	47 Ky.R. 2505		Amended	48 Ky.R. 1014	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
782 KAR 001:070 Amended	48 Ky.R. 1020		803 KAR 001:063 Amended	48 Ky.R. 160	
787 KAR 001:010 Amended	48 Ky.R. 578		803 KAR 001:065 Amended	48 Ky.R. 161	
787 KAR 001:020 Amended	48 Ky.R. 579		803 KAR 001:066 Amended	48 Ky.R. 164	
787 KAR 001:060 Amended	48 Ky.R. 581		803 KAR 001:070 Amended	48 Ky.R. 166	
787 KAR 001:080 Amended	48 Ky.R. 582		803 KAR 001:075 Amended	48 Ky.R. 178	
787 KAR 001:090 Amended	48 Ky.R. 584		803 KAR 001:080 Amended	48 Ky.R. 180	
787 KAR 001:110 Amended	48 Ky.R. 586		803 KAR 001:090 Amended	48 Ky.R. 184	
787 KAR 001:140 Amended	48 Ky.R. 590		803 KAR 002:010 Amended	47 Ky.R. 1261	
787 KAR 001:150 Amended	48 Ky.R. 592		As Amended	1960	7-6-2021
787 KAR 001:210 Amended	48 Ky.R. 593		803 KAR 002:011	47 Ky.R. 2769	
787 KAR 001:220 Amended	48 Ky.R. 595		803 KAR 002:019 Amended	47 Ky.R. 1622	
787 KAR 001:260 Amended	48 Ky.R. 596		As Amended	2369	8-3-2021
787 KAR 001:290 Amended	48 Ky.R. 598		803 KAR 002:021 Amended	47 Ky.R. 1465	
787 KAR 001:300 Amended	48 Ky.R. 599		803 KAR 002:041	47 Ky.R. 2770	8-3-2021
787 KAR 001:310 Amended	48 Ky.R. 600		803 KAR 002:050 Amended	47 Ky.R. 1467	
787 KAR 001:360 As Amended	47 Ky.R. 2768		As Amended	2370	8-3-2021
787 KAR 002:040 Amended	48 Ky.R. 1023		803 KAR 002:060 Amended	47 Ky.R. 2655	
791 KAR 001:010 Amended	48 Ky.R. 1024		As Amended	48 Ky.R. 800	
791 KAR 001:020 Amended	48 Ky.R. 1028		803 KAR 002:062 Amended	47 Ky.R. 2658	
791 KAR 001:025 Amended	48 Ky.R. 1032		As Amended	48 Ky.R. 803	
791 KAR 001:027 Amended	48 Ky.R. 1034		803 KAR 002:070 Amended	47 Ky.R. 2660	
791 KAR 001:030 Amended	48 Ky.R. 1035		As Amended	48 Ky.R. 803	
791 KAR 001:035 Amended	48 Ky.R. 1037		803 KAR 002:080 Amended	47 Ky.R. 1469	
791 KAR 001:040 Amended	48 Ky.R. 1039		As Amended	2371	8-3-2021
791 KAR 001:050 Amended	48 Ky.R. 1040		803 KAR 002:090 Amended	47 Ky.R. 1471	
791 KAR 001:060 Amended	48 Ky.R. 1042		As Amended	2371	8-3-2021
791 KAR 001:070 Amended	48 Ky.R. 1044		803 KAR 002:095 Repealed	47 Ky.R. 1509	8-3-2021
791 KAR 001:080 Amended	48 Ky.R. 1046		803 KAR 002:096(r)	47 Ky.R. 1509	8-3-2021
791 KAR 001:100 Amended	48 Ky.R. 1048		803 KAR 002:100 Amended	47 Ky.R. 1473	
791 KAR 001:150 Amended	48 Ky.R. 1050		As Amended	2372	8-3-2021
791 KAR 001:155 Amended	48 Ky.R. 1051		803 KAR 002:110 Amended	47 Ky.R. 2663	
791 KAR 001:160 Amended	48 Ky.R. 1053		As Amended	48 Ky.R. 804	
803 KAR 001:005 Amended	48 Ky.R. 145		803 KAR 002:115 Amended	47 Ky.R. 1475	
803 KAR 001:025 Amended	48 Ky.R. 149		As Amended	2373	8-3-2021
803 KAR 001:060 Amended	48 Ky.R. 154		803 KAR 002:120 Amended	47 Ky.R. 1624	
			As Amended	2373	8-3-2021
			803 KAR 002:122 Amended	47 Ky.R. 2665	
			As Amended	48 Ky.R. 805	
			803 KAR 002:125 Amended	47 Ky.R. 2669	
			As Amended	48 Ky.R. 807	
			803 KAR 002:127 Amended	47 Ky.R. 2671	
			As Amended	48 Ky.R. 808	
			803 KAR 002:130 Amended	47 Ky.R. 2673	
			As Amended	48 Ky.R. 809	
			803 KAR 002:140		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	47 Ky.R. 2674		803 KAR 002:424		
As Amended	48 Ky.R. 809		Amended	47 Ky.R. 1650	
803 KAR 002:170			As Amended	2386	8-3-2021
Amended	47 Ky.R. 2670		803 KAR 002:430		
As Amended	48 Ky.R. 810		Repealed	47 Ky.R. 1509	8-3-2021
803 KAR 002:181	47 Ky.R. 2772		803 KAR 2:435		
803 KAR 002:182	47 Ky.R.		Amended	47 Ky.R. 2710	
803 KAR 002:220			As Amended	48 Ky.R. 817	
Amended	47 Ky.R. 2684		803 KAR 2:440		
As Amended	48 Ky.R. 815		Amended	47 Ky.R. 2712	
803 KAR 002:230			As Amended	48 Ky.R. 818	
Amended	47 Ky.R. 2685		803 KAR 002:600		
803 KAR 002:240			Amended	47 Ky.R. 1652	
Amended	47 Ky.R. 1477		As Amended	2386	8-3-2021
As Amended	2374	8-3-2021	803 KAR 025:015		
803 KAR 002:250			Amended	47 Ky.R. 2107	
Amended	47 Ky.R. 2687		As Amended	48 Ky.R. 352	
As Amended	48 Ky.R. 816		803 KAR 025:021		
803 KAR 002:306			Amended	47 Ky.R. 2109	
Amended	47 Ky.R. 2690		As Amended	48 Ky.R. 818	
803 KAR 002:308			803 KAR 025:091		
Amended	47 Ky.R. 2692		Amended	47 Ky.R. 803	
803 KAR 002:309			Am Comments	1597	
Amended	47 Ky.R. 1626		As Amended	48 Ky.R. 824	
As Amended	2374	8-3-2021	803 KAR 025:092		
803 KAR 002:310			Amended	47 Ky.R. 1264	
Amended	47 Ky.R. 2695		Am Comments	2026	
803 KAR 002:314			As Amended	2585	8-31-2021
Amended	47 Ky.R. 1478		803 KAR 025:165	47 Ky.R. 2774	
As Amended	2375	8-3-2021	Am Comments	48 Ky.R. 837	
803 KAR 002:320			As Amended	1136	
Amended	47 Ky.R. 1628		803 KAR 025:170		
As Amended	2376	8-3-2021	Amended	47 Ky.R. 1266	
803 KAR 2:325			As Amended	1137	
Amended	47 Ky.R. 2697		803 KAR 025:175		
803 KAR 002:401			Amended	47 Ky.R. 1268	
Amended	47 Ky.R. 1634		As Amended	1138	
As Amended	2380	8-3-2021	803 KAR 025:185		
803 KAR 002:405			Amended	47 Ky.R. 1269	
Amended	47 Ky.R. 1636		As Amended	1138	
As Amended	2380	8-3-2021	803 KAR 025:190		
803 KAR 002:408			Amended	47 Ky.R. 2116	
Amended	47 Ky.R. 1638		Am Comments	48 Ky.R. 435	
As Amended	2381	8-3-2021	803 KAR 025:220		
803 KAR 002:409			Amended	47 Ky.R. 2123	
Amended	47 Ky.R. 1639		As Amended	48 Ky.R. 826	
As Amended	2381	8-3-2021	803 KAR 025:300	47 Ky.R. 1511	
803 KAR 002:410			As Amended	1962	7-6-2021
Amended	47 Ky.R. 1641		804 KAR 004:212	48 Ky.R. 1435	
As Amended	2381	8-3-2021	804 KAR 004:221	48 Ky.R. 1437	
803 KAR 002:413			804 KAR 004:251	48 Ky.R. 1439	
Amended	47 Ky.R. 1480		804 KAR 004:480	48 Ky.R. 1441	
As Amended	2382	8-3-2021	806 KAR 002:060	47 Ky.R. 1714	
803 KAR 002:414			As Amended	2387	8-3-2021
Amended	47 Ky.R. 1643		806 KAR 004:010		
As Amended	2382	8-3-2021	Amended	47 Ky.R. 2714	
803 KAR 002:415			As Amended	1139	
Amended	47 Ky.R. 1645		806 KAR 005:025		
As Amended	2383	8-3-2021	Amended	48 Ky.R. 1363	
803 KAR 002:416			806 KAR 009:025		
Amended	47 Ky.R. 1647		Amended	47 Ky.R. 806	
As Amended	2383	8-3-2021	Am Comments	1600	
803 KAR 002:417			As Amended	1141	
Amended	47 Ky.R. 1648		806 KAR 009:360		
As Amended	2384	8-3-2021	Amended	47 Ky.R. 813	
803 KAR 002:420			As Amended	1963	7-6-2021
Amended	47 Ky.R. 1482		806 KAR 011:020		
As Amended	2384	8-3-2021	Amended	48 Ky.R. 602	
803 KAR 002:423			806 KAR 012:095		
Amended	47 Ky.R. 2708		Amended	47 Ky.R. 2717	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	48 Ky.R. 827		As Amended	1171	
806 KAR 012:120			806 KAR 017:470		
Amended	47 Ky.R. 815		Amended	48 Ky.R. 205	
Am Comments	1604		806 KAR 017:511(r)	47 Ky.R. 2775	
As Amended	1144		As Amended	1173	
806 KAR 013:150			806 KAR 017:580	47 Ky.R. 2777	
Amended	2721		As Amended	48 Ky.R. 831	
As Amended	1148		806 KAR 019:050		
806 KAR 014:005			Amended	47 Ky.R. 1675	
Amended	47 Ky.R. 1654		As Amended	2396	8-3-2021
As Amended	2387	8-3-2021	806 KAR 019:060		
806 KAR 014:007			Amended	47 Ky.R. 1676	
Amended	47 Ky.R. 1656		As Amended	2396	8-3-2021
As Amended	2388	8-3-2021	806 KAR 039:050		
806 KAR 014:090			Amended	47 Ky.R. 1678	
Amended	47 Ky.R. 1658		As Amended	2397	8-3-2021
As Amended	2389	8-3-2021	806 KAR 039:070		
806 KAR 014:110			Amended	48 Ky.R. 607	
Amended	47 Ky.R. 1659		806 KAR 040:020		
As Amended	2390	8-3-2021	Amended	47 Ky.R. 1680	
806 KAR 014:121			As Amended	2398	8-3-2021
Amended	47 Ky.R. 1661		806 KAR 046:050		
As Amended	2586	8-31-2021	Amended	48 Ky.R. 207	
806 KAR 015:050			As Amended	1173	
Amended	47 Ky.R. 1664		806 KAR 052:030		
Am Comments	2413		Amended	47 Ky.R. 2744	
As Amended	2588	8-31-2021	As Amended	48 Ky.R. 831	
806 KAR 015:060			807 KAR 005:015	47 Ky.R. 2778	
Amended	47 Ky.R. 1668		Am Comments	48 Ky.R. 1181	
As Amended	2390	8-3-2021	807 KAR 005:056		
806 KAR 015:070			Amended	47 Ky.R. 1485	
Amended	47 Ky.R. 1673		As Amended	1965	6-3-2021
As Amended	2394	8-3-2021	810 KAR 002:001		
806 KAR 015:090			Amended	47 Ky.R. 2125	
Amended	47 Ky.R. 2725		As Amended	48 Ky.R. 353	8-12-2021
As Amended	48 Ky.R. 830		810 KAR 002:020		
806 KAR 017:070			Amended	47 Ky.R. 1271	7-6-2021
Amended	47 Ky.R. 2726		810 KAR 3:001		
As Amended	1151		Amended	47 Ky.R. 2127	
806 KAR 017:085			As Amended	48 Ky.R. 354	8-12-2021
Amended	47 Ky.R. 2729		810 KAR 004:001		
As Amended	1153		Amended	47 Ky.R. 2130	
806 KAR 017:100			As Amended	48 Ky.R. 355	8-12-2021
Amended	47 Ky.R. 2734		810 KAR 004:010		
As Amended	1158		Amended	47 Ky.R. 1274	
806 KAR 017:150			As Amended	1965	7-6-2021
Amended	47 Ky.R. 2736		810 KAR 004:030		
As Amended	1159		Amended	47 Ky.R. 1277	7-6-2021
806 KAR 017:230			810 KAR 004:040		
Amended	47 Ky.R. 2742		Amended	48 Ky.R. 610	
As Amended	1164		810 KAR 005:001		
806 KAR 017:240			Amended	47 Ky.R. 2132	
Amended	48 Ky.R. 186		As Amended	48 Ky.R. 357	8-12-2021
806 KAR 017:260			810 KAR 005:030		
Amended	48 Ky.R. 188		Amended	48 Ky.R. 1375	
As Amended	1164		810 KAR 005:060		
806 KAR 017:270			Amended	48 Ky.R. 1378	
Amended	48 Ky.R. 190		810 KAR 005:070		
806 KAR 017:280			Amended	48 Ky.R. 1383	
Amended	48 Ky.R. 191		810 KAR 005:080		
806 KAR 017:290			Amended	47 Ky.R. 2135	
Amended	48 Ky.R. 195		As Amended	48 Ky.R. 27	
As Amended	1165		810 KAR 006:001		
806 KAR 017:350			Amended	47 Ky.R. 2138	
Amended	48 Ky.R. 605		As Amended	48 Ky.R. 359	8-12-2021
806 KAR 017:370			810 KAR 006:010	47 Ky.R. 2181	
Amended	48 Ky.R. 200		As Amended	48 Ky.R. 362	8-12-2021
As Amended	1169		810 KAR 006:020		
806 KAR 017:450			Amended	47 Ky.R. 2142	
Amended	48 Ky.R. 202		As Amended	48 Ky.R. 363	8-12-2021

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
810 KAR 006:030	47 Ky.R. 2184		As Amended	2599	6-16-2021
As Amended	48 Ky.R. 372	8-12-2021	900 KAR 006:115		
810 KAR 008:010			Amended	47 Ky.R. 1704	6-16-2021
Amended	47 Ky.R. 2152		900 KAR 010:111	47 Ky.R. 2194	7-21-2021
As Amended	48 Ky.R. 29		900 KAR 010:115	47 Ky.R. 2197	7-21-2021
810 KAR 008:020			900 KAR 010:120	47 Ky.R. 2203	
Amended	47 Ky.R. 2159		As Amended	48 Ky.R. 48	7-21-2021
810 KAR 008:025	47 Ky.R. 2188		900 KAR 010:125	47 Ky.R. 2211	
As Amended	48 Ky.R. 35		As Amended	48 Ky.R. 54	7-21-2021
810 KAR 008:030			900 KAR 010:130	47 Ky.R. 2214	
Amended	47 Ky.R. 2167		As Amended	48 Ky.R. 56	7-21-2021
As Amended	48 Ky.R. 39		900 KAR 011:010		
810 KAR 008:040			Repealed	47 Ky.R. 1325	6-16-2021
Amended	47 Ky.R. 2174		900 KAR 011:011	47 Ky.R. 1325	6-16-2021
As Amended	48 Ky.R. 44		900 KAR 012:005	48 Ky.R. 1079	
810 KAR 008:060			902 KAR 002:020		
Amended	47 Ky.R. 1281	7-6-2021	Amended	48 Ky.R. 1389	
815 KAR 004:010			902 KAR 004:150	47 Ky.R. 2219	
Amended	48 Ky.R. 613		As Amended	48 Ky.R. 59	7-21-2021
815 KAR 004:025			902 KAR 010:010		
Amended	48 Ky.R. 615		Amended	47 Ky.R. 1283	6-16-2021
815 KAR 004:027			902 KAR 010:060		
Amended	48 Ky.R. 617		Repealed	47 Ky.R. 1969	6-16-2021
815 KAR 007:080			902 KAR 010:110		
Amended	48 Ky.R. 618		Amended	47 Ky.R. 1285	6-16-2021
815 KAR 007:110			902 KAR 010:120		
Amended	48 Ky.R. 621		Amended	48 Ky.R. 638	
815 KAR 010:060			902 KAR 010:121		
Amended	48 Ky.R. 623		Amended	48 Ky.R. 1396	
815 KAR 010:070			902 KAR 010:130		
Amended	48 Ky.R. 627		Repealed	47 Ky.R. 1969	6-16-2021
815 KAR 020:050			902 KAR 010:131(r)	47 Ky.R. 1326	
Amended	48 Ky.R. 629		As Amended	1969	6-16-2021
815 KAR 020:150			902 KAR 010:140		
Amended	47 Ky.R. 1098		Amended	47 Ky.R. 1288	
As Amended	1587		As Amended	1970	6-16-2021
As Amended	1967	6-15-2021	902 KAR 010:150		
815 KAR 020:195			Amended	47 Ky.R. 1292	
Amended	48 Ky.R. 631		As Amended	1973	6-16-2021
815 KAR 030:010			902 KAR 010:160		
Amended	48 Ky.R. 633		Amended	47 Ky.R. 1295	
815 KAR 030:060			As Amended	1975	6-16-2021
Amended	48 Ky.R. 635		902 KAR 010:170		
900 KAR 006:030			Amended	47 Ky.R. 1299	
Amended	47 Ky.R. 1682		As Amended	1978	6-16-2021
As Amended	2591	6-16-2021	902 KAR 010:190	48 Ky.R. 715	
900 KAR 006:055			902 KAR 020:081		
Amended	47 Ky.R. 1683		Amended	48 Ky.R. 1399	
Am Comments	2417		902 KAR 020:160		
As Amended	2591	6-16-2021	Amended	47 Ky.R. 1103	
900 KAR 006:060			Am Comment	1749	
Amended	47 Ky.R. 1685	6-16-2021	As Amended	1980	6-16-2021
900 KAR 006:065			902 KAR 020:440		
Amended	47 Ky.R. 1687		Amended	47 Ky.R. 1114	
As Amended	2592	6-16-2021	Am Comments	1760	
900 KAR 006:080			As Amended	1989	6-16-2021
Amended	47 Ky.R. 1691	6-16-2021	902 KAR 030:210	47 Ky.R. 2220	
900 KAR 006:090			As Amended	48 Ky.R. 60	7-21-2021
Amended	47 Ky.R. 1693		902 KAR 045:160		
As Amended	2594	6-16-2021	Amended	47 Ky.R. 1488	6-16-2021
900 KAR 006:095			902 KAR 045:190	47 Ky.R. 1157	
Amended	47 Ky.R. 1695	6-16-2021	Am Comments	1767	
900 KAR 006:100			As Amended	1995	
Amended	47 Ky.R. 1698		As Amended IJC	48 Ky.R. 60	6-16-2021
As Amended	2597	6-16-2021	902 KAR 048:010		
900 KAR 006:105			Amended	48 Ky.R. 661	
Amended	47 Ky.R. 1701	6-16-2021	902 KAR 048:020		
900 KAR 006:110			Amended	48 Ky.R. 665	
Amended	47 Ky.R. 1702		902 KAR 048:030		
Am Comments	2419		Amended	48 Ky.R. 668	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
902 KAR 048:040			Amended	47 Ky.R. 2746	
Amended	48 Ky.R. 673		Am Comments	48 Ky.R. 1188	
902 KAR 95:040			921 KAR 004:116		
Amended	47 Ky.R. 1493		Amended	48 Ky.R. 689	
As Amended	2599	6-16-2021	922 KAR 001:300		
906 KAR 001:180			Amended	47 Ky.R. 2749	
Amended	48 Ky.R. 1403		Am Comments	48 Ky.R. 1191	
907 KAR 001:005			922 KAR 001:380		
Amended	48 Ky.R. 1409		Amended	47 Ky.R. 2759	
907 KAR 001:030			922 KAR 001:390		
Amended	48 Ky.R. 1411		Amended	47 Ky.R. 2760	
907 KAR 001:038			922 KAR 001:490		
Amended	47 Ky.R. 2483		Amended	47 Ky.R. 1844	
As Amended	48 Ky.R. 374	8-26-2021	Am Comments	48 Ky.R. 94	
907 KAR 001:604			As Amended	377	8-26-2021
Amended	48 Ky.R. 1414		922 KAR 001:540		
907 KAR 003:005			Amended	47 Ky.R. 1849	
Amended	47 Ky.R. 1834		As Amended	2603	6-16-2021
Am Comments	48 Ky.R. 838		922 KAR 001:565		
907 KAR 003:010			Amended	48 Ky.R. 1426	
Amended	47 Ky.R. 1839		922 KAR 001:580		
Am Comments	48 Ky.R. 89		Amended	47 Ky.R. 1851	
As Amended	1174		As Amended	2604	6-16-2021
907 KAR 003:060	47 Ky.R. 2507		922 KAR 002:120		
907 KAR 007:020	47 Ky.R. 1859		Amended	47 Ky.R. 1145	
As Amended	2602	6-16-2021	Am Comments	1787	6-16-2021
907 KAR 010:815			922 KAR 002:160		
Amended	48 Ky.R. 1055		Amended	48 Ky.R. 693	
907 KAR 010:830			922 KAR 002:230		
Amended	48 Ky.R. 1417		Amended	47 Ky.R. 1303	6-16-2021
907 KAR 015:070			922 KAR 002:240		
Amended	47 Ky.R. 1121		Amended	47 Ky.R. 1304	6-16-2021
Am Comments	1769		922 KAR 002:250		
As Amended	1996	6-16-2021	Amended	47 Ky.R. 1310	
907 KAR 015:080			922 KAR 002:300	47 Ky.R. 2509	
Amended	47 Ky.R. 1127		As Amended	48 Ky.R. 380	8-26-2021
Am Comments	1776		922 KAR 005:020		
As Amended	2001	6-16-2021	Amended	47 Ky.R. 2486	
907 KAR 023:020			As Amended	48 Ky.R. 382	8-26-2021
Amended	48 Ky.R. 678		923 KAR 002:470		
908 KAR 001:390	47 Ky.R. 2222		Amended	48 Ky.R. 1059	
Am Comments	48 Ky.R. 441				
908 KAR 002:270	47 Ky.R. 1328				
As Amended	2011	6-16-2021			
910 KAR 004:010	48 Ky.R. 1442				
921 KAR 001:020					
Amended	48 Ky.R. 209				
As Amended	1178				
921 KAR 001:390					
Amended	48 Ky.R. 212				
As Amended	1179				
921 KAR 001:400					
Amended	48 Ky.R. 681				
921 KAR 002:015					
Amended	48 Ky.R. 684				
921 KAR 003:027	48 Ky.R. 236				
921 KAR 003:010					
Amended	47 Ky.R. 1497	6-16-2021			
921 KAR 003:025					
Amended	47 Ky.R. 1706				
As Amended	2398	8-3-2021			
Repealed	48 Ky.R.				
921 KAR 003:035					
Amended	47 Ky.R. 591				
Am Comments	1416				
As Amended	1594				
As Amended	2401	7-21-2021			
921 KAR 003:045					
Amended	47 Ky.R. 1499	6-16-2021			
921 KAR 003:060					

## 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.

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 001:565	15.394	503 KAR 001:060
11.160	502 KAR 030:060	15.396	503 KAR 001:140
12.355	201 KAR 022:045		503 KAR 001:060
13A.010	902 KAR 010:190	15.3971	503 KAR 001:140
13A.310	921 KAR 003:026E		503 KAR 001:060
13B	101 KAR 001:365	15.3973	503 KAR 001:060
	501 KAR 003:150	15.3975	503 KAR 001:060
	725 KAR 002:015	15.3977	503 KAR 001:060
	782 KAR 001:010	15.3979	503 KAR 001:060
	791 KAR 001:030	15.398	503 KAR 001:060
	810 KAR 005:070	15.400	503 KAR 001:060
	902 KAR 010:120		503 KAR 001:140
	902 KAR 010:190	15.402	503 KAR 001:060
	902 KAR 020:081	15.404	503 KAR 001:060
	906 KAR 001:180		503 KAR 001:110
13B.050	201 KAR 002:430		503 KAR 001:120
13B.125	201 KAR 002:430	15.410	503 KAR 005:080
13B.140	907 KAR 010:815	15.430	503 KAR 001:060
	907 KAR 010:830	15.440	503 KAR 001:090
13.310	030 KAR 006:011E		503 KAR 001:110
	030 KAR 006:011		503 KAR 001:440
14.300	030 KAR 006:011E		503 KAR 001:140
	030 KAR 006:011		503 KAR 003:020
14.302	030 KAR 006:011E	15.450	503 KAR 001:060
	030 KAR 006:011	15.460	503 KAR 005:100
14.304	030 KAR 006:011E	15.470	503 KAR 005:100
	030 KAR 006:011	15.490	503 KAR 005:100
14.306	030 KAR 006:011E	15.500	503 KAR 005:100
	030 KAR 006:011	15.510	503 KAR 005:080
14A.1-070	030 KAR 001:011	15.530	503 KAR 003:050
14A.2-010	030 KAR 001:011	15.540	502 KAR 030:060
14A.2-060	030 KAR 001:011		503 KAR 001:140
14A.2-130	030 KAR 001:011	15.550	503 KAR 003:050
14A.2-140	030 KAR 001:011	15.560	503 KAR 003:050
14A.2-160	030 KAR 001:011	15.565	503 KAR 001:140
14A.3-010	030 KAR 001:011		503 KAR 003:050
15.247	040 KAR 006:010	15.580	503 KAR 001:140
15.310	503 KAR 001:060	15.900	040 KAR 006:020
15.315	503 KAR 001:060	15.920	040 KAR 006:020
15.320	503 KAR 001:060	15.935	040 KAR 006:020
15.325	503 KAR 001:060	15A.070	503 KAR 003:020
15.330	503 KAR 001:060	15A.160	502 KAR 012:010
	503 KAR 001:080		502 KAR 030:010
	503 KAR 001:090	16.040	502 KAR 045:005
	503 KAR 001:100		502 KAR 045:015
	503 KAR 001:110		502 KAR 045:035
	503 KAR 001:120		502 KAR 045:085
	503 KAR 001:140		502 KAR 045:150
	503 KAR 001:170	16.050	502 KAR 045:005
15.334	503 KAR 001:060		502 KAR 045:015
15.335	503 KAR 001:060		502 KAR 045:035
15.340	503 KAR 001:060		502 KAR 045:045
	503 KAR 003:030		502 KAR 045:075
15.350	503 KAR 001:060		502 KAR 045:105
15.360	503 KAR 001:060		502 KAR 045:115
15.367	503 KAR 001:060	16.060	502 KAR 040:010
15.380	503 KAR 001:060	16.080	502 KAR 045:015
	503 KAR 001:140		502 KAR 045:035
15.382	503 KAR 001:060		502 KAR 045:045
	503 KAR 001:140	16.132	502 KAR 012:010
15.383	502 KAR 013:010	16.140	502 KAR 050:010
15.384	503 KAR 001:060	16.505-16.652	105 KAR 001:210
	503 KAR 001:140	16.545	105 KAR 001:330
15.386	503 KAR 001:060	16.645	105 KAR 001:330
	503 KAR 001:110		105 KAR 001:310
15.388	503 KAR 001:060	17.110	502 KAR 030:020
15.390	503 KAR 001:060		502 KAR 040:010
15.391	503 KAR 001:060	17.115	502 KAR 030:020
15.392	503 KAR 001:060		502 KAR 030:060
	503 KAR 001:140	17.140	502 KAR 030:010

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	502 KAR 030:050	61.685	105 KAR 001:330
	502 KAR 030:060	61.870	725 KAR 001:020
	502 KAR 030:070	61.870-61.884	782 KAR 001:010
17.147	502 KAR 030:060		791 KAR 001:155
17.150	502 KAR 030:030	61.872	502 KAR 030:070
	502 KAR 030:070	61.876	040 KAR 001:040E
17.151	502 KAR 030:060		040 KAR 001:040
17.152	502 KAR 030:060	61.878	502 KAR 030:070
17.160	502 KAR 030:060		725 KAR 001:025
17.167	502 KAR 030:060		791 KAR 001:155
17.180	502 KAR 014:010	61.884	502 KAR 030:070
17.450	502 KAR 035:010	67A	815 KAR 007:110
	502 KAR 035:020	67C	815 KAR 007:110
	502 KAR 035:030	72.020	502 KAR 012:010
	502 KAR 035:040	72.025	501 KAR 007:090
	502 KAR 035:050	72.210-72.280	500 KAR 012:010
17.460	502 KAR 035:010	75.400	739 KAR 002:060
	502 KAR 035:020	78.510-78.852	105 KAR 001:210
	502 KAR 035:030		105 KAR 001:310
	502 KAR 035:040	78.545	105 KAR 001:330
	502 KAR 035:050	78.5520	105 KAR 001:330
17.500-17.540	502 KAR 031:020	78.610	105 KAR 001:330
17.550-17.991	501 KAR 006:190	82.105	815 KAR 007:110
18A.020	101 KAR 001:345	83	815 KAR 007:110
18A.030	101 KAR 002:210E	83A	815 KAR 007:110
	101 KAR 002:210	95.010	739 KAR 002:060
18A.075	101 KAR 001:335	95A.040	739 KAR 002:060
	101 KAR 001:345	95A.210	739 KAR 002:060
	101 KAR 001:365	117.001	031 KAR 005:025E
	101 KAR 001:367		031 KAR 005:025
	101 KAR 001:375	117.015	031 KAR 004:195
	101 KAR 001:400	117.066	031 KAR 004:195E
18A.0751	101 KAR 001:335	117.085	031 KAR 005:025E
	101 KAR 001:345		031 KAR 005:025
	101 KAR 001:365	117.086	031 KAR 005:025E
	101 KAR 001:367		031 KAR 005:025
	101 KAR 001:375	117.087	031 KAR 005:025E
	101 KAR 001:400		031 KAR 005:025
18A.095	101 KAR 001:345	117.145	031 KAR 005:025E
	101 KAR 001:365		031 KAR 005:025
	101 KAR 001:367	117.225	031 KAR 005:025E
18A.115	101 KAR 001:400		031 KAR 005:025
18A.225	101 KAR 002:210E	117.228	031 KAR 005:025E
	101 KAR 002:210		031 KAR 005:025
18A.2254	101 KAR 002:210E	120.205	031 KAR 004:200E
	101 KAR 002:210		031 KAR 004:200
39A.180	201 KAR 002:411E	120.215	031 KAR 004:200E
39F.180	603 KAR 005:360	131.130	103 KAR 016:352
39F.200	603 KAR 005:360		103 KAR 018:090
41.400	040 KAR 006:020	131.570	787 KAR 001:110
42.019	200 KAR 003:020E	136.120	103 KAR 008:090
	200 KAR 003:020		103 KAR 008:090
42.425	200 KAR 003:020E	139.010	103 KAR 027:050
	200 KAR 003:020		103 KAR 027:150
45.031	200 KAR 017:110E		103 KAR 027:230
	200 KAR 017:110		103 KAR 030:091
45.237-45.241	922 KAR 001:565		103 KAR 030:120
45.357	921 KAR 004:116E		103 KAR 030:140
	921 KAR 004:116		103 KAR 030:190
45A	603 KAR 004:035		103 KAR 030:250
	921 KAR 001:020	139.105	103 KAR 027:050
49	502 KAR 012:010		103 KAR 030:190
56.010	200 KAR 003:020E	139.200	103 KAR 027:050
	200 KAR 003:020		103 KAR 027:150
56.463	200 KAR 003:020E		103 KAR 027:230
	200 KAR 003:020		103 KAR 030:250
61.365	502 KAR 013:010	139.215	103 KAR 027:150
61.371-61.379	101 KAR 001:395		103 KAR 027:230
61.505	105 KAR 001:330	139.240	103 KAR 027:230
61.505-61.705	105 KAR 001:210	139.250	103 KAR 027:230
	105 KAR 001:310	139.260	103 KAR 027:150
61.543	105 KAR 001:330		103 KAR 027:230
61.552	105 KAR 001:330		103 KAR 030:091
61.592	105 KAR 001:330		103 KAR 030:190



KRS SECTION	REGULATION	KRS SECTION	REGULATION
139.270	103 KAR 030:250		301 KAR 002:260
	103 KAR 027:150		301 KAR 004:050
	103 KAR 027:230	150.022	301 KAR 004:001
	103 KAR 030:250		301 KAR 004:010
139.280	103 KAR 027:150	150.023	301 KAR 004:001
	103 KAR 027:230	150.025	301 KAR 001:019
	103 KAR 030:250		301 KAR 001:031
139.290	103 KAR 027:150		301 KAR 002:050
	103 KAR 027:230		301 KAR 002:111
	103 KAR 030:250		301 KAR 002:224
139.310	103 KAR 027:050		301 KAR 002:230
	103 KAR 027:150		301 KAR 003:010
	103 KAR 027:230		301 KAR 003:026
	103 KAR 030:250		301 KAR 003:030
139.330	103 KAR 027:050		301 KAR 004:010
	103 KAR 027:150		301 KAR 004:020
	103 KAR 027:230		301 KAR 004:110
	103 KAR 030:250	150.090	301 KAR 001:012
139.340	103 KAR 030:190		301 KAR 001:016
139.470	103 KAR 027:230		301 KAR 001:031
	103 KAR 030:091		301 KAR 005:030
	103 KAR 030:190	150.105	301 KAR 002:260
	103 KAR 030:250	150.170	301 KAR 001:031
139.480	103 KAR 027:230		301 KAR 001:050
	103 KAR 030:091		301 KAR 001:125
	103 KAR 030:120		301 KAR 001:152
	103 KAR 030:140		301 KAR 002:041
	103 KAR 030:250		301 KAR 002:050
139.486	103 KAR 030:190		301 KAR 002:111
139.531	810 KAR 005:030		301 KAR 002:230
141.010	103 KAR 016:270		301 KAR 002:260
	103 KAR 016:352		301 KAR 003:026
141.0101	103 KAR 016:352		301 KAR 003:110
141.012	103 KAR 016:352		301 KAR 005:030
141.039	103 KAR 016:320		301 KAR 004:070
	103 KAR 016:352	150.175	301 KAR 001:031
141.040	103 KAR 016:270		301 KAR 001:050
	103 KAR 016:352		301 KAR 001:082
141.044	103 KAR 016:352		301 KAR 001:120
141.050	103 KAR 016:320		301 KAR 001:152
	103 KAR 018:090		301 KAR 002:142
141.120	103 KAR 016:270		301 KAR 002:230
	103 KAR 016:352		301 KAR 002:260
141.121	103 KAR 016:270		301 KAR 003:026
141.160	103 KAR 016:352		301 KAR 003:110
141.170	103 KAR 016:352		301 KAR 005:030
141.206	103 KAR 016:270	150.180	301 KAR 002:041
	103 KAR 016:352		301 KAR 004:070
141.210	103 KAR 016:352	150.183	301 KAR 002:082
141.310	103 KAR 018:090	150.186	301 KAR 002:082
141.315	103 KAR 018:090	150.190	301 KAR 001:120
141.325	103 KAR 018:090	150.195	301 KAR 002:082
141.330	103 KAR 018:020		301 KAR 004:070
141.355	103 KAR 018:020		301 KAR 005:001
141.420	725 KAR 001:020		301 KAR 005:030
141.990	103 KAR 016:352	150.235	301 KAR 001:120
142.303	907 KAR 010:830		301 KAR 001:125
150.010	301 KAR 001:050		301 KAR 002:082
	301 KAR 001:125		301 KAR 002:260
	301 KAR 001:140		301 KAR 005:030
	301 KAR 001:152	150.236	301 KAR 005:100
	301 KAR 001:120	150.240	301 KAR 003:012
	301 KAR 002:041	150.250	301 KAR 001:031
	301 KAR 002:050		301 KAR 002:050
	301 KAR 002:082		301 KAR 004:100
	301 KAR 002:224	150.280	301 KAR 002:041
	301 KAR 003:012		301 KAR 002:084
	301 KAR 003:030	150.290	301 KAR 002:084
	301 KAR 004:010	150.300	301 KAR 004:020
	301 KAR 004:020	150.305	301 KAR 002:142
	301 KAR 004:050		301 KAR 002:224
	301 KAR 004:070	150.320	301 KAR 002:082
150.015	301 KAR 002:015	150.330	301 KAR 002:082
	301 KAR 002:082		301 KAR 002:224

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	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	156.496	922 KAR 001:565
150.445	301 KAR 001:152	157.200	016 KAR 004:020
150.450	301 KAR 001:140	157.250	016 KAR 004:020
	301 KAR 001:152	157.3175	016 KAR 002:040
150.470	301 KAR 001:031	157.320	702 KAR 007:125E
150.485	301 KAR 001:120		702 KAR 007:125
	301 KAR 001:125	157.350	702 KAR 007:125E
150.600	301 KAR 002:224		702 KAR 007:125
	301 KAR 002:260	157.360	702 KAR 007:125E
	301 KAR 004:020		702 KAR 007:125
	301 KAR 004:050	158.030	702 KAR 007:125E
150.620	301 KAR 001:012		702 KAR 007:125
	301 KAR 001:018	158.070	702 KAR 007:125E
	301 KAR 001:019		702 KAR 007:125
	301 KAR 001:050	158.100	702 KAR 007:125E
	301 KAR 003:010		702 KAR 007:125
	301 KAR 003:012	158.135	013 KAR 003:050
	301 KAR 003:026	158.143	013 KAR 003:050
	301 KAR 003:027	158.160	902 KAR 002:221E
	301 KAR 004:100	158.240	702 KAR 007:125E
150.625	301 KAR 001:012		702 KAR 007:125
	301 KAR 001:016	158.6645	013 KAR 003:050
	301 KAR 001:019	159.010	702 KAR 007:125E
150.630	301 KAR 002:041		702 KAR 007:125
	301 KAR 002:260	159.030	702 KAR 007:125E
150.640	301 KAR 001:012		702 KAR 007:125
	301 KAR 001:016		704 KAR 007:121
	301 KAR 001:019	159.035	702 KAR 007:125E
	301 KAR 002:050		702 KAR 007:125
	301 KAR 003:010	159.140	702 KAR 007:125E
	301 KAR 003:012		702 KAR 007:125
150.680	301 KAR 002:050	159.170	702 KAR 007:125E
150.990	301 KAR 001:050		702 KAR 007:125
	301 KAR 001:152	160.290	702 KAR 001:191E
	301 KAR 002:041		702 KAR 001:191
	301 KAR 002:142		702 KAR 007:150
	301 KAR 002:082		704 KAR 007:121
	301 KAR 002:224	160.613	103 KAR 030:140
	301 KAR 002:260	161.011	013 KAR 003:030
	301 KAR 003:012	161.020	016 KAR 002:040
	301 KAR 003:030		016 KAR 002:050
	301 KAR 003:110		016 KAR 002:180
	301 KAR 004:070		016 KAR 002:220E
	301 KAR 004:100		016 KAR 002:220
	301 KAR 005:030		016 KAR 002:230E
151.601	200 KAR 017:110E		016 KAR 002:230
	200 KAR 017:110		016 KAR 002:180
151.605	200 KAR 017:110E		016 KAR 003:070
	200 KAR 017:110		016 KAR 004:020
151B.020	787 KAR 002:040		016 KAR 004:050
151B.185	781 KAR 001:020		016 KAR 005:010
151B.190	781 KAR 001:010		016 KAR 006:010
	781 KAR 001:020	161.028	016 KAR 002:050
	781 KAR 001:030		016 KAR 002:220E

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	016 KAR 002:220	165A.420	791 KAR 001:025
	016 KAR 002:230E	165A.450	791 KAR 001:020
	016 KAR 002:230		791 KAR 001:035
	016 KAR 003:070		791 KAR 001:050
	016 KAR 004:020	165A.460	502 KAR 010:070
	016 KAR 004:050		502 KAR 010:090
	016 KAR 005:010		791 KAR 001:040
	016 KAR 006:010		791 KAR 001:070
161.030	016 KAR 002:040	165A.460-165A.515	791 KAR 001:060
	016 KAR 002:050	165A.465	791 KAR 001:050
	016 KAR 002:180		791 KAR 001:070
	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 004:020		791 KAR 001:070
	016 KAR 004:050	165A.485	791 KAR 001:070
	016 KAR 005:010	165A.500	791 KAR 001:080
	016 KAR 006:010	165A.510	791 KAR 001:080
161.053	016 KAR 002:050		791 KAR 001:100
161.1211	016 KAR 002:180	165A.990	791 KAR 001:030
161.155	702 KAR 001:191	171	725 KAR 001:010
161.200	702 KAR 007:125E		725 KAR 001:050
	702 KAR 007:125	171.027	725 KAR 002:015
163.470	782 KAR 001:010	171.125	725 KAR 002:015
164.518	011 KAR 016:001	171.221	725 KAR 002:080
	011 KAR 016:010	171.420	725 KAR 001:025
164.740	011 KAR 016:001		725 KAR 001:061
164.945	016 KAR 005:010	171.450	725 KAR 001:020
164.946	016 KAR 005:010		725 KAR 001:030
164.947	016 KAR 005:010		725 KAR 001:061
164A.575	745 KAR 001:035	171.470	725 KAR 001:025
165A.310	502 KAR 010:035	171.480	725 KAR 001:025
	791 KAR 001:020	171.500	725 KAR 001:025
	791 KAR 001:070		725 KAR 001:040
165A.330	791 KAR 001:010	171.520	725 KAR 001:025
	791 KAR 001:020	171.550	725 KAR 001:025
	791 KAR 001:040	171.580	725 KAR 001:025
	791 KAR 001:050	171.590	725 KAR 001:025
	791 KAR 001:060	171.600	725 KAR 001:020
	791 KAR 001:070	171.670	725 KAR 001:020
	791 KAR 001:080	173.040	725 KAR 002:015
	791 KAR 001:100	173.340	725 KAR 002:015
165A.340	791 KAR 001:020	173.480	725 KAR 002:015
	791 KAR 001:155	173.725	725 KAR 002:015
165A.350	791 KAR 001:010	176.051	603 KAR 003:100
	791 KAR 001:020	177.0734-177.0738	603 KAR 004:035
	791 KAR 001:025	177.572-177.576	603 KAR 010:011E
	791 KAR 001:030		603 KAR 010:040E
	791 KAR 001:070		603 KAR 010:040
	791 KAR 001:150	177.830-177.890	603 KAR 010:011E
165A.360	791 KAR 001:010		603 KAR 010:040E
	791 KAR 001:020		603 KAR 010:040
	791 KAR 001:025	177.990	603 KAR 010:011E
	791 KAR 001:030		603 KAR 010:040E
	791 KAR 001:150		603 KAR 010:040
	791 KAR 001:160	186.021	806 KAR 039:070
165A.370	791 KAR 001:020	186.412	502 KAR 013:010
	791 KAR 001:027		502 KAR 013:040
	791 KAR 001:030	186.480	782 KAR 001:070
	791 KAR 001:040	186.570	921 KAR 001:390
	791 KAR 001:050	186.576	782 KAR 001:070
	791 KAR 001:060	186.577	782 KAR 001:070
	791 KAR 001:070	186.578	782 KAR 001:070
	791 KAR 001:080	186.579	782 KAR 001:070
	791 KAR 001:100	186A.040	806 KAR 039:070
	791 KAR 001:155	186A.042	806 KAR 039:070
	791 KAR 001:160	186A.095	806 KAR 039:070
165A.380	791 KAR 001:025	189A.010	782 KAR 001:070
	791 KAR 001:070	189.450	502 KAR 015:020
165A.390	791 KAR 001:020	189.635	502 KAR 015:010
	791 KAR 001:030	189.751	502 KAR 015:020
	791 KAR 001:155	189.752	502 KAR 015:020

KRS SECTION	REGULATION	KRS SECTION	REGULATION
189.753	502 KAR 015:020	205.560	907 KAR 001:604
194.010	921 KAR 004:116E		907 KAR 023:020E
	921 KAR 004:116		907 KAR 023:020
194.030	787 KAR 001:310	205.561	907 KAR 023:020E
194.060	921 KAR 004:116E		907 KAR 023:020
	921 KAR 004:116	205.5631	907 KAR 023:020E
	922 KAR 002:160E		907 KAR 023:020
	922 KAR 002:160	205.5632	907 KAR 023:020E
194.070	921 KAR 004:116E		907 KAR 023:020
	921 KAR 004:116	205.5634	907 KAR 023:020E
194A	921 KAR 002:015E		907 KAR 023:020
	921 KAR 002:015	205.5636	907 KAR 023:020E
194A.005	922 KAR 001:565		907 KAR 023:020
194A.540	201 KAR 020:320	205.5638	907 KAR 023:020E
196.035	501 KAR 002:060		907 KAR 023:020
196.020	501 KAR 002:060	205.5639	907 KAR 023:020E
196.030	501 KAR 006:250		907 KAR 023:020
197.045	501 KAR 002:060	205.565	907 KAR 010:830
	725 KAR 002:015	205.624	907 KAR 001:005
198B.032	725 KAR 002:015	205.6312	907 KAR 001:005
198B.040	815 KAR 007:110		907 KAR 001:604
198B.050	725 KAR 002:015	205.6316	907 KAR 023:020E
	815 KAR 004:025		907 KAR 023:020
	815 KAR 007:110	205.637	907 KAR 010:815
	815 KAR 010:060		907 KAR 010:830
	815 KAR 020:195	205.638	907 KAR 010:830
198B.060	815 KAR 007:110	205.639	907 KAR 010:815
198B.070	815 KAR 007:110		907 KAR 010:830
198B.400	815 KAR 004:010	205.640	907 KAR 010:815
	815 KAR 004:027		907 KAR 010:830
198B.400-198B.0540	815 KAR 004:025	205.6405	907 KAR 010:815
198B.470	815 KAR 004:010	205.6406	907 KAR 010:815
198B.480	815 KAR 004:010	205.6407	907 KAR 010:815
198B.490	815 KAR 004:027	205.6408	907 KAR 010:815
198B.500	815 KAR 004:010	204.6485	907 KAR 001:604
198B.510	815 KAR 004:010	205.710	921 KAR 001:020
198B.540	815 KAR 004:010		921 KAR 001:390
198B.550-198B.630	815 KAR 007:080		921 KAR 001:400E
199.011	922 KAR 001:565		921 KAR 001:400
199.462	922 KAR 001:565	205.712	921 KAR 001:020
199.470-199.590	922 KAR 001:565		921 KAR 001:390
199.894	922 KAR 002:160E	205.721	921 KAR 001:390
	922 KAR 002:160	205.730	921 KAR 001:020
199.896	922 KAR 002:160E		921 KAR 001:390
	922 KAR 002:160	205.735	921 KAR 001:020
199.898	922 KAR 002:160E	205.7685	921 KAR 001:020
	922 KAR 002:160	205.772	921 KAR 001:020
199.8982	922 KAR 002:160E	205.774	921 KAR 001:020
	922 KAR 002:160	205.776	921 KAR 001:020
199.899	922 KAR 002:160E	205.800	921 KAR 001:020
	922 KAR 002:160	205.802	921 KAR 001:400E
202A.011	702 KAR 007:150		921 KAR 001:400
	921 KAR 002:015E	205.8451	907 KAR 001:604
	921 KAR 002:015	205.990	921 KAR 001:020
202A.410	501 KAR 014:010		921 KAR 001:400E
205.175	921 KAR 001:020		921 KAR 001:400
205.177	921 KAR 001:020	209.020	502 KAR 012:010
205.2005	921 KAR 003:026E		921 KAR 002:015E
	921 KAR 003:027E		921 KAR 002:015
	921 KAR 003:027	209.030	502 KAR 012:010
205.211	922 KAR 001:565		906 KAR 001:180
205.245	921 KAR 002:015E	209.032	902 KAR 020:081
	921 KAR 002:015		906 KAR 001:180
	923 KAR 002:470	209A.020	502 KAR 012:010
205.510	900 KAR 012:005E	209A.030	502 KAR 012:010
	900 KAR 012:005	209A.100	502 KAR 012:010
	907 KAR 010:815	209A.110	502 KAR 012:010
	907 KAR 010:830	209A.130	502 KAR 012:010
205.5510-205.5520	907 KAR 023:020E	211.015	902 KAR 010:120
	907 KAR 023:020		902 KAR 010:190
205.559	900 KAR 012:005E	211.090	902 KAR 010:120
	900 KAR 012:005	211.180	902 KAR 002:212E
205.5591	900 KAR 012:005E		902 KAR 002:213E
	900 KAR 012:005		902 KAR 010:190

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	902 KAR 048:010		902 KAR 020:081
	902 KAR 048:020	217.015	907 KAR 023:020E
	902 KAR 048:030		907 KAR 023:020
211.185	902 KAR 048:040	217.055	201 KAR 002:076
211.332	902 KAR 010:121	217.065	201 KAR 002:076
	900 KAR 012:005E	217.186	201 KAR 002:360
	900 KAR 012:005	217.211	806 KAR 017:280
211.600	502 KAR 012:010	217.660	902 KAR 048:010
211.990	902 KAR 010:120	217.801	902 KAR 048:010
	902 KAR 010:121		902 KAR 048:010
211.994	902 KAR 048:010		902 KAR 048:040
	902 KAR 048:010	218A.1431	502 KAR 047:010
211.210	902 KAR 010:120	218A.172	201 KAR 020:057
211.220	902 KAR 010:120	218A.205	201 KAR 002:050
211.900-211.905	902 KAR 048:010		201 KAR 002:430
	902 KAR 048:010		201 KAR 008:520
211.990	902 KAR 010:120		201 KAR 020:057
	902 KAR 048:010		201 KAR 020:215
211.994	902 KAR 048:010	224A.011	200 KAR 017:110E
	902 KAR 048:010		200 KAR 017:110
211.9061-200.9079	902 KAR 048:010	224A.020	200 KAR 017:110E
211.9063	902 KAR 048:030		200 KAR 017:110
	902 KAR 048:040	224A.035	200 KAR 017:110E
211.9069	902 KAR 048:030		200 KAR 017:110
211.9071	902 KAR 048:030	224A.040	200 KAR 017:110E
	902 KAR 048:040		200 KAR 017:110
211.9075	902 KAR 048:030	224A.050-224A.314	200 KAR 017:110E
212.626	815 KAR 007:110		200 KAR 017:110
213.036	921 KAR 001:390	224.1-010-410	502 KAR 047:010
213.046	921 KAR 001:390	224.60-105	815 KAR 030:060
	921 KAR 001:400E	224.60-135	815 KAR 030:060
	921 KAR 001:400	224.99-010	502 KAR 047:010
213.071	921 KAR 001:390	227.300	725 KAR 002:015
214.010	902 KAR 002:212E		815 KAR 010:060
	902 KAR 002:213E		815 KAR 030:060
	902 KAR 002:221E	227.320	815 KAR 010:060
214.020	902 KAR 002:221E	227.330	815 KAR 010:060
214.036	922 KAR 002:160E	227.489	815 KAR 007:110
	922 KAR 002:160	227.700	815 KAR 010:070
214.623	902 KAR 002:020	227.702	815 KAR 010:070
214.645	902 KAR 002:020	227.704	815 KAR 010:070
	902 KAR 002:212E	227.708	815 KAR 010:070
	902 KAR 002:213E	227.710	815 KAR 010:070
214.990	902 KAR 002:020	227.715	815 KAR 010:070
215.520	902 KAR 002:020	227.750	815 KAR 010:070
216.380	907 KAR 010:815	227.752	815 KAR 010:070
	907 KAR 010:830	227.990	815 KAR 010:060
216A.070	201 KAR 006:020	230.215	810 KAR 004:040
216A.080	201 KAR 006:020		810 KAR 005:030
216.530	921 KAR 002:015E		810 KAR 005:060
	921 KAR 002:015		810 KAR 005:070
216.557	921 KAR 002:015E	230.260	810 KAR 004:040
	921 KAR 002:015		810 KAR 005:030
216.710-216.716	906 KAR 001:180		810 KAR 005:060
	910 KAR 004:010		810 KAR 005:070
216.765	921 KAR 002:015E	230.280	810 KAR 005:070
	921 KAR 002:015	230.290	810 KAR 005:070
216.935	902 KAR 020:081	230.300	810 KAR 005:070
	907 KAR 001:030	230.310	810 KAR 005:070
216.936	907 KAR 001:030	230.320	810 KAR 005:070
216.937	902 KAR 020:081	234.120	815 KAR 030:010
	907 KAR 001:030	234.130	815 KAR 030:010
216.9375	902 KAR 020:081	234.140	815 KAR 010:060
	907 KAR 001:030	235	301 KAR 006:001
216.935-216.939	910 KAR 004:010	235.40	301 KAR 006:070
216.939	907 KAR 001:030	235.220	301 KAR 006:070
216B	921 KAR 002:015E	235.315	301 KAR 001:018
	921 KAR 002:015	237.110	502 KAR 011:010
216B.010-216B.130	902 KAR 020:081		502 KAR 011:060
216B.015	502 KAR 012:010		502 KAR 011:070
	902 KAR 002:020		502 KAR 013:030
	906 KAR 001:180		502 KAR 013:040
216B.400	502 KAR 012:010		502 KAR 013:050
216B.990	502 KAR 012:010		502 KAR 013:060

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	502 KAR 013:080	303.70	921 KAR 001:020
	502 KAR 030:060	303.8	921 KAR 001:400E
	503 KAR 004:010		921 KAR 001:400
	503 KAR 004:040	303.30-303.32	921 KAR 001:400E
	503 KAR 004:050		921 KAR 001:400
	921 KAR 001:390	304	806 KAR 011:020
237.120	503 KAR 004:040		921 KAR 001:020
237.122	503 KAR 004:040		921 KAR 001:390
237.124	503 KAR 004:040	304.1-050	806 KAR 011:020
	503 KAR 004:050		806 KAR 046:050
237.126	503 KAR 004:040	304.1-120	806 KAR 011:020
237.138	502 KAR 013:030	304.2-100	806 KAR 017:290
	502 KAR 013:040		806 KAR 017:350
	502 KAR 013:050	304.2-110	806 KAR 017:470
	502 KAR 013:060	304.2-140	806 KAR 017:280
	502 KAR 013:080	304.2-160	806 KAR 011:020
237.140	502 KAR 013:030	304.2-165	806 KAR 011:020
	502 KAR 013:040	304.2-230	806 KAR 017:290
	502 KAR 013:050	304.2-310	806 KAR 017:290
	502 KAR 013:060		806 KAR 017:450
	502 KAR 013:080	304.5-040	806 KAR 011:020
237.142	502 KAR 013:030	304.5-140	806 KAR 005:025
	502 KAR 013:040	304.9-020	806 KAR 011:020
	502 KAR 013:050	304.9-051	806 KAR 011:020
	502 KAR 013:060	304.9-052	806 KAR 017:450
	502 KAR 013:080	304.11-030	806 KAR 011:020
237.138-237.142	502 KAR 013:010	304.11-045	806 KAR 011:020
241.010	103 KAR 030:120	304.13-011	806 KAR 046:050
243.030	103 KAR 030:120	304.13-051	806 KAR 046:050
	804 KAR 004:212	304.14-120	806 KAR 046:050
243.040	103 KAR 030:120	304.17-412	806 KAR 017:280
243.100	804 KAR 004:480	304.17A	806 KAR 017:260
243.220	804 KAR 004:221	304.17A-005	806 KAR 011:020
243.260	804 KAR 004:251		806 KAR 017:370
243.520	804 KAR 004:480		806 KAR 017:470
247.100	303 KAR 001:110	304.17A-138	806 KAR 017:270
247.145	303 KAR 001:005		900 KAR 012:005E
	303 KAR 001:010		900 KAR 012:005
	303 KAR 001:015	304.17A-200	806 KAR 017:450
	303 KAR 001:075	304.17A-230	806 KAR 017:240
	303 KAR 001:080	304.17A-330	806 KAR 017:240
	303 KAR 001:090	304.17A-410	806 KAR 011:020
	303 KAR 001:100	304.17A-600	806 KAR 011:020
217.147	303 KAR 001:110		806 KAR 017:280
247.153	303 KAR 001:005		806 KAR 017:290
247.154	303 KAR 001:005	304.17A-607	806 KAR 017:370
	303 KAR 001:010	304.17A-619	806 KAR 017:280
	303 KAR 001:015	304.17A-621	806 KAR 017:290
247.160	303 KAR 001:075	304.17A-623	806 KAR 017:280
258.065	902 KAR 002:020	304.17A-631	806 KAR 017:290
258.990	902 KAR 002:020	304.17A-633	806 KAR 011:020
281A.120	502 KAR 010:120	304.17A-700	806 KAR 017:370
281A.130	502 KAR 010:120		806 KAR 017:470
281A.150	502 KAR 010:120	304.17A-730	806 KAR 017:370
281A.160	502 KAR 010:035	304.17A-750	806 KAR 017:450
	502 KAR 010:110	304.17A-770	806 KAR 017:450
	502 KAR 010:120	304.17A-802	806 KAR 011:020
281A.170	502 KAR 010:120	304.17A-812	806 KAR 011:020
285.065	301 KAR 002:082	304.17A-846	806 KAR 017:470
285.085	301 KAR 002:082	304.17B-001	806 KAR 017:350
302.31	921 KAR 001:390	304.17B-021	806 KAR 017:350
302.33	921 KAR 001:390	304.17B-023	806 KAR 017:350
302.34	921 KAR 001:020	304.17C-010	806 KAR 017:280
302.50	921 KAR 001:400E		806 KAR 017:370
	921 KAR 001:400	304.17C-030	806 KAR 017:280
302.56	921 KAR 001:400E	304.17C-090	806 KAR 017:370
	921 KAR 001:400	304.18-045	806 KAR 017:280
302.80	921 KAR 001:400E	304.18-114	806 KAR 017:260
	921 KAR 001:400	304.18-120	806 KAR 017:260
303.107	921 KAR 001:020	304.32-147	806 KAR 017:280
303.21	921 KAR 001:020	304.32-330	806 KAR 017:280
303.4	921 KAR 001:400E	304.38-225	806 KAR 017:280
	921 KAR 001:400	304.39-010	806 KAR 017:370
303.5	921 KAR 001:390	304.39-080	806 KAR 039:070

KRS SECTION	REGULATION	KRS SECTION	REGULATION
304.39-083	806 KAR 039:070		201 KAR 020:474
304.39-085	806 KAR 039:070		201 KAR 020:476
304.39-087	806 KAR 039:070		201 KAR 020:478
304.39-090	806 KAR 039:070	314.041	201 KAR 020:320
304.39-117	806 KAR 039:070	314.042	201 KAR 020:057
304.39-340	806 KAR 017:370		902 KAR 020:081
304.40-320	900 KAR 012:005E	314.073	201 KAR 020:215
	900 KAR 012:005	314.089	201 KAR 020:478
304.47-020	806 KAR 017:450	314.091	201 KAR 020:478
304.48-020	806 KAR 046:050	314.111	201 KAR 020:320
304.48-180	806 KAR 046:050	314.103	201 KAR 020:476
304.99-020	806 KAR 011:020		201 KAR 020:478
307.13	921 KAR 001:020	314.131	201 KAR 020:320
309.350	201 KAR 042:010		201 KAR 020:472
309.351	201 KAR 042:050		201 KAR 020:474
	201 KAR 042:110		201 KAR 020:476
309.355	201 KAR 042:010	314.137	201 KAR 020:470
	201 KAR 042:030		201 KAR 020:472
	201 KAR 042:050		201 KAR 020:474
	201 KAR 042:060		201 KAR 020:476
	201 KAR 042:110		201 KAR 020:478
309.357	201 KAR 042:010	314.193	201 KAR 020:057
	201 KAR 042:040	314.195	201 KAR 020:057
309.358	201 KAR 042:035	314.991	201 KAR 020:215
309.359	201 KAR 042:035		201 KAR 020:478
	201 KAR 042:070	315.010	201 KAR 002:074
309.361	201 KAR 042:040		201 KAR 002:411E
	201 KAR 042:110		201 KAR 002:420
309.362	201 KAR 042:035		902 KAR 002:020
	201 KAR 042:040	315.020	201 KAR 002:074
	201 KAR 042:050		201 KAR 002:076
	201 KAR 042:060		201 KAR 002:411E
309.363	201 KAR 042:035	315.030	201 KAR 002:074
309.404	201 KAR 047:010	315.035	201 KAR 002:050
309.406	201 KAR 047:010		201 KAR 002:076
	201 KAR 047:030	315.0351	201 KAR 002:050
309.412	201 KAR 047:010		201 KAR 002:076
	201 KAR 047:030	315.036	201 KAR 002:050
309.414	201 KAR 047:010	315.050	201 KAR 002:050
	201 KAR 047:030		201 KAR 002:411E
309.416	201 KAR 047:010		201 KAR 002:420
	201 KAR 047:030	315.060	201 KAR 002:050
309.418	201 KAR 047:010	315.065	201 KAR 002:411E
	201 KAR 047:030	315.110	201 KAR 002:050
309.420	201 KAR 047:010	315.120	201 KAR 002:050
	201 KAR 047:030	315.121	201 KAR 002:074
311.282	902 KAR 002:020		201 KAR 002:270
311.571	902 KAR 002:020		201 KAR 002:430
311.5975	900 KAR 012:005E	315.131	201 KAR 002:430
	900 KAR 012:005	315.135	201 KAR 002:411E
311.621	906 KAR 001:180	315.136	201 KAR 002:420
311.840	902 KAR 020:081	315.191	201 KAR 002:030
311A.100	502 KAR 030:060		201 KAR 002:050
312.019	201 KAR 021:035		201 KAR 002:076
	201 KAR 021:054		201 KAR 002:270
	201 KAR 021:070	315.205	201 KAR 002:411E
	201 KAR 021:090	315.210	201 KAR 002:030
	201 KAR 021:100	315.402	201 KAR 002:050
312.085	201 KAR 021:090	315.500	201 KAR 002:411E
312.115	201 KAR 021:070	316.010	201 KAR 015:110E
313.022	201 KAR 008:520		201 KAR 015:110
313.030	201 KAR 008:520	316.030	201 KAR 015:040E
313.100	201 KAR 008:520		201 KAR 015:040
314.011	201 KAR 020:057		201 KAR 015:050E
	201 KAR 020:215		201 KAR 015:050
	201 KAR 020:320		201 KAR 015:110E
	502 KAR 012:010		201 KAR 015:110
	702 KAR 007:150	316.125	201 KAR 015:030E
	902 KAR 020:081		201 KAR 015:030
	922 KAR 002:160E		201 KAR 015:110E
	922 KAR 002:160		201 KAR 015:110
314.021	201 KAR 020:320	316.127	201 KAR 015:110E
	201 KAR 020:478		201 KAR 015:110
314.035	201 KAR 020:472	316.130	201 KAR 015:030E

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 015:030		787 KAR 001:020
	201 KAR 015:110E		787 KAR 001:220
	201 KAR 015:110		787 KAR 001:260
316.132	201 KAR 015:030E		787 KAR 001:290
	201 KAR 015:030		787 KAR 001:300
316.140	201 KAR 015:030E	341.115	787 KAR 001:020
	201 KAR 015:030	341.145	787 KAR 001:150
316.165	201 KAR 015:125E	341.190	787 KAR 001:010
	201 KAR 015:125		787 KAR 001:020
316.260	201 KAR 015:110E		787 KAR 001:060
	201 KAR 015:110		787 KAR 001:220
318.010	815 KAR 020:195	341.243	787 KAR 001:010
318.030	815 KAR 020:050	341.250	787 KAR 001:010
318.134	815 KAR 020:050		787 KAR 001:220
	815 KAR 020:195		787 KAR 001:260
318.160	815 KAR 020:050	341.262	787 KAR 001:010
319A.010	902 KAR 020:081		787 KAR 001:220
	907 KAR 001:604	341.270	787 KAR 001:210
321.181	902 KAR 002:020	341.272	787 KAR 001:210
322.010	725 KAR 002:015		787 KAR 001:290
323.010	725 KAR 002:015	341.350	787 KAR 001:090
323.020	725 KAR 002:015		787 KAR 001:150
324B.030	201 KAR 047:010		787 KAR 001:310
324B.040	201 KAR 047:010	341.360	787 KAR 001:060
327.010	201 KAR 022:045		787 KAR 001:080
	902 KAR 020:081		787 KAR 001:090
	907 KAR 001:604		787 KAR 001:150
327.070	201 KAR 022:045	341.370	787 KAR 001:060
329.010-329.030	502 KAR 020:020		787 KAR 001:090
322.110	902 KAR 010:120		787 KAR 001:150
323.020	902 KAR 010:120	341.380	787 KAR 001:090
332.015	502 KAR 010:010		787 KAR 001:150
332.095	791 KAR 001:070	341.420	787 KAR 001:110
332.204	502 KAR 010:030	341.430	787 KAR 001:110
	502 KAR 010:035	341.440	787 KAR 001:110
332.216	502 KAR 010:020	341.450	787 KAR 001:110
	502 KAR 010:050	341.500	787 KAR 001:140
	502 KAR 010:060	341.540	787 KAR 001:300
	502 KAR 010:080	341.510	787 KAR 001:140
333.020	902 KAR 002:020	341.530	787 KAR 001:060
333.130	902 KAR 002:020	342	725 KAR 002:015
	902 KAR 002:212E	344	725 KAR 002:015
	902 KAR 002:213E	344.030	101 KAR 001:365
334A.020	016 KAR 002:050		105 KAR 001:210
	902 KAR 020:081	349.3401	501 KAR 014:010
	907 KAR 001:604	365.571	030 KAR 003:010
334A.033	016 KAR 002:050	365.573	030 KAR 003:010
334A.035	016 KAR 002:050	365.581	030 KAR 003:020
334A.060	016 KAR 002:050	365.593	030 KAR 003:010
334A.190	016 KAR 002:050		030 KAR 003:030
337.275	803 KAR 001:063	367.110-367-360	791 KAR 001:010
	803 KAR 001:065	387	922 KAR 001:565
	803 KAR 001:066	403.160	921 KAR 001:400E
	803 KAR 001:070		921 KAR 001:400
	803 KAR 001:075	403.210-403.240	921 KAR 001:400E
	803 KAR 001:080		921 KAR 001:400
	803 KAR 001:090	403.211	921 KAR 001:020
	922 KAR 002:160E	403.270-403.355	922 KAR 001:565
	922 KAR 002:160	403.707	502 KAR 012:010
337.275-337.325	803 KAR 001:005	405.024	922 KAR 001:565
337.285	803 KAR 001:060	405.430	921 KAR 001:020
	803 KAR 001:063		921 KAR 001:390
	803 KAR 001:065		921 KAR 001:400E
	803 KAR 001:066		921 KAR 001:400
	803 KAR 001:070	405.440	921 KAR 001:400E
	803 KAR 001:075		921 KAR 001:400
	803 KAR 001:080	405.991	921 KAR 001:400E
	803 KAR 001:090		921 KAR 001:400
337.345	803 KAR 001:005	406.011	921 KAR 001:390
337.385-337.405	803 KAR 001:005	406.021	921 KAR 001:390
337.420-337.433	803 KAR 001:025		921 KAR 001:400E
338.015	803 KAR 002:330E		921 KAR 001:400
341	725 KAR 002:015	406.025	921 KAR 001:390
341.070	787 KAR 001:010		921 KAR 001:400E



KRS SECTION	REGULATION	KRS SECTION	REGULATION
406.035	921 KAR 001:400		907 KAR 023:020
406.180	921 KAR 001:020	454.220	921 KAR 001:400E
411.32	921 KAR 001:390		921 KAR 001:400
416.120	806 KAR 017:370	510.010-510.140	502 KAR 012:010
	921 KAR 002:015E	514	921 KAR 002:015E
	921 KAR 002:015		921 KAR 002:015
416.212	921 KAR 002:015E	524.140	502 KAR 012:010
	921 KAR 002:015	527.100	922 KAR 001:565
416.2030	921 KAR 002:015E	527.110	922 KAR 001:565
	921 KAR 002:015	529.010	040 KAR 006:030
416.2095	921 KAR 002:015E		502 KAR 012:010
	921 KAR 002:015	529.100	502 KAR 012:010
416.2096	921 KAR 002:015E	529.130	040 KAR 006:030
	921 KAR 002:015	529.140	040 KAR 006:030
416.2099	921 KAR 002:015E	529.150	040 KAR 006:030
	921 KAR 002:015	530.020	502 KAR 012:010
421.570	502 KAR 012:010	530.064	502 KAR 012:010
431.215	501 KAR 002:060	531.310	502 KAR 012:010
431.600-431.660	040 KAR 003:020	532.043	501 KAR 001:050
434.757	301 KAR 001:018	532.060	501 KAR 002:020
434.845	921 KAR 001:020		501 KAR 001:050
438.310	782 KAR 001:010	532.100	501 KAR 002:020
439.179	501 KAR 003:130		501 KAR 002:050
439.250	501 KAR 006:250		501 KAR 002:060
439.352	501 KAR 001:050		501 KAR 002:070
439.356	501 KAR 001:050		501 KAR 003:130
439.358	501 KAR 001:050		501 KAR 007:120
439.551	501 KAR 006:250	533.010	501 KAR 002:070
439.553	501 KAR 006:250	533.025	501 KAR 002:070
439.3105-439.3108	501 KAR 006:250	533.200	013 KAR 003:020
440.120	907 KAR 023:020E	533.210	013 KAR 003:020
	907 KAR 023:020	600.020	502 KAR 012:010
441	501 KAR 003:150		922 KAR 001:565
441.045	501 KAR 002:060		922 KAR 002:160E
	501 KAR 003:110		922 KAR 002:160
	501 KAR 003:120	605.120	922 KAR 001:565
	501 KAR 003:170		922 KAR 002:160E
	501 KAR 007:040		922 KAR 002:160
	501 KAR 007:060	610.110	922 KAR 001:565
	501 KAR 007:090	620.020	201 KAR 020:320
	501 KAR 007:120		922 KAR 001:565
	501 KAR 007:140		922 KAR 002:160E
	501 KAR 007:150	620.020-620.050	040 KAR 003:020
441.046	502 KAR 014:010		922 KAR 002:160
441.055	501 KAR 003:110	620.030	502 KAR 012:010
	501 KAR 003:120		906 KAR 001:180
	501 KAR 003:130	620.090	922 KAR 001:565
	501 KAR 003:170	620.140	922 KAR 001:565
	501 KAR 007:040	620.142	922 KAR 001:565
	501 KAR 007:060	620.170	922 KAR 001:565
	501 KAR 007:090	7 C.F.R.	921 KAR 003:026E
	501 KAR 007:100		921 KAR 003:027E
	501 KAR 007:110		921 KAR 003:027
	501 KAR 007:120		922 KAR 002:160E
	501 KAR 007:130		922 KAR 002:160
	501 KAR 007:140	16 C.F.R.	201 KAR 015:110E
	501 KAR 007:150		201 KAR 015:110
441.075	501 KAR 002:060	20 C.F.R.	921 KAR 002:015E
441.115	501 KAR 007:120		921 KAR 002:015
441.125	501 KAR 003:130		922 KAR 002:160E
	501 KAR 007:120		922 KAR 002:160
441.203	806 KAR 017:370		923 KAR 002:470
441.206	806 KAR 017:370	23 C.F.R.	603 KAR 010:011E
441.207	806 KAR 017:370		603 KAR 010:040E
441.208	806 KAR 017:370		603 KAR 010:040
441.250	806 KAR 017:370	29 C.F.R.	105 KAR 001:210
441.255	806 KAR 017:370		803 KAR 002:330E
441.256	806 KAR 017:370		806 KAR 017:260
441.258	806 KAR 017:370		902 KAR 010:120
441.510	501 KAR 002:060	34 C.F.R.	016 KAR 004:020
441.560	501 KAR 007:090		781 KAR 001:010
446.010	501 KAR 006:250		781 KAR 001:020
	502 KAR 013:010		781 KAR 001:030
447.500-447.520	907 KAR 023:020E		781 KAR 001:040

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	781 KAR 001:050		921 KAR 001:020
	782 KAR 001:010	34 U.S.C.	502 KAR 012:010
	922 KAR 002:160E		922 KAR 002:160E
40 C.F.R.	922 KAR 002:160		922 KAR 002:160
	902 KAR 048:010	38 U.S.C.	922 KAR 002:160E
42 C.F.R.	902 KAR 048:040		922 KAR 002:160
	907 KAR 001:005	42 U.S.C.	105 KAR 001:210
	907 KAR 001:030		201 KAR 002:411E
	907 KAR 001:604		502 KAR 031:020
	907 KAR 010:815		725 KAR 002:015
	907 KAR 010:830		787 KAR 001:310
	907 KAR 023:020E		806 KAR 017:370
45 C.F.R.	907 KAR 023:020		900 KAR 012:005E
	502 KAR 012:010		900 KAR 012:005
	806 KAR 017:470		902 KAR 020:081
	902 KAR 020:081		907 KAR 001:005
	907 KAR 001:030		907 KAR 001:604
	921 KAR 001:020		907 KAR 010:815
	921 KAR 001:390		907 KAR 010:830
	921 KAR 001:400E		907 KAR 023:020E
	921 KAR 001:400		907 KAR 023:020
	921 KAR 003:026E		921 KAR 001:020
	921 KAR 003:027E		921 KAR 001:390
	921 KAR 003:027		921 KAR 001:400E
	921 KAR 004:116E		921 KAR 001:400
	921 KAR 004:116		921 KAR 002:015E
	922 KAR 002:160E		921 KAR 002:015
49 C.F.R.	922 KAR 002:160		921 KAR 004:116E
	502 KAR 010:035		921 KAR 004:116
	502 KAR 010:110		922 KAR 001:565
	502 KAR 010:120		922 KAR 002:160E
	791 KAR 001:060		922 KAR 002:160
59 C.F.R.	301 KAR 002:224	45 U.S.C.	803 KAR 001:063
7 U.S.C.	921 KAR 003:026E	49 U.S.C.	502 KAR 010:120
	921 KAR 003:027E		
	921 KAR 003:027		
	922 KAR 002:160E		
	922 KAR 002:160	EXAMPLES:	
8 U.S.C.	921 KAR 002:015E	45.237 - 45.241	922 KAR 001:565
	921 KAR 002:015	45A	601 KAR 002:030E
15 U.S.C.	902 KAR 010:120		702 KAR 003:130
18 U.S.C.	502 KAR 013:010	44 C.F.R.	201 KAR 011:121
	502 KAR 013:030	31 U.S.C.	045 KAR 001:050
	502 KAR 013:040	Pub.L. 104-191	902 KAR 030:010E
	502 KAR 013:050		920 KAR 001:070
	502 KAR 013:060	EO 2020-253	800 KAR 001:010
	502 KAR 013:080		
20 U.S.C.	016 KAR 004:020		
	016 KAR 005:010		
	782 KAR 001:010		
	921 KAR 003:026E		
	921 KAR 003:027E		
	921 KAR 003:027		
23 U.S.C.	603 KAR 010:011E		
	603 KAR 010:040E		
25 U.S.C.	922 KAR 002:160E		
	922 KAR 002:160		
26 U.S.C.	103 KAR 016:320		
	105 KAR 001:330		
	921 KAR 001:020		
29 U.S.C.	101 KAR 001:345		
	201 KAR 015:110E		
	201 KAR 015:110		
	781 KAR 001:010		
	781 KAR 001:020		
	781 KAR 001:030		
	781 KAR 001:040		
	781 KAR 001:050		
	787 KAR 002:040		
	806 KAR 011:020		
	922 KAR 002:160E		
	922 KAR 002:160		
31 U.S.C.	900 KAR 012:005E		
	900 KAR 012:005		

## 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 045:180	9-22-2021	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 48<sup>th</sup> year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
----------------------	-------------------	----------------------	-------------------

## SUBJECT INDEX

### AGING AND INDEPENDENT LIVING

#### Office of Dementia Services

Alzheimer's and dementia services curriculum review and approval; 910 KAR 004:010

### ALCOHOLIC BEVERAGE CONTROL

#### Licensing

Alternating proprietorship agreements; 804 KAR 004:221  
In-State Distilled Spirits Supplier License; 804 KAR 004:212  
Special temporary licenses; 804 KAR 004:251  
License surrender; 804 KAR 004:480

### ATTORNEY GENERAL

#### Attorney General

Standardized Open Records Request Form; 040 KAR 001:040  
Kentucky Victim and Witness Protection Program  
Funding assistance from the child victims' trust fund; 040 KAR 006:020  
Human Trafficking Victims Fund; 040 KAR 006:030  
Kentucky Victim and Witness Protection Program; 040 KAR 006:010

### BOARDS AND COMMISSIONS

*See also Occupations and Professions*

*See listing below for specific subject headings:*

Chiropractic Examiners; 201 KAR Chapter 021  
Dentistry, 201 KAR Chapter 008  
Durable Medical Equipment; 201 KAR Chapter 047  
Embalmers and Funeral Directors, 201 KAR Chapter 015  
Licensure for Long-Term Care Administrators, 201 KAR Chapter 006  
Nursing, 201 KAR Chapter 020  
Pharmacy; 201 KAR Chapter 002  
Physical Therapy; 201 KAR Chapter 022

### CERTIFICATE OF NEED

Application process; 900 KAR 006:065  
Expenditure minimums; 900 KAR 006:030  
Filing, hearing, and show cause hearing; 900 KAR 006:090  
Forms; 900 KAR 006:055  
Notification requirements; 900 KAR 006:110  
Standards for implementation and biennial review; 900 KAR 006:100  
Telehealth terminology and requirements; 900 KAR 012:005E  
Telehealth  
Telehealth terminology and requirements; 900 KAR 012:005

### CHIROPRACTIC EXAMINERS

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

### COMMISSION ON FIRE PROTECTION PERSONNEL STANDARDS AND EDUCATION

Certification and qualifications of fire and emergency services instructors; 739 KAR 002:060

### COMMUNITY BASED SERVICES

Child Welfare (922 KAR Chapter 001)  
Daycare (922 KAR Chapter 002)  
Child Care  
Child Care Assistance Program; 922 KAR 002:160  
Energy Assistance Program/Weatherization  
Low Income Home Energy Assistance Program or "LIHEAP"; 921 KAR 004:116  
Family Support  
Low Income Home Energy Assistance Program or "LIHEAP"; 921 KAR 004:116  
Supplemental Nutrition Assistance Program (921 KAR Chapter 003)

#### Family Support

Child Support Enforcement Program; confidentiality, program administration contracts, and agreements; 921 KAR 001:020  
Child Support Enforcement Program paternity establishment; 921 KAR 001:390  
Establishment, review, and modification of child support and medical support orders; 921 KAR 001:400  
K-TAP, Kentucky Works, Welfare to Work, State Supplementation  
Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 002:015  
Protection and Permanency  
Service array for a relative or fictive kin caregiver; 922 KAR 001:565  
Supplemental Nutrition Assistance Program  
Technical requirements; 921 KAR 003:027

### CORRECTIONS

#### Class D and Class C Felons

Definitions for 501 KAR Chapter 2; 501 KAR 002:020  
Procedures for housing of Class C and D felons; 501 KAR 002:060  
Transfer requests; 501 KAR 002:050  
Work release; 501 KAR 002:070

#### Kentucky Parole Board

Granting final discharge from parole; 501 KAR 001:050

#### Jail Standards for Full-service Facilities

Admission; searches and release; 501 KAR 003:120  
Classification; 501 KAR 003:110  
Classifications; 501 KAR 003:170  
Hearings, procedures, disposition; 501 KAR 003:150  
Prison programs; services; 501 KAR 003:130

#### Jail Standards for Restricted Custody Center Facilities

Admission; searches and release; 501 KAR 007:120  
Classification; 501 KAR 007:110  
Food services; 501 KAR 007:100  
Medical services; 501 KAR 007:090  
Personnel; 501 KAR 007:040  
Prisoner programs; services; 501 KAR 007:130  
Prisoner rights; 501 KAR 007:140  
Security; control; 501 KAR 007:060  
Training; 501 KAR 007:150

#### Office of the Secretary

Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders; 501 KAR 006:190  
Comprehensive sex offender presentence evaluation procedure; 501 KAR 006:200  
Graduated sanctions for technical violations of probation and compliance incentives system; 501 KAR 006:250  
Psychiatric or Forensic Psychiatric Facility Victim Notification System  
Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR 014:010

### CRIMINAL JUSTICE TRAINING

#### Concealed Deadly Weapons

Definitions for 503 KAR Chapter 4; 503 KAR 004:010  
Required content and conduct of applicant training course; 503 KAR 004:050

Required instructor training; 503 KAR 004:040

#### General Training Provision

Law enforcement training course trainee requirements; misconduct; penalties; discipline procedures; 503 KAR 003:020  
Telecommunications (Public Safety Dispatch) Academy graduation requirements; records; 503 KAR 003:050  
Training charges; 503 KAR 003:030  
Law Enforcement Foundation Program Fund  
Definitions; 503 KAR 005:080  
Disbursement of salary supplement funds; audits; 503 KAR 005:100

## SUBJECT INDEX

### DENTISTRY

Fees and fines; 201 KAR 008:520

### DISABILITY DETERMINATION SERVICES

Disability Determination

Disability Determinations Program; 923 KAR 002:470

### DURABLE MEDICAL EQUIPMENT

Compliant and disciplinary process; 201 KAR 047:030

Home medical equipment and supplier licenses, requirements, and fees; 201 KAR 047:010

### EDUCATION

*See also: Postsecondary Education (KAR Title 013)*

General Administration

District employee quarantine leave; 702 KAR 001:191

Face coverings in school facilities; 702 KAR 001:195E

Office of Chief State School Officer

Selection and Appointment of Non-Voting Kentucky Board of Education Members; 701 KAR 005:160

Office of Learning Support Services

Repeal of 704 KAR 007:120; 704 KAR 007:121

School Terms, Attendance, and Operation

Home or hospital instruction; 702 KAR 007:150

Pupil attendance; 702 KAR 007:125

### EDUCATION PROFESSIONAL STANDARDS BOARD

Administrative Certificates

Assessment prerequisites for teacher certification; 016 KAR 006:010

Dating of certifications; 016 KAR 004:050

Emeritus Certificate; 016 KAR 002:220

Endorsement for individual intellectual assessment; 016 KAR 003:070

Exception Certificate; 016 KAR 002:230

One (1) year conditional certificate; 016 KAR 002:180

Standards for accreditation of educator preparation providers and approval of programs; 016 KAR 005:010

Certification Procedures

Certification requirements for teachers of exceptional children; 016 KAR 004:020

Teaching Certificates

Certificates for teachers of exceptional children/communication disorders; 016 KAR 002:050

Interdisciplinary early childhood education, birth to primary; 016 KAR 002:040

### EMBALMERS AND FUNERAL DIRECTORS

Apprenticeship and supervision requirements; 201 KAR 015:050

Examination; 201 KAR 015:040

Fees; 201 KAR 015:030

Funeral establishment criteria; 201 KAR 015:110

Surface transportation permit; 201 KAR 015:125

### EMPLOYMENT AND TRAINING; OFFICE OF

Unemployment Insurance

Appeals; 787 KAR 001:110

Application for employer account; reports; 787 KAR 001:010

Change of status; discontinuance of business; 787 KAR 001:020

Claimant profiling; 787 KAR 001:310

Contract construction rates; 787 KAR 001:290

Employer contribution rates; 787 KAR 001:210

Interstate claimants; 787 KAR 001:150

Labor dispute or strike; notification; 787 KAR 001:080

Required reports and due dates; 787 KAR 001:220

Separation for cause; reports; 787 KAR 001:060

Successorship; 787 KAR 001:300

Unemployed worker's reporting requirements; 787 KAR 001:090

Unemployment insurance fund payments; 787 KAR 001:140

Voluntary election of coverage; 787 KAR 001:260

### FINANCE AND ADMINISTRATION

State-owned Buildings and Grounds

Use of state-owned facilities and grounds; 200 KAR 003:020

### FISH AND WILDLIFE RESOURCES

Fish

Cedar Creek Lake; 301 KAR 001:019

Frog season; limits; 301 KAR 001:082

Harvest and sale of Asian carp; 301 KAR 001:152

Land between the Lakes provisions; 301 KAR 001:031

Live fish scales and handling; licensure; 301 KAR 001:120

Small state-owned lakes, special administrative requirements of; 301 KAR 001:050

Special commercial fishing permit for Kentucky and Barkley lakes; 301 KAR 001:140

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

Transportation of fish; 301 KAR 001:125

Use of boating access areas; 301 KAR 001:018

Use of lands and waters on lakes owned or controlled by the department; 301 KAR 001:016

Free fishing days; 301 KAR 001:210

Game

Black bear seasons and requirements; 301 KAR 002:300

Crow hunting season; 301 KAR 002:260

Deer and turkey hunting on special areas; 301 KAR 002:111

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

Feeding of wildlife; 301 KAR 002:015

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

Importation of game birds; 301 KAR 002:084

Land between the Lakes hunting requirements; 301 KAR 002:050

Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season; 301 KAR 002:041

Shoot-to-retrieve field permits and procedures; 301 KAR 002:230

Spring wild turkey hunting; 301 KAR 002:142

Waterfowl hunting zones; 301 KAR 002:224

Hunting and Fishing

Access to Wildlife Management Areas for mobility-impaired individuals; 301 KAR 003:026

Hunting and fishing method exemptions for disabled persons; 301 KAR 003:027

Mobility-impaired hunts for deer, turkey and waterfowl; 301 KAR 003:110

Public use of Otter Creek Outdoor Recreation Area; 301 KAR 003:012

Public use of Wildlife Management Areas; 301 KAR 003:010

Year-round season for wildlife; 301 KAR 003:030

Licensing

Definitions for 301 KAR Chapter 5; 301 KAR 005:001

Interstate Wildlife Violators Compact; 301 KAR 005:100

Purchasing licenses and permits; 301 KAR 005:030

Water Patrol

Boat dealers; 301 KAR 006:070

Definitions for 301 KAR Chapter 6; 301 KAR 006:001

Wildlife

Administration of drugs to wildlife; 301 KAR 004:110

Ballard Wildlife Management Area restrictions; 301 KAR 004:020

Districts; 301 KAR 004:010

Selection of Fish and Wildlife Resources Commission nominees; 301 KAR 004:001

Scientific and educational collecting permits; 301 KAR 004:070

Swan Lake Unit of Boatwright Wildlife Management Area; 301 KAR 004:050

Peabody Wildlife Management Area use requirements and restrictions; 301 KAR 004:100

### HIGHER EDUCATION ASSISTANCE AUTHORITY

Early Childhood Development Scholarship Program

Definitions for 11 KAR Chapter 16; 011 KAR 016:001

## SUBJECT INDEX

Early Childhood Development Scholarship Program applicant selection process; 011: KAR 016:010

### FOOD STAMPS

See *Supplemental Nutritional Assistance Program, 921 KAR Chapter 003*

### HORSE RACING COMMISSION

Flat and Steeplechase Racing  
Running of the race; 810 KAR 004:040  
Standardbred Racing  
Claiming races; 810 KAR 005:030  
Entries and starters; 810 KAR 005:060  
Running of the race; 810 KAR 005:070

### HOUSING, BUILDINGS AND CONSTRUCTION

Elevator Safety  
Annual inspection of elevators, chairlifts, fixed guideway systems, and platform lifts; 815 KAR 004:010  
Permit and inspection fees for new and altered elevators, chairlifts, fixed guideway systems, and platform lifts; 815 KAR 004:025  
Reporting incidents involving personal injury or death; 815 KAR 004:027  
Hazardous Materials  
Certification of underground petroleum storage tank contractors; 815 KAR 030:060  
LP gas license; financial responsibility required; 815 KAR 030:010  
Kentucky Building Code  
Criteria for expanded local jurisdiction; 815 KAR 007:110  
Licensing of fire protection sprinkler contractors; 815 KAR 007:080  
Plumbing  
Installation permits; 815 KAR 020:050  
Medical gas piping installations; 815 KAR 020:195  
Standards of Safety  
Consumer fireworks retailer registration and fees; 815 KAR 010:070  
Kentucky standards of safety; 815 KAR 010:060

### INFRASTRUCTURE AUTHORITY

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

### INSURANCE

Health Insurance Contracts  
Certificate of filing for provider-sponsored networks; 806 KAR 017:100  
Conversion policy minimum benefits; 806 KAR 017:260  
Data reporting requirements; 806 KAR 017:240  
Data reporting to an employer-organized association health benefit plan; 806 KAR 017:470  
Definition of health care provider; 806 KAR 017:580  
Filing procedures for health insurance rates; 806 KAR 017:070  
Health benefit plan rate filing requirements; 806 KAR 017:150  
Independent External Review Program; 806 KAR 017:290  
Insurance purchasing outlet requirements; 806 KAR 017:450  
Life insurance and managed care; 806 KAR 017:350  
Minimum standards for short-term nursing home insurance policies; 806 KAR 017:085  
Registration, utilization review, and internal appeal; 806 KAR 017:280  
Repeal of 806 KAR 017:005, 806 KAR 017:095, 806 KAR 017:170, 806 KAR 017:180, and 806 KAR 017:510; 806 KAR 017:511  
Requirements regarding medical director's signature on health care benefit denials; 806 KAR 017:230  
Standardized health claim attachments; 806 KAR 017:370  
Telehealth claim forms and records; 806 KAR 017:270  
Insurance Contract  
Minimum standards for the readability and intelligibility of insurance contracts; 806 KAR 014:121  
Kinds of Insurance; Limits of Risk; Reinsurance

Credit for reinsurance; 806 KAR 005:025  
Life Insurance and Annuity Contracts  
Reporting and general requirements for settlement providers and brokers; 806 KAR 015:050  
Motor Vehicle Reparations (No-fault)  
Proof of motor vehicle insurance; 806 KAR 039:070  
Unauthorized Insurers' Prohibitions, Process and Advertising  
Multiple employer welfare arrangements; 806 KAR 011:020

### KENTUCKY RETIREMENT SYSTEMS

General Rules  
Disability procedures; 105 KAR 001:210  
Fred Capps Memorial Act; 105 KAR 001:310  
Purchase of service credit; 105 KAR 001:330

### KENTUCKY STATE UNIVERSITY

Board of Regents  
Procurement procedures; 745 KAR 001:035

### LAW ENFORCEMENT COUNCIL

Approval of course curriculums; 503 KAR 001:090  
Career Development Program; 503 KAR 001:170  
Certification of instructors; 503 KAR 001:100  
Certification of schools; 503 KAR 001:080  
Definitions for 503 KAR Chapter 1; 503 KAR 001:060  
Department of Criminal Justice Training Basic training: graduation requirements; records; 503 KAR 001:110  
Peace officer, telecommunicator, and court security officer professional standards; 503 KAR 001:140  
Professional development in-service training: training requirements; recognized courses; records; 503 KAR 001:120

### LIBRARIES AND ARCHIVES

Archives  
Collection and distribution of reports and publications; 725 KAR 001:040  
Recording and reproducing public records; 725 KAR 001:020  
Records management program; 725 KAR 001:050  
Records officers; duties; 725 KAR 001:010  
Records retention schedules; authorized schedules; 725 KAR 001:061  
Scheduling public records for retention and disposal: procedures; 725 KAR 001:030  
Transfer of public records; 725 KAR 001:025  
Libraries  
Public library facilities construction; 725 KAR 002:015  
Interstate Library Compact; 725 KAR 002:080

### LICENSURE FOR LONG-TERM CARE ADMINISTRATORS

Other requirements for licensure; 201 KAR 006:020

### LICENSURE FOR MASSAGE THERAPY

Application process, exam, and curriculum requirements; 201 KAR 042:035  
Code of ethics and standards of practice for massage therapists; 201 KAR 042:060  
Complaint procedure and disciplinary action; 201 KAR 042:050  
Endorsement; 201 KAR 042:070  
Fees; 201 KAR 042:020  
Goals for massage therapy sessions; 201 KAR 042:010  
Licensee's change of name, home address, or place of business; 201 KAR 042:030  
Renewal and reinstatement; 201 KAR 042:040  
Continuing education requirements; 201 KAR 042:110

### LOTTERY CORPORATION

Procurement procedures; 202 KAR 003:020

### MEDICAID SERVICES

Hospital Services Coverage and Reimbursement  
Acute care inpatient hospital reimbursement; 907 KAR 010:830  
Per Diem inpatient hospital reimbursement; 907 KAR 010:815  
Outpatient Pharmacy Program

## SUBJECT INDEX

Reimbursement for outpatient drugs; 907 KAR 023:020  
Medicaid Services  
Cost-sharing prohibited within the Medicaid program; 907 KAR 001:604  
Home health agency services; 907 KAR 001:030  
Nonduplication of payments; 907 KAR 001:005.

### MEDICAL EXAMINER

Duplicate records request fee schedule; 500 KAR 012:010

### NURSING

Continuing approval and periodic evaluation of dialysis technician training programs; 201 KAR 020:474  
Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement; 201 KAR 020:476  
Dialysis technician scope of practice, discipline, and miscellaneous requirements; 201 KAR 020:478  
Initial approval for dialysis technician training programs; 201 KAR 020:472  
Repeal of 201 KAR 020:470; 201 KAR 020:471

### OCCUPATIONAL SAFETY AND HEALTH

*See Workplace Standards, 803 KAR Chapter 2*

### OFFICE OF INSPECTOR GENERAL

Division of Health Care

Operation and services; personal services agencies; 906 KAR 001:180

### PERSONNEL

Personnel Board

Appeal and hearing procedures; 101 KAR 001:365  
Disciplinary actions; 101 KAR 001:345  
Employee actions; 101 KAR 001:335  
Employee grievances and complaints; 101 KAR 001:375  
Promotion; 101 KAR 001:400  
Restoration from military duty; 101 KAR 001:395  
Standards of conduct and technology governing recording board proceedings; 101 KAR 001:367

Personnel Board, Classified

2022 Plan Year Handbook for the Public Employee Health Insurance Program; 101 KAR 002:210

### PHARMACY

Administration of vaccines; 201 KAR 002:420  
Compounding; 201 KAR 002:076  
Emergency orders and hearings; 201 KAR 002:430  
Expungement; 201 KAR 002:270  
Licenses and permits; fees; 201 KAR 002:050  
Naloxone dispensing; 201 KAR 002:360  
Ordering and administering vaccinations; 201 KAR 002:411E  
Pharmacy services in hospitals; 201 KAR 002:074

### PHYSICAL THERAPY

Continued competency requirements and procedures; 201 KAR 022:045

### POSTSECONDARY EDUCATION

Adult Education and Literacy

GED eligibility requirements; 013 KAR 003:050  
GED Incentives Program; 013 KAR 003:040  
GED Testing Program; 013 KAR 003:010  
High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College Systems institutions; 013 KAR 003:060  
Provision of instruction for individuals sentenced by a court to participate in educational programs; 013 KAR 003:020  
Qualifications for progressing satisfactorily through a GED preparation program; 013 KAR 003:030

### PUBLIC HEALTH

Communicable Diseases

Reportable disease surveillance; 902 KAR 002:020

Health Services and Facilities

Operations and services; home health agencies; 902 KAR 020:081

K-TAP, Kentucky Works, Welfare to Work, State Supplementation  
Childcare standards for covering the face in response to declared national or state public health emergency; 902 KAR 002:213E

Lead Abatement

Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement; 902 KAR 048:030

Definitions for 902 KAR Chapter 48; 902 KAR 048:010

Lead-hazard abatement permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement; 902 KAR 048:040

Training and certification requirements for persons who perform lead-hazard detection or abatement; 902 KAR 048:020

Sanitation

Kentucky public swimming and bathing facilities; 902 KAR 010:120

Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments; 902 KAR 010:121

Splash pads operated by local governments; 902 KAR 010:190

### PUBLIC SERVICE COMMISSION

Utilities

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

### RETIREMENT

*See Kentucky Retirement Systems (KAR Title 105)*  
*Teachers' Retirement System (KAR Title 102)*

### REVENUE

Ad Valorem Tax; State Assessment

Classification of property; public service corporations; 103 KAR 008:090

Income Tax; Corporations

Apportionment; receipts factor; 103 KAR 016:270

Claim of right doctrine; 103 KAR 016:320

Corporation income taxes policies and circulars; 103 KAR 016:352

Income Tax; Withholding

Payroll records; 103 KAR 018:090

Withholding return adjustment; 103 KAR 018:020

Sales and Use Tax; Miscellaneous Retailer Occupations

Motor vehicle body shops; 103 KAR 027:230

Sourcing of retail sales by florists; 103 KAR 027:050

Repairers and reconditioners of tangible personal property; 103 KAR 027:150

Sales and Use Tax; General Exemptions

Energy and energy-producing fields; 103 KAR 030:140

Interstate and foreign commerce; 103 KAR 030:190

Machinery for new and expanded industry; 103 KAR 030:120

Property used in the publication of newspapers; 103 KAR 030:25

Sales to farmers; 103 KAR 030:091

### SECRETARY OF STATE

Address Confidentiality Program

Kentucky address confidentiality program; 030 KAR 006:011

Corporations

Repeal of 30 KAR 1:010, 30 KAR 1:020, 30 KAR 1:040, and 30 KAR 1:050; 030 KAR 001:011

Trademarks and Service Marks

Application for registration of trademarks and service marks; 030 KAR 003:010

Application for renewal of registration; 030 KAR 003:020

Classification of goods and services for registration of trademarks and service marks; 030 KAR 003:030

### STATE BOARD OF ELECTIONS

Forms and Procedures



## SUBJECT INDEX

- Chain of custody for records during an election contest; 031 KAR 004:200
- Consolidation of precincts and precinct election officers; 031 KAR 004:195.
- Voting
  - Ballot standards and election security; 031 KAR 005:025
- STATE FAIR BOARD**
  - Fairgrounds and Exhibition Center
    - Conduct and operation of concessions and exhibits; 303 KAR 001:075
    - Exhibition Center, dissemination of material; demonstrations; 303 KAR 001:090
    - Exposition Center, grounds; dissemination of material; demonstrations; 303 KAR 001:080
    - 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; 303 KAR 001:100
    - Procurement procedures; 303 KAR 001:110
    - Traffic flow; 303 KAR 001:015
    - Vehicle parking; 303 KAR 001:010
    - Vehicle speed; 303 KAR 001:005
- STATE EMPLOYEES**
  - See also: *Kentucky Retirement Systems (KAR Title 105)*  
*Personnel (KAR Title 101)*  
*Teachers' Retirement System (KAR Title 102)*
- STATE POLICE**
  - Automated Fingerprint Identification System
    - Provision and maintenance of automated fingerprint identification system equipment and programs in detention centers. Submission of fingerprints by jailers to the Kentucky State Police; 502 KAR 014:010
  - Candidate Selection
    - Appeals; 502 KAR 045:115
    - Application and selection process; 502 KAR 045:035
    - Appointment; 502 KAR 045:105
    - Aptitude examination; 502 KAR 045:045
    - Definitions; 502 KAR 045:005
    - Medical examination; 502 KAR 045:085
    - Qualifications; 502 KAR 045:015
    - Register; 502 KAR 045:075
    - Physical Fitness Test (PFT); 502 KAR 045:150
  - Concealed Deadly Weapons
    - Application for license to carry concealed deadly weapon; 502 KAR 011:010
    - License denial and reconsideration process; 502 KAR 011:060.
    - License revocation and suspension notice and reinstatement process; 502 KAR 011:070
  - Criminal History Record Information System
    - Arrest and disposition reporting procedure; 502 KAR 030:020
    - Audit of Criminal History Record Information System; 502 KAR 030:030
    - Criminal History Record Information System; 502 KAR 030:010
    - Dissemination of criminal history record information; 502 KAR 030:060
    - Security of centralized criminal history record information; 502 KAR 030:050
    - Inspection of criminal history record information by record subject; 502 KAR 030:070
  - Driver Training
    - Commercial driver's license skill testing; 502 KAR 010:035
    - Contracts and agreements; 502 KAR 010:050
    - Definitions; 502 KAR 010:010
    - Department facilities; facility inspection; conflict of interest; 502 KAR 010:020
    - Instructor's license; 502 KAR 010:030
    - License suspension, revocation, denial; 502 KAR 010:080
    - Procedure for denial, suspension, nonrenewal or revocation hearings; 502 KAR 010:090
    - School advertising; 502 KAR 010:060
    - Third-party CDL skills test examiner standards; 502 KAR 010:110
  - Training school facilities; 502 KAR 010:040
  - Training vehicle, annual inspection; 502 KAR 010:070
  - Hazardous materials endorsement requirements; 502 KAR 010:120
- General Traffic
  - Traffic collision; 502 KAR 015:010
  - Abandoned vehicles; 502 KAR 015:020
- Kentucky Missing Child Information Center
  - Capabilities of the Missing Child Information Center computer system; 502 KAR 035:020
  - Definitions; 502 KAR 035:010
  - Quality of information reported to the Kentucky Missing Child Information Center; 502 KAR 035:030
  - Reporting of missing children by law enforcement agencies; 502 KAR 035:040
  - Statistical analysis of information related to missing children; 502 KAR 035:050
- Law Enforcement Officers Safety Act of 2004
  - Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers; 502 KAR 013:010
  - Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers; 502 KAR 013:060
  - Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers; 502 KAR 013:080
  - Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers; 502 KAR 013:040
  - Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers; 502 KAR 013:030
  - Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers; 502 KAR 013:050
- Law Information Network of Kentucky
  - Law Information Network of Kentucky; 502 KAR 040:010
- Medical Examiner Protocols
  - Sexual assault forensic-medical examination protocol; 502 KAR 012:010
- Methamphetamine
  - Methamphetamine; 502 KAR 047:010
- Polygraph
  - Detection of deception examiners; 502 KAR 020:020
- Sex Offender Registration System
  - 502 KAR 031:020. Sex Offender Registration System.
- Trial Board Proceedings
  - Admissibility of evidence; 502 KAR 050:010
- TRANSPORTATION**
  - Billboards
    - Advertising devices; 603 KAR 010:040
    - Repeal of 603 KAR 010:002, 010:010, and 010:021; 603 KAR 010:011E
  - Maintenance
    - Noxious weeds and invasive plants to be eradicated from rights-of-way; 603 KAR 003:100
  - Motor Vehicle Commission
    - Applications; 605 KAR 001:030
    - Facilities requirements; 605 KAR 001:035
    - Licensing fees; 605 KAR 001:215
    - Procedures; 605 KAR 001:130
  - Right-of-way

## SUBJECT INDEX

- Logo sign panels; placement along fully controlled and partially controlled access highways; 603 KAR 004:035
- Traffic
  - Transportation Cabinet use of interstate and parkway signs to locate missing persons; 603 KAR 005:360
- WORKERS' CLAIMS**
  - Electronic data interchange vendor approval; 803 KAR 025:165
  - Pharmacy; 803 KAR 025:092
- WORKFORCE INVESTMENT**
  - Kentucky Commission on Proprietary Education
    - Application for license for commercial driver license training school; 791 KAR 001:050
    - Application for renewal of license for commercial driver license training school; 791 KAR 001:060
    - Applications, permits, and renewals; 791 KAR 001:010
    - Bond requirements for agents and schools; 791 KAR 001:150
    - Commercial driver license training school curriculum and refresher course; 791 KAR 001:040
    - Commercial driver license training school instructor and agency application and renewal procedures; 791 KAR 001:070
    - Fees; 791 KAR 001:025
    - Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools; 791 KAR 001:080
    - Procedures for hearings; 791 KAR 001:030
    - School closing process; 791 KAR 001:155
    - School record keeping requirements; 791 KAR 001:027
    - Standards for licensure; 791 KAR 001:020
    - Standards for Kentucky resident commercial driver training school facilities; 791 KAR 001:100
    - Student protection fund; 791 KAR 001:035
    - Transfer of ownership, change of location, change of name, revision of existing programs; 791 KAR 001:160
  - Office for the Blind
    - Certified driver training program; 782 KAR 001:070
    - Kentucky Business Enterprises; 782 KAR 001:010
  - Office of Employment and Training
    - Local workforce development area governance; 787 KAR 002:040
  - Office of Vocational Rehabilitation
    - Carl D. Perkins Vocational Training Center; 781 KAR 001:050
    - General provisions for operation of the Office of Vocational Rehabilitation; 781 KAR 001:020.
    - Order of selection and economic need test for vocational rehabilitation services; 781 KAR 001:030
    - Office of Vocational Rehabilitation appeal procedures; 781 KAR 001:010
    - Rehabilitation technology services; 781 KAR 001:040
- WORKPLACE STANDARDS**
  - Labor Standards; Wages and Hours
    - Board, lodging, gratuities and other allowances; 803 KAR 001:080
    - Employer-employee relationship; 803 KAR 001:005
    - Equal pay provisions, meaning and application; 803 KAR 001:025
    - Exclusions from minimum wage and overtime; 803 KAR 001:075
    - Executive, administrative, supervisory or professional employees; salesmen; 803 KAR 001:070
    - Hours worked; 803 KAR 001:065
    - Overtime pay requirements; 803 KAR 001:060
    - Recordkeeping requirements; 803 KAR 001:066
    - Trading time; 803 KAR 001:063
  - Occupational Safety and Health
    - Abatement; 803 KAR 002:122
    - Contest of citation; 803 KAR 002:140
    - Cranes and derricks in construction; 803 KAR 002:440
    - Discrimination; 803 KAR 002:250
    - Employer and employee representatives; 803 KAR 002:110
    - Employer responsibility to post notice; 803 KAR 002:060
    - Employer responsibility when employee is exposed to toxic substances or harmful physical agents; 803 KAR 002:062
    - Failure to correct violation; 803 KAR 002:127
    - General industry standards; 803 KAR 002:325
    - Informal conference; 803 KAR 002:130
    - Inspections; 803 KAR 002:070
    - Medical services and first aid; 803 KAR 002:310
    - Pay during inspection activity; 803 KAR 002:230
    - Personal protective equipment; 803 KAR 002:308
    - Posting of citation; 803 KAR 002:125
    - Occupational exposure to COVID-19; 803 KAR 002:330E
    - Occupational health and environmental control; 803 KAR 002:306
    - Recordkeeping and reporting occupational injuries and illnesses; 803 KAR 002:181
    - Refusal to work when dangerous condition exist; 803 KAR 002:220
    - Repeal of 803 KAR 002:018; 803 KAR 002:011
    - Repeal of 803 KAR 002:040; 803 KAR 002:041
    - Repeal of 803 KAR 002:180; 803 KAR 002:182E
    - Variance and interim order; 803 KAR 002:170