



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

## MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on November 9, 2021, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - [1459](#) [Online agenda updated as needed](#)

## INDEXES & OTHER INFORMATION

Regulation Review Procedure .....	1465	KRS Index .....	E – 15
ARRS Report .....	1686	Certifications .....	E – 28
Other Committee Reports .....	1693	Technical Amendments .....	E – 29
Locator Index - Effective Dates .....	E – 2	Subject Index .....	E – 30

## EMERGENCIES

### Board of Pharmacy

201 KAR 002:412E. Ordering and administering vaccinations .....	1466
---	------

### Board of Cosmetology

201 KAR 012:082E. Education requirements and school administration .....	1468
--	------

### Department of Workers' Claims

803 KAR 025:305E. Workers' compensation expedited hearings pursuant to occupational exposure to COVID-19 .....	1473
--	------

### Department for Public Health

902 KAR 002:230E. COVID-19 antibody administration center .....	1474
902 KAR 002:240E. COVID-19 test acquisition and distribution .....	1476
902 KAR 002:250E. COVID-19 vaccine storage .....	1477
902 KAR 020:460E. Essential visitor programs; visitation guidelines for long-term care facilities .....	1479

## AMENDED IN-PROCESS EMERGENCIES

### Department of Highways

603 KAR 010:040E. Advertising devices .....	1483
---	------

### Office of Telehealth Services

900 KAR 012:005E. Telehealth terminology and requirements .....	1489
---	------

## AS AMENDED

### Education Professional Standards Board

016 KAR 002:180. One (1) year conditional certificate .....	1492
016 KAR 002:220. Emeritus Certificate .....	1492
016 KAR 003:070. Endorsement for individual intellectual assessment .....	1493
016 KAR 004:050. Dating of certifications .....	1494
016 KAR 005:010. Standards for accreditation of educator preparation providers and approval of programs .....	1494

### Department of Law

040 KAR 001:040. Standardized Open Records Request Form .....	1506
---	------

### Department of Revenue

103 KAR 016:320. Claim of right doctrine .....	1506
103 KAR 016:352. Corporation income taxes policies and circulars .....	1507
103 KAR 018:020. Withholding return adjustment .....	1508
103 KAR 018:090. Payroll records .....	1509
103 KAR 027:050. Sourcing of retail sales by florists .....	1509
103 KAR 027:150. Repairers and reconditioners of tangible personal property .....	1510
103 KAR 030:091. Sales to farmers .....	1511
103 KAR 030:120. Machinery for new and expanded industry .....	1514
103 KAR 030:190. Interstate and foreign commerce .....	1515
103 KAR 030:250. Property used in the publication of newspapers .....	1517

### State-owned Buildings and Grounds

200 KAR 003:020. Use of state-owned facilities and grounds .....	1517
--	------

### Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses .....	1521
---	------

### Board of Chiropractic Examiners

201 KAR 021:035. Seal .....	1525
201 KAR 021:054. Emergency orders .....	1525

### Board of Physical Therapy

201 KAR 022:045. Continued competency requirements and procedures .....	1525
---	------

### Board of Licensure for Professional Art Therapists

201 KAR 034:070. Inactive status .....	1527
--	------

### Board of Durable Medical Equipment

201 KAR 047:010. Home medical equipment and supplier licenses, requirements, and fees .....	1527
201 KAR 047:030. Compliant and disciplinary process .....	1529

### Department Of Workforce Investment

787 KAR 001:020. Change of status; discontinuance of business .....	1531
---	------

787 KAR 001:060. Separation for cause; reports .....	1532
787 KAR 001:090. Unemployed worker's reporting requirements .....	1532
787 KAR 001:110. Appeals .....	1533
787 KAR 001:150. Interstate claimants .....	1536
787 KAR 001:210. Employer contribution rates.....	1537
787 KAR 001:220. Required reports and due dates.....	1537
787 KAR 001:260. Voluntary election of coverage .....	1538
787 KAR 001:300. Successorship .....	1538
787 KAR 001:310. Claimant profiling.....	1539

#### **Department of Workplace Standards**

803 KAR 002:325. General industry standards .....	1539
---	------

#### **Department of Insurance**

806 KAR 017:240. Data reporting requirements .....	1550
806 KAR 017:270. Telehealth claim forms and records .....	1551
806 KAR 017:280. Registration, utilization review, and internal appeal .....	1551
806 KAR 017:470. Data reporting to an employer-organized association health benefit plan .....	1554

#### **Public Service Commission**

807 KAR 005:015. Access and attachments to utility poles and facilities.....	1555
--	------

#### **Kentucky Horse Racing Commission**

810 KAR 004:040. Running of the race .....	1561
--	------

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

921 KAR 001:400. Establishment, review, and modification of child support and medical support orders .....	1563
921 KAR 002:015. Supplemental programs for persons who are aged, blind, or have a disability .....	1564
922 KAR 001:300. Standards for child-caring facilities.....	1569
922 KAR 001:380. Standards for emergency shelter child-caring facilities .....	1579

### **AMENDED AFTER COMMENTS**

#### **Education Professional Standards Board**

016 KAR 006:010. Assessment prerequisites for teacher certification .....	1581
---	------

#### **Department of Revenue**

103 KAR 008:090. Classification of property; public service corporations.....	1584
103 KAR 016:270. Apportionment; receipts factor.....	1585

#### **Board of Dentistry**

201 KAR 008:520. Fees and fines .....	1603
---------------------------------------	------

#### **Board of Nursing**

201 KAR 020:472. Initial approval for dialysis technician training programs .....	1605
---	------

#### **Department of Corrections**

501 KAR 002:060. Procedures for housing of Class C and D felons .....	1610
---	------

#### **Board of Education**

702 KAR 007:150. Home or hospital instruction .....	1612
---	------

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

922 KAR 002:160. Child Care Assistance Program .....	1614
--	------

### **PROPOSED AMENDMENTS**

#### **Education Professional Standards Board**

016 KAR 001:030. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial .....	1624
---	------

#### **Board of Cosmetology**

201 KAR 012:082. Education requirements and school administration .....	1627
---	------

#### **Department of Agriculture**

302 KAR 050:021. Procedures and policies for hemp grower.....	1631
302 KAR 050:031. Procedures and policies for hemp processors and handlers.....	1640

302 KAR 050:056. Sampling and THC testing; disposal of non-compliant harvests; post-testing actions.....	1647
302 KAR 050:080. Materials incorporated by reference .....	1652

#### **Board of Education**

702 KAR 007:065. Designation of agent to manage middle and high school interscholastic athletics .....	1653
--	------

#### **Department of Insurance**

806 KAR 010:030. Surplus lines reporting and tax payment structure.....	1657
806 KAR 012:010. Advertising of accident and sickness benefits .....	1659
806 KAR 014:007. Rate and form filing for health insurers .....	1662

#### **Department of Housing, Buildings, and Construction**

815 KAR 035:020. Electrical inspections.....	1664
--	------

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

907 KAR 003:170. Telehealth service coverage and reimbursement .....	1667
--	------

### **NEW ADMINISTRATIVE REGULATIONS**

#### **Department of Agriculture**

302 KAR 050:046. Department's reports to the USDA; records retention for three year.....	1672
--	------

#### **Motor Vehicle Commission**

605 KAR 001:051. Dealer and salesman .....	1674
605 KAR 001:071. Change of ownership .....	1675
605 KAR 001:091. Motor vehicle dealership names.....	1677
605 KAR 001:131. Procedures.....	1678
605 KAR 001:191. Motor vehicle advertising.....	1680
605 KAR 001:211. Nonprofit motor vehicle dealer requirements and licensing.....	1682

#### **Department of Insurance**

806 KAR 017:590. Annual report on providers prescribing medication for addiction treatment .....	1684
--	------

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



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, November 9, 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**

**Council on Postsecondary Education**

**Adult Education and Literacy**

013 KAR 003:010. GED Testing Program.

013 KAR 003:020. Provision of instruction for individuals sentenced by a court to participate in educational programs.

013 KAR 003:030. Qualifications for progressing satisfactorily through a GED preparation program.

013 KAR 003:040. GED Incentives Program.

013 KAR 003:050. GED eligibility requirements.

013 KAR 003:060. High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College Systems institutions.

**Education Professional Standards Board**

**Administrative Certificates**

016 KAR 006:010. Assessment prerequisites for teacher certification. (Amended After Comments)

**SECRETARY OF STATE**

**Address Confidentiality Program**

030 KAR 006:011E. Kentucky address confidentiality program. ("E" expires 06-12-2022) (Filed with Ordinary)

**DEPARTMENT OF LAW**

**Medical Examination of Sexual Abuse Victims**

040 KAR 003:020. Protocol for operation of local multidisciplinary teams on child sexual abuse.

**Kentucky Victim and Witness Protection Program**

040 KAR 006:010. Kentucky Victim and Witness Protection Program

040 KAR 006:020. Funding assistance from the child victims' trust fund.

040 KAR 006:030. Human Trafficking Victims Fund.

**PERSONNEL CABINET**

**Personnel Board, Classified**

101 KAR 002:210E. 2022 Plan Year Handbook for the Public Employee Health Insurance Program. ("E" expires 06-12-2022) (Filed with Ordinary)

**FINANCE AND ADMINISTRATION CABINET**

**Department of Revenue**

**Ad Valorem Tax; State Assessment**

103 KAR 008:090. Classification of property; public service corporations. (Amended After Comments)

**Income Tax; Corporations**

103 KAR 016:270. Apportionment; receipts factor. (Amended After Comments)

**Kentucky Retirement Systems**

**General Rules**

105 KAR 001:210. Disability procedures.

105 KAR 001:310. Fred Capps Memorial Act.

105 KAR 001:330. Purchase of service credit.

**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 002:050. Licenses and permits; fees.

201 KAR 002:076. Compounding.

201 KAR 002:430. Emergency orders and hearings.

## **VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

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

201 KAR 006:020. Other requirements for licensure. (Deferred from October)

### **Board of Dentistry**

201 KAR 008:520. Fees and fines. (Amended After Comments)

### **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)

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

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

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

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

### **Board of Nursing**

201 KAR 020:471. Repeal of 201 KAR 020:470. (Deferred from September)

201 KAR 020:472. Initial approval for dialysis technician training programs. (Amended After Comments)

201 KAR 020:474. Continuing approval and periodic evaluation of dialysis technician training programs. (Not Amended After Comments)

201 KAR 020:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement. (Deferred from September)

201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements. (Deferred from September)

## **TOURISM, ARTS AND HERITAGE CABINET**

### **Department of Fish and Wildlife Resources**

#### **Game**

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

301 KAR 002:082. Transportation and holding of live exotic wildlife.

301 KAR 002:142. Spring wild turkey hunting.

301 KAR 002:224. Waterfowl hunting zones.

#### **Hunting and Fishing**

301 KAR 003:010. Public use of Wildlife Management Areas.

301 KAR 003:012. Public use of Otter Creek Outdoor Recreation Area.

301 KAR 003:026. Access to Wildlife Management Areas for mobility-impaired individuals.

301 KAR 003:027. Hunting and fishing method exemptions for disabled persons.

301 KAR 003:030. Year-round season for wildlife.

301 KAR 003:110. Mobility-impaired hunts for deer, turkey and waterfowl.

#### **Wildlife**

301 KAR 004:001. Selection of Fish and Wildlife Resources Commission nominees.

301 KAR 004:010. Districts.

301 KAR 004:020. Ballard Wildlife Management Area restrictions.

301 KAR 004:050. Swan Lake Unit of Boatwright Wildlife Management Area.

301 KAR 004:070. Scientific and educational collecting permits.

301 KAR 004:100. Peabody Wildlife Management Area use requirements and restrictions.

301 KAR 004:110. Administration of drugs to wildlife.

#### **Licensing**

301 KAR 005:001. Definitions for 301 KAR Chapter 5.

301 KAR 005:030. Purchasing licenses and permits.

301 KAR 005:100. Interstate Wildlife Violators Compact.

#### **Water Patrol**

301 KAR 006:001. Definitions for 301 KAR Chapter 6.

301 KAR 006:070. Boat dealers.

### **Kentucky State Fair Board**

#### **Fairgrounds and Exhibition Center**

303 KAR 001:005. Vehicle speed.

303 KAR 001:010. Vehicle parking.

303 KAR 001:015. Traffic flow.

303 KAR 001:075. Conduct and operation of concessions and exhibits.

303 KAR 001:080. Exposition Center, grounds; dissemination of material; demonstrations.

303 KAR 001:090. Exhibition Center, dissemination of material; demonstrations.

303 KAR 001:100. Exposition Center, grounds; sales and dissemination of real property, fixtures and goods, solicitation of contribution or sales during annual State Fair; rental of space; use of sound amplification equipment.

303 KAR 001:110. Procurement procedures.

## **JUSTICE AND PUBLIC SAFETY CABINET**

### **Department of Corrections**

#### **Kentucky Parole Board**

501 KAR 001:050. Granting final discharge from parole.

## **VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

### **Class D and Class C Felons**

- 501 KAR 002:020. Definitions for 501 KAR Chapter 2. (Not Amended After Comments)
- 501 KAR 002:060. Procedures for housing of Class C and D felons. (Amended After Comments)

### **Jail Standards for Full-service Facilities**

- 501 KAR 003:110. Classification.
- 501 KAR 003:120. Admission; searches and release.
- 501 KAR 003:130. Prison programs; services.
- 501 KAR 003:150. Hearings, procedures, disposition.
- 501 KAR 003:170. Classifications.

### **Office of the Secretary**

- 501 KAR 006:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.
- 501 KAR 006:200. Comprehensive sex offender presentence evaluation procedure.
- 501 KAR 006:250. Graduated sanctions for technical violations of probation and compliance incentives system.

### **Jail Standards for Restricted Custody Center Facilities**

- 501 KAR 007:040. Personnel.
- 501 KAR 007:060. Security; control.
- 501 KAR 007:090. Medical services.
- 501 KAR 007:100. Food services.
- 501 KAR 007:110. Classification.
- 501 KAR 007:120. Admission; searches and release.
- 501 KAR 007:130. Prisoner programs; services.
- 501 KAR 007:140. Prisoner rights.
- 501 KAR 007:150. Training.

### **Psychiatric or Forensic Psychiatric Facility Victim Notification System**

- 501 KAR 014:010. Psychiatric or Forensic Psychiatric Facility Victim Notification System.

### **Department of Criminal Justice Training**

#### **Kentucky Law Enforcement Council**

- 503 KAR 001:060. Definitions for 503 KAR Chapter 1.
- 503 KAR 001:080. Certification of schools.
- 503 KAR 001:090. Approval of course curriculums.
- 503 KAR 001:100. Certification of instructors.
- 503 KAR 001:110. Department of Criminal Justice Training Basic training: graduation requirements; records.
- 503 KAR 001:120. Professional development in-service training: training requirements; recognized courses; records.
- 503 KAR 001:140. Peace officer, telecommunicator, and court security officer professional standards.
- 503 KAR 001:170. Career Development Program.

## **TRANSPORTATION CABINET**

### **Department of Highways**

#### **Traffic**

- 603 KAR 005:360. Transportation Cabinet use of interstate and parkway signs to locate missing persons.

#### **Billboards**

- 603 KAR 010:011E. Repeal of 603 KAR 010:002, 010:010, and 010:021. ("E" expires 04-26-2022) (Emergency Only) (Deferred from October)
- 603 KAR 010:040E. Advertising devices. ("E" expires 04-26-2022) (Filed with Ordinary) (Emergency Amended After Comments)
- 603 KAR 010:040. Advertising devices. (Filed with Emergency)

## **EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

### **Board of Education**

#### **Office of Chief State School Officer**

- 701 KAR 005:160. Selection and Appointment of Non-Voting Kentucky Board of Education Members.

#### **General Administration**

- 702 KAR 001:191E. District employee quarantine leave. (Filed with Ordinary) (Not Amended After Comments)
- 702 KAR 001:191. District Employee Quarantine Leave. (Filed with Emergency)

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

- 702 KAR 007:125. Pupil attendance. (Filed with Emergency)
- 702 KAR 007:125E. Pupil attendance. ("E" expires 05-08-2022) (Filed with Ordinary)
- 702 KAR 007:150. Home or hospital instruction. (Amended After Comments)

#### **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. (Deferred from October)

## **VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

725 KAR 001:020. Recording and reproducing public records. (Deferred from October)  
725 KAR 001:025. Transfer of public records. (Deferred from October)  
725 KAR 001:030. Scheduling public records for retention and disposal; procedures. (Deferred from October)  
725 KAR 001:040. Collection and distribution of reports and publications. (Deferred from October)  
725 KAR 001:050. Records management program. (Deferred from October)  
725 KAR 001:061. Records retention schedules; authorized schedules. (Deferred from October)

### **Libraries**

725 KAR 002:015. Public library facilities construction. (Deferred from October)  
725 KAR 002:080. Interstate Library Compact. (Deferred from October)

## **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. (Deferred from October)

## **EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

### **Department of Workforce Investment**

#### **Office of Vocational Rehabilitation**

781 KAR 001:010. Office of Vocational Rehabilitation appeal procedures.  
781 KAR 001:020. General provisions for operation of the Office of Vocational Rehabilitation.  
781 KAR 001:030. Order of selection and economic need test for vocational rehabilitation services.  
781 KAR 001:040. Rehabilitation technology services.  
781 KAR 001:050. Carl D. Perkins Vocational Training Center.

#### **Office for the Blind**

782 KAR 001:010. Kentucky Business Enterprises.  
782 KAR 001:070. Certified driver training program.

#### **Office of Employment and Training**

787 KAR 002:040. Local workforce development area governance.

### **Kentucky Commission on Proprietary Education**

791 KAR 001:010. Applications, permits, and renewals.  
791 KAR 001:020. Standards for licensure.  
791 KAR 001:025. Fees.  
791 KAR 001:027. School record keeping requirements  
791 KAR 001:030. Procedures for hearings.  
791 KAR 001:035. Student protection fund.  
791 KAR 001:040. Commercial driver license training school curriculum and refresher course.  
791 KAR 001:050. Application for license for commercial driver license training school.  
791 KAR 001:060. Application for renewal of license for commercial driver license training school.  
791 KAR 001:070. Commercial driver license training school instructor and agency application and renewal procedures.  
791 KAR 001:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools.  
791 KAR 001:100. Standards for Kentucky resident commercial driver training school facilities.  
791 KAR 001:150. Bond requirements for agents and schools.  
791 KAR 001:155. School closing process.  
791 KAR 001:160. Transfer of ownership, change of location, change of name, revision of existing programs.

## **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. (Not Amended After Comments)

### **Occupational Safety and Health**

803 KAR 002:330E. Occupational exposure to COVID-19. (Emergency Only) (Not Amended After Comments)

### **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. (Deferred from October)

**Health Insurance Contracts**

806 KAR 017:350. Life insurance and managed care. (Deferred from October)

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

806 KAR 039:070. Proof of motor vehicle insurance. (Deferred from October)

**Department of Housing, Buildings and Construction**

**Elevator Safety**

815 KAR 004:010. Annual inspection of elevators, chairlifts, fixed guideway systems, and platform lifts. (Deferred from October)

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

815 KAR 004:027. Reporting incidents involving personal injury or death. (Deferred from October)

**Kentucky Building Code**

815 KAR 007:080. Licensing of fire protection sprinkler contractors. (Deferred from October)

815 KAR 007:110. Criteria for expanded local jurisdiction. (Not Amended After Comments)

**Standards of Safety**

815 KAR 010:060. Kentucky standards of safety. (Not Amended After Comments)

815 KAR 010:070. Consumer fireworks retailer registration and fees. (Deferred from October)

**Plumbing**

815 KAR 020:050. Installation permits. (Deferred from October)

815 KAR 020:195. Medical gas piping installations. (Deferred from October)

**Hazardous Materials**

815 KAR 030:010. LP gas license; financial responsibility required. (Deferred from October)

815 KAR 030:060. Certification of underground petroleum storage tank contractors. (Deferred from October)

**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) (Emergency Amended After Comments)

900 KAR 012:005. Telehealth terminology and requirements. (Filed with Emergency)

**Department for Medicaid Services**

**Hospital Services Coverage and Reimbursement**

907 KAR 010:815. Per Diem inpatient hospital reimbursement.

**Department for Community Based Services**

**Division of Child Care**

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

**Department of Disability Determination Services**

**Disability Determination**

923 KAR 002:470. Disability Determinations Program.

**3. REGULATIONS REMOVED FROM NOVEMBER'S AGENDA**

**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) (Deferred from October)

031 KAR 004:195. Consolidation of precincts and precinct election officers. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2021)

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) (Deferred from October)

031 KAR 004:200. Chain of custody for records during an election contest. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2021)

**Voting**

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

031 KAR 005:025. Ballot standards and election security. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2021)

## **VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

### **BOARDS AND COMMISSIONS**

#### **Board of Nursing**

201 KAR 020:215. Continuing competency requirements. (Comments Received, SOC ext.; due 11-15-2021)

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. (Comments Received, SOC ext.; due 11-15-2021)

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

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

##### **Sanitation**

902 KAR 010:120. Kentucky public swimming and bathing facilities. (Comments Received, SOC ext.; due 11-15-2021)

902 KAR 010:190. Splash pads operated by local governments. (Comments Received, SOC ext.; due 11-15-2021)

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

##### **Outpatient Pharmacy Program**

907 KAR 023:020. Reimbursement for outpatient drugs. (Filed with Emergency) (Comments Received; SOC ext. due 11-15-2021)

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

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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

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

**Review Procedure**

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

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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

**Review Procedure**

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

## EMERGENCY ADMINISTRATIVE REGULATIONS

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

**STATEMENT OF EMERGENCY**  
**201 KAR 002:412E**

This emergency administrative regulation establishes requirements that the Board of Pharmacy shall implement in order to comply with 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 52136 and 86 Fed. Reg. 9516, 10588 and 14462. 85 Fed. Reg. 15198, 52136 and 86 Fed. Reg. 9516, 10588, 14462 and 41977 have been promulgated in response to the public health emergency invoked by 42 U.S.C. 247d-6d to address COVID-19. This emergency administrative regulation is necessary, pursuant to KRS 13A.190(1)(a)3. and 4., to ensure continued compliance with federal law and to ensure that Kentucky continues to have an ample pool of pharmacists available to order and administer the covid-19 vaccine. Without this emergency regulation, thousands of pharmacists will become ineligible to order and administer the covid-19 vaccine because they have not met the federal training requirements. So long as the state has a training requirement, compliance with the state training requirement is sufficient to comply with federal law. Without this emergency regulation, there is not a state training requirement. This emergency administrative regulation will ensure that state law remains congruent with emergency federal regulations, and responds to the current COVID-19 public health emergency. An ordinary administrative regulation is not a sufficient avenue to address the current emergency due to the emergency being temporary. This emergency administrative regulation with regards to pharmacist authority will not be replaced by an ordinary administrative regulation due to the scope of the administrative regulation only existing and being needed for the duration of the state of emergency.

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

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

**201 KAR 002:412E. Ordering and administering vaccinations.**

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

STATUTORY AUTHORITY: KRS 315.500, 315.505

NECESSITY, FUNCTION, AND CONFORMITY: 85 Fed. Reg. 15198, 85 Fed. Reg. 52136 and 86 Fed. Reg. 9516, 10588 and 41977 require the Board of Pharmacy to promulgate an administrative regulation to conform state law to federal law during the period of this public health emergency resulting from the coronavirus (COVID-19) pandemic. KRS 315.010(22) does not authorize pharmacists to order vaccinations nor does KRS 315.010(22) authorize the use of prescriber-approved protocols for pharmacists or pharmacist interns to administer vaccinations to children under the age of nine (9). 85 Fed. Reg. 52136, requires that state-licensed pharmacists be authorized to order and to administer vaccinations to children between the ages of three (3) and seventeen (17) and that state-registered pharmacist interns and pharmacy technicians be authorized to administer vaccinations to children between the ages of three (3) and seventeen (17). 85 Fed. Reg. 79190, published on December 3, 2020 and effective on February 4, 2021, requires that technicians be authorized to administer childhood vaccinations and COVID-19 vaccinations and

requires that state law establish a training requirement for all pharmacists, technicians, and interns that will be ordering or administering vaccinations pursuant to the declaration. Moreover, on August 4, 2021, 86 FR 41977 was released requiring that pharmacists be authorized to order the seasonal flu vaccine for individuals aged nineteen and over and that interns and technicians be authorized to administer the seasonal flu vaccine. The Prep Act (42 U.S.C. 247d-6d(8)) preempts any state law that would prohibit or effectively prohibit activities authorized by the secretary in a PREP Act Declaration. This administrative regulation establishes requirements for Kentucky to comply with 85 Fed. Reg. 15198, 52136, 79190 and 86 Fed. Reg. 7872, 9516, 10588, 14462 and 41977 and ensure a robust pool of pharmacist for ordering and administering vaccines.

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

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

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

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

(5) "Prescribe" means to issue an original or new order from a pharmacist for an FDA-approved or authorized vaccination or medication, including but not limited to, epinephrine, diphenhydramine and corticosteroids, to treat emergency reactions to vaccines.

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

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

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

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

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

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

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

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

4. No provision in this regulation affects the ability of a pharmacist to administer a vaccination pursuant to a prescription drug order.

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

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

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

Section 4. Pharmacy Technician Requirements. A pharmacy

technician may administer a vaccine under the general supervision of a pharmacist to an individual, if the pharmacy technician:

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

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

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

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

(2) In accordance with KRS 13A.190, this administrative regulation shall remain in effect until:

(a) Expiration of the time period established by KRS 13A.190; or

(b) Withdrawn in accordance with KRS 13A.190(12).

(3) The Board of Pharmacy shall regularly consult with the Governor's Office, the Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190.

LARRY HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: October 6, 2021

FILED WITH LRC: October 12, 2021 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2021 at 9 a.m. Eastern Time via zoom teleconference. A link to the public hearing shall be provided on the Board's website no fewer than (5) days before the hearing. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is received. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 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 authorizes pharmacists to order and to administer vaccinations to individuals three (3) and older, pursuant to specific requirements. This administrative regulation also authorizes pharmacy technicians and pharmacist interns to administer vaccinations to individuals three (3) and older, pursuant to specific requirements.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.500 and KRS 315.505 authorize the Board of Pharmacy to promulgate regulations during a state of emergency pursuant to KRS 39A.100 within the scope of the enumerated reasons listed in KRS 315.500, including administering

immunizations to children pursuant to protocols established by the Centers for Disease Control and Prevention, the National Institutes of Health, or the National Advisory Committee on Immunization Practices or determined to be appropriate by the commissioner of public health or his or her designee.

(d) How this administrative regulation currently assists or will assist in the effective

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

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts any pharmacist, pharmacist intern or pharmacy technician that desires to order or to administer vaccinations to individuals three and up.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no requirement for pharmacists, pharmacy technicians or pharmacist interns to order or to administer vaccinations; however, this administrative regulation provides pharmacists with an authorization to order and to administer vaccinations pursuant to this administrative regulation's requirements and for pharmacy technicians and pharmacist interns with an authorization to administer vaccinations pursuant to this administrative regulation's requirements. Should the pharmacist, pharmacist intern or pharmacy technician choose to order or to administer vaccinations, the pharmacist, pharmacist intern or pharmacy technician shall meet the conditions set forth in this regulation, including completing a training, being CPR certified and other conditions specifically enumerated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not require pharmacists, pharmacist interns or pharmacy technicians to order or to administer vaccinations and therefore this administrative regulation does not create any cost to the potentially impacted individuals. However, should the pharmacist choose to order or to administer vaccinations or the pharmacist intern or pharmacy technician choose to administer vaccinations, those individuals will have the cost of training, potential yearly continuing education requirements and the cost of becoming CPR certified.

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

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

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

(b) On a continuing basis: No cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board of Pharmacy will inspect pharmacies, pharmacist practice and pharmacist intern and pharmacy technician practices to ensure

compliance with this administrative regulation. The Board of Pharmacy already employs inspectors, and this regulation will not increase any cost of enforcement for the Board of Pharmacy.

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There will be no impact on local or state government outside of the Board of Pharmacy's enforcement of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, 86 Fed. Reg. 9516, 10588, 14462 and 41977, KRS 315.500, KRS 315.505.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on the expenditures and revenue of a state or local government agency.

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

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

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

(d) How much will it cost to administer this program for subsequent years? This regulation will not generate costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, 86 Fed. Reg. 9516, 10588, 14462 and 41977. This is an emergency federal mandate only in effect during the federal declaration under the PREP Act.

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

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

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This

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

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

#### STATEMENT OF EMERGENCY 201 KAR 12:082E

This emergency regulation is being promulgated under KRS 13.190(1)(a)(1) to meet an imminent threat to public health, safety, and welfare. With the occurrence of the COVID-19 pandemic and in light of the current surge of COVID-19 cases in the Commonwealth of Kentucky the Kentucky Board of Cosmetology requests to make emergency alternative education adjustments in line with the US Department of Education and the accrediting agencies who set additional standards within the cosmetology industry. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

#### BOARDS AND COMMISSIONS Board of Cosmetology (Emergency Amendment)

#### 201 KAR 12:082E. Education requirements and school administration.

EFFECTIVE: October 1, 2021

RELATES TO: KRS 317A.020, 317A.050, 317A.090

STATUTORY AUTHORITY: KRS 317A.060, 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h) requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetic practices, and nail technology. KRS 317A.090 establishes licensing requirements for schools of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetic practices, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the subject areas identified in this section.

(1) Basics:

(a) History and Career Opportunities;

(b) Life Skills;

(c) Professional Image; and

(d) Communications.

(2) General Sciences:

(a) Infection Control: Principles and Practices;

(b) General Anatomy and Physiology;

(c) Skin Structure, Growth, and Nutrition;

(d) Skin Disorders and Diseases;

(e) Properties of the Hair and Scalp;

(f) Basic Chemistry; and

- (g) Basics of Electricity.
  - (3) Hair Care:
    - (a) Principles of Hair Design;
    - (b) Scalp Care, Shampooing, and Conditioning;
    - (c) Hair Cutting;
    - (d) Hair Styling;
    - (e) Braiding and Braid Extensions;
    - (f) Wig and Hair Additions;
    - (g) Chemical Texture Services; and
    - (h) Hair Coloring.
  - (4) Skin Care:
    - (a) Hair Removal;
    - (b) Facials; ~~and~~
    - (c) Facial Makeup; ~~and~~[-]
    - (d) Application of Artificial Eyelashes.
  - (5) Nails:
    - (a) Manicuring;
    - (b) Pedicuring;
    - (c) Nail Tips and Wraps;
    - (d) Monomer Liquid and Polymer Powder Nail Enhancements;
- and
- (e) Light Cured Gels.
  - (6) Business Skills:
    - (a) Preparation for Licensure and Employment;
    - (b) On the Job Professionalism; and
    - (c) Salon Businesses.

Section 2. A school or program of instruction of any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [cosmetology, esthetic practices, and nail technology] shall teach the students about the various supplies and equipment used in the usual salon practices.

#### Section 3. Instructional Hours.

- (1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a minimum of:
  - (a) 375 lecture hours for science and theory;
  - (b) 1,085 clinic and practice hours; and
  - (c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.
- (2) A cosmetology student shall not perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors.

- (1) A training period for a student shall be no more than eight (8)~~ten (10)~~ hours per day, forty (40) hours per week.
- (2) A student shall be allowed thirty (30) minutes per eight (8) hour day or longer for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.

#### Section 5. Laws and Regulations.

- (1) At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and 201 KAR Chapter 12.
- (2) Schools or programs of instruction of any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [of cosmetology, esthetic practices, and nail technology,] shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 6. Nail Technician Curriculum. The nail technician course of instruction shall include the following:

- (1) Basics:
  - (a) History and Opportunities;
  - (b) Life Skills;
  - (c) Professional Image; and
  - (d) Communications.
- (2) General Sciences:

- (a) Infection Control: Principles and Practices;
- (b) General Anatomy and Physiology;
- (c) Skin Structure and Growth;
- (d) Nail Structure and Growth;
- (e) Nail Diseases and Disorders;
- (f) Basics of Chemistry;
- (g) Nail Product Chemistry; and
- (h) Basics of Electricity.
- (3) Nail Care:
  - (a) Manicuring;
  - (b) Pedicuring;
  - (c) Electric Filing;
  - (d) Nail Tips and Wraps;
  - (e) Monomer Liquid and Polymer Powder Nail Enhancements;
  - (f) UV and LED Gels; and
  - (g) Creative Touch.
- (4) Business Skills:
  - (a) Seeking Employment;
  - (b) On the Job Professionalism; and
  - (c) Salon Businesses.

#### Section 7. Nail Technology Hours Required.

- (1) A nail technician student shall receive no less than 450 hours in clinical and theory class work with a minimum of:
  - (a) 150 lecture hours for science and theory;
  - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
  - (c) 275 clinic and practice hours.
- (2) A nail technician student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 8. Apprentice Instructor Curriculum. The course of instruction for an apprentice instructor of any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 shall include no less than 750 hours, 425 hours of which shall be in direct contact with students. 325 hours of the required theory instruction may be taken in person or online, in the following areas:

- (1) Orientation;
- (2) Psychology of student training;
- (3) Introduction to teaching;
- (4) Good grooming and professional development;
- (5) Course outlining and development;
- (6) Lesson planning;
- (7) Teaching techniques (methods);
- (8) Teaching aids, audio-visual techniques;
- (9) Demonstration techniques;
- (10) Examinations and analysis;
- (11) Classroom management;
- (12) Recordkeeping;
- (13) Teaching observation;
- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. Supervision. An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

Section 10. Instructors Online Theory Course. All online theory instruction completed to comply with Section 8 of this administrative regulation shall be administered from an approved digital platform at a licensed Kentucky school of cosmetology, esthetic practices, or nail technology.

Section 11. Additional Coursework. Apprentice Esthetics and Nail Technology Instructors shall also complete an additional fifty (50) hours of advanced course work in that field within a two (2) year period prior to the instructor examination.

Section 12. Schools may enroll persons for a special supplemental course in any subject.

Section 13. Esthetician Curriculum. The regular course of instruction for esthetician students shall consist of courses relating to the subject areas identified in this section. (1) Basics:

- (a) History and Career Opportunities;
- (b) Professional Image; and
- (c) Communication.
- (2) General Sciences:
  - (a) Infection Control: Principles and Practices;
  - (b) General Anatomy and Physiology;
  - (c) Basics of Chemistry;
  - (d) Basics of Electricity; and
  - (e) Basics of Nutrition.
- (3) Skin Sciences:
  - (a) Physiology and Histology of the Skin;
  - (b) Disorders and Diseases of the Skin;
  - (c) Skin Analysis; and
  - (d) Skin Care Products: Chemistry, Ingredients, and Selection.
- (4) Esthetics:
  - (a) Treatment Room;
  - (b) Basic Facials;
  - (c) Facial ~~Massage~~ [Message];
  - (d) Facial Machines;
  - (e) Hair Removal;
  - (f) Advanced Topics and Treatments; ~~and~~
  - (g) Application of Artificial Eyelashes; and
  - (h)[(g)] Makeup.
- (5) Business Skills:
  - (a) Career Planning;
  - (b) The Skin Care Business; and
  - (c) Selling Products and Services.

Section 14. Esthetician Hours Required.

- (1) An esthetician student shall receive no less than 750 hours in clinical and theory class work with a minimum of:
- (a) 250 lecture hours for science and theory;
  - (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
  - (c) 465 clinic and practice hours.
- (2) An esthetician student shall have completed 115 hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 115 hours.

Section 15. Blow Drying Services License Subject Areas. The regular courses of instruction for blow drying services license students shall contain courses relating to the subject areas identified in this section.

- (1) Basics:
  - (a) History and Career Opportunities;
  - (b) Life Skills;
  - (c) Professional Image; and
  - (d) Communications.
- (2) General Sciences:
  - (a) Infection Control: Principles and Practices;
  - (b) General Anatomy and Physiology of head, neck and scalp;
  - (c) Skin Disorders and Diseases of head, neck and scalp;
  - (d) Properties of the Hair and Scalp; and
  - (e) Basics of Electricity.
- (3) Hair Care:
  - (a) Principles of Hair Design;
  - (b) Scalp Care, Shampooing, and Conditioning;
  - (c) Hair Styling;
  - (d) Blow drying;
  - (e) Roller Placement;
  - (f) Finger waves/ pin curls;
  - (g) Thermal curling;
  - (h) Flat iron styling;
  - (i) Wig and Hair Additions; and
  - (j) Long hair styling.
- (4) Business Skills:
  - (a) Preparation for Licensure and Employment;
  - (b) On the Job Professionalism; and

- (c) Salon Businesses.

Section 16. Blow Drying Services License Hours Required.

- (1) A blow drying services license student shall receive no less than 400 hours in clinical and theory class work with a minimum of:
- (a) 150 lecture hours for science and theory;
  - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
  - (c) 275 clinic and practice hours.
- (2) A blow drying services license student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 17. Extracurricular Events. Each cosmetology, nail technician, and esthetician student shall be allowed up to sixteen (16) hours for field trip activities pertaining to the profession of study, sixteen (16) hours for attending educational programs, and sixteen (16) hours for charitable activities relating to the field of study, totaling not more than forty-eight (48) hours and not to exceed eight (8) hours per day. Attendance or participation shall be reported to the board within ten (10) business days of the field trip, education show, or charitable event on the Certification of Student Extracurricular Event Hours form.

Section 18. Student Records. Each school shall:

- (1) Maintain a ~~[legible and]~~ accurate daily attendance record ~~[used only for the verification and tracking of the required contact hours for education]~~ for all full-time students, part-time students, and apprentice instructors ~~[with records that shall be recorded using a digital biometric time keeping program as follows:~~
- ~~(a) All beginning, end, break, and lunch times shall be recorded;~~
  - ~~(b) All instructors shall comply with the biometric time keeping system; and~~
  - ~~(c) Previously licensed schools will have six (6) months from the effective date of this administrative regulation to comply.]~~
- (2) Keep a record of each student's practical work and work performed on clinic patrons;
- (3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
- (4) Make records required by this Section available to the board and its employees upon request.

Section 19. Certification of Hours.

- (1) Schools shall forward to the board digital certification of a student's hours completed within ten (10) business days of a student's withdrawal, dismissal, completion, or the closure of the school.
- (2) No later than the 10th day of each month, a licensed school shall submit to the board via electronic delivery a certification of each student's total hours obtained for the previous month and the total accumulated hours to date for all students enrolled. Amended reports shall not be accepted by the board without satisfactory proof of error. Satisfactory proof of error shall require, at a minimum, a statement signed by the school manager certifying the error and the corrected report.

Section 20. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

Section 21. Instructor Licensing and Responsibilities.

- (1) A person employed by a ~~[cosmetology, nail technology, or esthetic practices]~~ school or program for the purpose of teaching or instruction shall be licensed by the board as an instructor and shall post his or her license as required by 201 KAR 12:060.
- (2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.
- (3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.
- (4) Licensed schools shall not permit an instructor to perform services in the school for compensation during school hours.
- (5) An instructor shall not permit students to instruct or teach



other students in the instructor's absence.

(6) Except as provided in subsection (7) of this section, schools may not permit a demonstrator to teach in a licensed school.

(7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if a licensed instructor is present.

(8) Licensed schools or programs of instruction in any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [cosmetology, esthetic practices, and nail technology] shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) students enrolled and supervised.

(9) Licensed schools or programs of instruction in any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [cosmetology, esthetic practices, and nail technology] shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.

(10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.

#### Section 22. School Patrons.

(1) All services rendered in a licensed school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

(2) A licensed school shall not guarantee a student's work.

(3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: "Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

#### Section 23. Enrollment.

(1) Any person enrolling in a school or program for instruction in any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [for a cosmetology, nail technician, or esthetics course] shall furnish proof that the applicant has:

(a) A high school diploma,

(b) A General Educational Development (GED) diploma; or

(c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of the twelfth grade of high school.

(2) The applicant shall provide with the enrollment a passport photograph taken within thirty (30) days of submission of the application.

(3) A student enrolling in a licensed school who desires to transfer hours from an out of state school shall, prior to enrollment, provide to the board certification of the hours to be transferred from the state agency that governs the out of state school.

(4) If the applicant is enrolled in a board approved program at an approved Kentucky high school, the diploma, GED, or equivalency requirement of this Section is not necessary until examination.

#### Section 24. Certificate of Enrollment.

(1) Schools shall submit to the board the student's digital enrollment, accompanied by the applicant's proof of education, as established in Section 23 of this administrative regulation, within ten (10) business days of enrollment.

(2) All student identification information on the school's digital enrollment shall exactly match a state or federal government-issued identification card to take the examination. If corrections shall be made, the school shall submit the Enrollment Correction Application and the enrollment correction fee in 201 KAR 12:260 within ten (10) days of the erroneous submission. Students with incorrect enrollment information shall not be registered for an examination.

#### Section 25. Student Compensation.

(1) Schools shall not pay a student a salary or commission while the student is enrolled at the school.

(2) Licensed schools shall not guarantee future employment to students.

(3) Licensed schools shall not use deceptive statements and false promises to induce student enrollment.

Section 26. Transfer. A student desiring to transfer to another licensed school shall:

(1) Notify the school in which the student is presently enrolled of the student's withdrawal; and

(2) Complete a digital enrollment as required for the new school.

Section 27. Refund Policy. A school shall include the school's refund policy in school-student contracts.

Section 28. Student Complaints. A student may file a complaint with the board concerning the school in which the student is enrolled, by following the procedures outlined in 201 KAR 12:190.

Section 29. Student Leave of Absence. The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

(1) In writing from the student to the school; and

(2) Clearly denote the beginning and end dates for the leave of absence.

Section 30. Student Withdrawal. Within ten (10) business days from a student's withdrawal, a licensed school shall report the name of the withdrawing student to the board.

Section 31. Credit for Hours Completed. The board shall credit hours previously completed in a licensed school as follows:

(1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and

(2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 32. Program Transfer Hours. If a current licensee chooses to enter into the practice of cosmetology, they shall complete and submit the Program [Hour] Transfer [Request] form. Upon receiving a completed Program [Hour] Transfer [Request] form, the board shall treat the transferred license as earned credit hours in a cosmetology program subject to the following:

(1) Transfer of a current esthetics license shall credit the transferee no more than 400 hours in a cosmetology program;

(2) Transfer of a current nail technologist license shall credit the transferee no more than 200 hours in a cosmetology program;

(3) Transfer of a current blow drying services license shall credit the transferee no more than 300 hours in a cosmetology program; or

(4) Transfer of a current barber license shall credit the transferee no more than 750 hours in a cosmetology program.

(5) Credit hours transferred pursuant to this section shall only take effect upon the transferee's completion of the remaining hours necessary to complete a cosmetology program.

Section 33. Emergency Alternative Education. Digital theory content may be administered by a licensed school in the event of forced long-term or intermittent emergency closure(s) due to a world health concern or crisis to be approved by the board. The board may determine when emergency alternative education shall begin and end. The necessary compliance steps for implementation are:

(1) Full auditable attendance records shall be kept showing actual contact time spent by a student in the instruction module.

(2) Milady supported Mind Tap, Pivot Point supported LAB, or recorded video conference participation shall be used.

(3) Schools shall submit an outline to the board within ten (10) days prior to occurrence defining the content scope to be taught or completed and a plan for a transition into a digital training environment. Plans may be submitted for approval by the board to be kept for future use in the event emergency alternative education is allowable.

(4) Completion certificates showing final scoring on digital modules shall be maintained in student records.

(5) Schools and students shall comply with Section 4 of this regulation on accessible hours.

(6) No student shall accrue more than the total required theory instruction hours outlined in the above instructional sections in emergency alternative education time.

(7) Board may determine eligibility for accruals based on duration of crisis and applicable time limits for alternative emergency education availability.

Section 34. [~~Section 33.~~] Incorporation by Reference. The following material is incorporated by reference:

- (1)(a) "Certification of Student Extracurricular Event Hours", October 2018;
- (b) "Enrollment Correction Application", October 2018; and
- (c) "Program Transfer Form", January 2019.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: September 22, 2021

FILED WITH LRC: October 1, 2021 at 1:23 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 Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 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: Julie M. Campbell, Board Administrator, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, phone (502) 564-4262, email julie.campbell@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions for licensed schools of cosmetology, esthetics, and nail technology in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standardized education that complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to all aspects of KRS 317A.050 and 317A.090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines and defines education standards and the quantity of course hours required for licensed schools and students seeking Kentucky licensure by the board.

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

(a) How the amendment will change this existing administrative regulation: The current pandemic of COVID-19 requires the need for possible temporary alternative education methods it creates that option temporarily

(b) The necessity of the amendment to this administrative regulation: This amendment will create a temporary pathway for alternative education in light of the world pandemic COVID-19.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides additional education options for currently licensed schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated regulatory scheme for licensed schools that complies with the governing statute.

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

administrative regulation: There are 58 licensed cosmetology schools this will only effect those facilities and any individuals planning on opening a school.

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

(a) List 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 licensed entity will have the option to provide education in this manner during the pandemic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a forced additional cost to this measure. It is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will allow alternative education methods as defined during the emergency created by COVID-19.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All Kentucky Board of Cosmetology funding comes from fees collected from licensees and applicants. Current funding will not change as a result of this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created directly or indirectly for the agency by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation apply equally to all licensed schools.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050 and KRS 317A.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. There is no anticipated effect on state or local government agency revenue as a result of this 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? No additional revenue is anticipated as a result of 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? No additional revenue is anticipated as a result of this amendment.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated for subsequent years.

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.  
Other Explanation: Not applicable.

**STATEMENT OF EMERGENCY  
803 KAR 25:305E**

Joint Resolution 1 from the 2021 Special Legislative Session, 21 SS HJR 1/GA, extended certain emergency executive actions until January 15, 2022, and declared an emergency related to SARS-COV-2, also known as COVID-19. Joint Resolution 1 and Executive Order 2020-277 were issued to meet an imminent threat to public health, safety, and welfare. Joint resolution 1 extended Executive Order 2020-277, pertaining to temporary total benefits provided pursuant to KRS Chapter 342. This emergency administrative regulation provides guidance in the application of Executive Order 2020-277 and protects human health and public health, safety, and welfare. the guidance provided in this emergency administrative regulation cannot be provided through an ordinary administrative regulation because the ordinary rulemaking process cannot be completed until after January 15, 2022, and the extension will have expired. This emergency regulation will not be replaced by an ordinary administrative regulation because it is anticipated the emergency will resolve.

ANDY BESHEAR, GOVERNOR  
ROBERT WALKER, INTERIM COMMISSIONER

**LABOR CABINET  
Department of Workers' Claims  
(New Emergency Administrative Regulation)**

**803 KAR 25:305E. Workers' compensation expedited hearings pursuant to occupational exposure to COVID-19.**

EFFECTIVE: September 28, 2021

RELATES TO: KRS 342.0011(11)(a), 342.020, 342.040, 342.270, 342.730.

STATUTORY AUTHORITY: KRS 342.020, 342.260, 342.270, 342.730

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.020(1) requires employers to pay for the cure and relief from the effects of an injury or occupational disease as may reasonably be required at the time of injury and thereafter or as may be required for the cure and treatment of an occupational disease. KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department and the work of the administrative law judges. KRS 342.270(3) requires the commissioner to promulgate or amend existing administrative regulations to establish procedures for the resolution of claims. This emergency administrative regulation establishes the procedure for resolution of claims for temporary total benefits pursuant to Executive Order 2020-277.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "COVID-19" means the novel coronavirus designated SARS-COV-2.

(4) "Department" is defined by KRS 342.0011(8).

(5) "Designated class" means employees of a healthcare entity; law enforcement personnel, emergency medical services personnel, and fire department personnel; corrections officers; military personnel; activated National Guard personnel; domestic violence shelter workers; child advocacy workers; rape crisis center staff; Department of Community Based Services workers; grocery workers; postal service workers; and child care workers permitted by the Cabinet for Health and Family Services to provide child care in a limited duration center during the state of emergency.

(6) "Executive order" means Executive Order 2020-277.

(7) "Joint Resolution 1" means 21 SS HJR 1/GA.

Section 2. Motion to Expedite Hearing. (1) Each claim by a member of the designated class solely seeking temporary total disability benefits pursuant to Executive Order 2020-277 and Joint Resolution 1, alleging an injury or occupational disability due to occupational exposure to COVID-19, shall file an Application Seeking TTD Benefits and Expedited Hearing, Form 101-COV.

(2) When an Application Seeking TTD Benefits and Expedited Hearing, Form 101-COV is received by the Department, it shall notify the employer and insurance carrier identified on the application for resolution of claim within three (3) business days of receipt.

(3) When an Application Seeking TTD Benefits and Expedited Hearing, Form 101-COV is received by the Department, the claim shall be assigned to an administrative law judge within three (3) business days of receipt.

(4) The matter shall be set for hearing within ten (10) calendar days following the date of assignment to the administrative law judge.

(5) The expedited hearing shall be limited to whether an employee was removed from work by a physician due to occupational exposure to COVID-19.

(6) The executive order establishes there must be a causal connection between the conditions under which the work is performed and COVID-19, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment, in order for the exposure to be occupational.

(7) If the employee is found to have an occupational exposure to COVID-19, the limitations in KRS 342.040(1) shall be suspended and temporary total disability payments shall be payable from the first day the employee is removed from work.

(8) The parties shall file all proof no later than three (3) calendar days prior to the hearing date.

(9) The administrative law judge shall render a decision no later than two (2) business days after the date of the hearing.

Section 3. (1) Voluntary temporary total disability payments by the employer or its payment obligor to an employee removed from work by a physician due to occupational exposure to COVID-19 which are made without a hearing and decision by the administrative law judge shall not waive the employer's right to contest its liability for the claim or other benefits to be provided.

(2) Nothing in this emergency administrative regulation precludes a claimant from seeking additional benefits under KRS Chapter 342.

Section 4. Incorporation by Reference. (1) "Application Seeking TTD Benefits and Expedited Hearing, Form 101-COV," September 2021 edition, is incorporated by reference

(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, 8:00 a.m. to 4:30 p.m., and at <https://labor.ky.gov/comp/Forms/Pages/default.aspx>.

This is to certify the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

ROBERT WALKER, Interim Commissioner

APPROVED BY AGENCY: September 27, 2021

FILED WITH LRC: September 28, 2021 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on November 23, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no

notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency 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 emergency administrative regulation to the contact person.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0682, email dale.hamblin@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the procedure for resolution of claims for temporary total benefits pursuant to Executive Order 2020-277.

(b) The necessity of this administrative regulation: Executive Order 2020-277 provides for temporary total disability benefits from the first day of removal from work by a physician when removed from work for an occupational exposure to COVID-19. KRS 342.270(3) requires the commissioner to promulgate or amend existing administrative regulations to establish procedures for the resolution of claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation establishes the procedure for resolution of claims for temporary total benefits pursuant to Executive Order 2020-277.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation provides guidance to those seeking temporary total disability benefits pursuant to Executive Order 2020-277.

(2) If 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 emergency administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All employees within the Designated Class removed from work by a physician due to occupational exposure to COVID-19 and employers of those 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: Employees within the Designated Class seeking temporary total disability benefits pursuant to Executive Order 2020-277 will have to file a motion to expedite hearing. Employees within the Designated Class, employers, and insurance carriers will have expedited timelines to supply proof of whether the employee was removed from work by a physician due to occupational exposure to COVID-19.

(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): Employees within the Designated

Class removed from work by a physician due to occupational exposure to COVID-19 and their employer will be entitled to an expedited hearing.

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

(a) Initially: No additional costs are associated with implementation.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the procedure applies to all parties equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all parts of government with employees within the Designated Class.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.260, 342.270, 342.730, Executive Order 2020-277, and 21 SS HJR 1/GA.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? None.

(c) How much will it cost to administer this program for the first year? No new administrative costs will be required.

(d) How much will it cost to administer this program for subsequent years? No new administrative costs will be required.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on state or local government because the activities associated with the emergency administrative regulation are already performed, only the timing is changed.

#### STATEMENT OF EMERGENCY 902 KAR 2:230E

This emergency administrative regulation is being promulgated to establish COVID-19 antibody administration centers (CAACs) throughout the Commonwealth, including protocols for appropriate patient eligibility criteria for receiving treatment and the administration of treatment. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to protect public health, safety, and welfare, and KRS 13A.190(1)(a)3. as directed by 2021 Extra. Sess. Ky. Acts Ch. 5. This emergency administrative regulation will not be replaced by an ordinary

administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Epidemiology and Health Planning**  
**(New Emergency Administrative Regulation)**

**902 KAR 2:230E. COVID-19 antibody administration center.**

EFFECTIVE: October 1, 2021

RELATES TO: KRS 39A.350 to 39A.366, 194A.050, 211.180, 216B.015, 21 U.S.C. 360 bbb-3(b)(1)

STATUTORY AUTHORITY: 2021 Extra. Sess. Ky. Acts Ch. 5

NECESSITY, FUNCTION, CONFORMITY: 2021 Extra. Sess. Ky. Acts Ch. 5 Section 2 requires the Cabinet for Health and Family Services to assist and support established and additional COVID-19 antibody administration centers (CAACs) throughout the Commonwealth, develop protocols for appropriate patient eligibility criteria for receiving treatments, and proper protocol for the administration of treatments. 2021 Extra. Sess. Ky. Acts Ch. 5 Section 4 requires the cabinet to promulgate an emergency administrative regulation to implement Section 2. This emergency administrative regulation establishes the CAAC process, patient eligibility criteria, and treatment protocols.

Section 1. A COVID-19 antibody administration center shall abide by the most current guidance on monoclonal antibody treatment issued by the federal Food and Drug Administration available online at <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#coviddrugs>.

Section 2. (1) The Kentucky Department for Public Health shall establish a program to support, through direct financial support and other coordinating activities, CAACs for the work associated with inclusion on a state-published antibody administration website.

(2) The program established in subsection (1) of this section shall be available to all sites that agree to join this statewide network, subject to the available supply of monoclonal antibody treatments provided by the federal government through its established distribution program.

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

APPROVED BY AGENCY: September 27, 2021

FILED WITH LRC: October 1, 2021 at 10:03 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 new emergency administrative regulation references the federal Food and Drug Administration guidance for monoclonal antibody administration, including patient eligibility criteria, and treatment protocols.

(b) The necessity of this administrative regulation: In order to expand the use of monoclonal antibodies to treat COVID-19 infection, the cabinet has been directed to promulgate an emergency administrative regulation regarding the establishment of CAACs throughout the fifteen (15) Area Development Districts, patient eligibility protocols, and treatment protocols.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2021 Extra. Sess. Ky. Acts Ch. 5 Section 4 requires the cabinet to promulgate an emergency administrative regulation to implement the CAAC process, patient eligibility criteria, and treatment protocols.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new emergency administrative regulation references the most current guidance on monoclonal antibody treatment issued by the Federal Food and Drug Administration (FDA) and requires all CAACs abide by this guidance. This ensures the proper patient identification and treatment protocols for the administration of monoclonal antibodies to treat COVID-19 infection.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new emergency administrative regulation will impact all health care providers and health facilities who identify as a CAAC.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: All health care providers and health facilities operating a CAAC will need to abide by the requirements issued by the FDA through the emergency use authorization of monoclonal antibody.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs is unknown. Many health care providers and health facilities have sufficient equipment for the safe storage and handling of, and treatment with monoclonal antibodies. Those that do not currently have the required facilities and equipment would incur the costs associated with procuring these.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Health care providers and health facilities will be able to offer a monoclonal antibody treatment to eligible patients. This may help to slow the disease progression and ease the current strain on the hospital system in the commonwealth.

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

(a) Initially: This new emergency administrative regulation will have no impact on the budget of the cabinet. The authorized use of monoclonal antibodies has been issued by the FDA.

(b) On a continuing basis: This new emergency administrative

regulation will not impact the budget of the cabinet on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding necessary to implement this emergency administrative regulation will be the American Rescue Plan Act as authorized by 2021 Extra. Sess. Ky. Acts Ch. 2.

(7) Provide an assessment of whether an 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 this new emergency administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All health care providers and health facilities operating as a CAAC will need to abide by the guidance issued by the FDA.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 new emergency administrative regulation will impact the Division of Epidemiology and Health Planning in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2021 Extra. Sess. Ky. Acts Ch. 5

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 902 KAR 2:240E

This emergency administrative regulation is being promulgated to establish the Cabinet for Health and Family Services assists and supports all hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities with COVID-19 test acquisition, and establish a statewide distribution plan. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to protect public health, safety, and welfare, and KRS 13A.190(1)(a)3. as directed by 2021 Extra. Sess. Ky. Acts Ch. 5. This emergency administrative regulation will not be replaced by an ordinary administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Epidemiology and Health Planning (New Emergency Administrative Regulation)

#### 902 KAR 2:240E. COVID-19 test acquisition and distribution.

EFFECTIVE: October 1, 2021

RELATES TO: KRS 194A.050, 211.180

STATUTORY AUTHORITY: 2021 Extra. Sess. Ky. Acts Ch. 5

NECESSITY, FUNCTION, CONFORMITY: 2021 Extra. Sess.

Ky. Acts Ch. 5 Section 3 requires the Cabinet for Health and Family Services to assist and support all hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities in acquiring a sufficient number of COVID-19 tests. The cabinet is to develop a plan for the statewide distribution of the COVID-19 tests, and to distribute all COVID-19 tests. 2021 Extra. Sess. Ky. Acts Ch. 5 Section 4 requires the cabinet to promulgate an emergency administrative regulation to implement Section 3. This emergency administrative regulation is in fulfillment of this statutory directive.

Section 1. COVID-19 Tests Acquisition. (1) The Kentucky Department for Public Health (KDPH) shall coordinate testing operations in accordance with federal and state requirements.

(2) Federal and state funding shall be made available to support testing operations including the purchase of testing and laboratory supplies.

(3) Request for COVID-19 testing resources, including personnel, equipment, and supplies, shall be made to the State Emergency Operations Center or the State Health Operation Center.

(4) KDPH shall distribute any COVID-19 test available upon request from all hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities.

Section 2. COVID-19 Test Distribution in Support of Vulnerable Populations. (1) In accordance with Ky. Acts Ch. 5 Section 3 the cabinet shall, to the extent supplies and necessary funding is available, and in compliance with existing federal and state statutes and regulations, obtain and distribute BinaxNOW™ antigen test cards to jails, prisons, homeless shelters, local health departments, and other entities serving vulnerable populations;

(2) A standardized request process describing eligible entities, program requirements, and including a link to an online request survey shall be available at the [kycovid19.ky.gov](https://kycovid19.ky.gov) website.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 27, 2021

FILED WITH LRC: October 1, 2021 at 10:03 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

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

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 new emergency administrative regulation establishes the process for COVID-19 test acquisition and distribution.

(b) The necessity of this administrative regulation: 2021 Extra. Sess. Ky. Acts Ch. 5 Sec. 3 requires the cabinet to assist and support hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities in acquiring sufficient COVID-19 tests, develop a plan for statewide distribution of the COVID-19 tests, and to distribute all COVID-19 tests.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2021 Extra. Sess. Ky. Acts Ch. 5 Sec. 4 requires the cabinet to promulgate an emergency administrative regulation to implement the requirements of 2021 Extra. Sess. Ky. Acts Ch. 5 Section 3. This new emergency administrative regulation conforms to the requirements of 2021 Extra. Sess. Ky. Acts Ch. 5 Sec. 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new emergency administrative regulation will ensure the cabinet is available to assist and support hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities in acquiring sufficient COVID-19 tests, and ensure the cabinet distributes all COVID-19 tests according to a statewide distribution plan.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new emergency administrative regulation will impact all hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities who request assistance and support to acquire sufficient COVID-19 tests.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: All hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities will need to request sufficient COVID-19 tests.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities will be able to provide COVID-19 tests when necessary.

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

(a) Initially: The impact on the budget of the cabinet is unknown. The cabinet will incur costs associated with the distribution of

COVID-19 tests.

(b) On a continuing basis: This new emergency administrative regulation will not impact the budget of the cabinet on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding necessary to implement this emergency administrative regulation will be the American Rescue Plan Act as authorized by 2021 Extra. Sess. Ky. Acts Ch. 2.

(7) Provide an assessment of whether an 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 this new emergency administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All hospitals, licensed health care providers, jails, prisons, homeless shelters, local health departments, and other entities will be impacted equally by this new emergency administrative regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This new emergency administrative regulation will impact the Division of Epidemiology and Health Planning in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2021 Extra. Sess. Ky. Acts Ch. 5

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### STATEMENT OF EMERGENCY 902 KAR 2:250E

This emergency administrative regulation is being promulgated to establish the storage and handling protocols for the COVID-19 vaccines. All health care providers who provide the COVID-19 vaccine will need to ensure the vaccine is stored in compliance with the storage and handling protocols established by the Centers for Disease Control and Prevention. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to protect public health, safety, and welfare, and KRS 13A.190(1)(a)3. as directed by 2021 Extra. Sess. Ky. Acts Ch. 5. This emergency administrative regulation will not be replaced by an ordinary administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Epidemiology and Health Planning**  
**(New Emergency Administrative Regulation)**

**902 KAR 2:250E. COVID-19 vaccine storage.**

EFFECTIVE: October 1, 2021

RELATES TO: KRS 194A.050, 211.180

STATUTORY AUTHORITY: 2021 Extra. Sess. Ky. Acts Ch. 5

NECESSITY, FUNCTION, CONFORMITY: 2021 Extra. Sess. Ky. Acts Ch. 5 requires the Cabinet for Health and Family Services to promulgate an emergency administrative regulation for storage of COVID-19 vaccines. This emergency administrative regulation establishes vaccine storage protocols.

Section 1. Vaccine Storage Protocol. (1) All COVID-19 vaccines shall be stored in accordance with the most current guidance from the Centers for Disease Control and Prevention available online at <https://www.cdc.gov/vaccines/hcp/admin/storage/toolkit/index.html>.

(2) The Janssen (Johnson and Johnson) COVID-19 vaccine shall be stored in accordance with the most current protocol established by the Centers for Disease Control and Prevention (CDC) available at <https://www.cdc.gov/vaccines/covid-19/info-by-product/janssen/downloads/janssen-storage-handling-summary.pdf>.

(3) The Moderna COVID-19 vaccine shall be stored in accordance with the most current protocol established by the CDC available at <https://www.cdc.gov/vaccines/covid-19/info-by-product/moderna/downloads/storage-summary.pdf>.

(4) The Pfizer-BioNTech COVID-19 vaccine shall be stored in accordance with the most current protocol established by the CDC available at <https://www.cdc.gov/vaccines/covid-19/info-by-product/pfizer/downloads/storage-summary.pdf>.

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

APPROVED BY AGENCY: September 27, 2021

FILED WITH LRC: October 1, 2021 at 10:03 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new emergency administrative regulation references the COVID-19 vaccine storage and handling summaries issued by the Centers for Disease Control and Prevention (CDC).

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to ensure the proper storage and handling of the COVID-19 vaccines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2021 Extra. Sess. Ky. Acts Ch. 5 requires the cabinet to promulgate an emergency administrative regulation related to the storage of the COVID-19 vaccine.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will ensure the available COVID-19 vaccines are stored and handled in accordance with the guidance issued from the CDC.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new emergency administrative regulation will impact all health care providers who register with the cabinet to administer a COVID-19 vaccine.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: All health care providers offering a COVID-19 vaccine will need to ensure they are able to properly store and handle the vaccine, regardless of the vaccine being provided.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The cost is unknown. Many health care providers have sufficient facilities and equipment for the safe storage and handling of vaccines. Those that do not currently have the required facilities and equipment would incur the costs associated with procuring these.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Health care providers will be able to offer a COVID-19 vaccination as part of the routine care provided to patients. This will help to increase the total number of citizens who are vaccinated against COVID-19.

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

(a) Initially: This new emergency administrative regulation will have no impact on the budget of the cabinet. The vaccine storage and handling protocols have been developed by the CDC and are available to the public on the CDC website.

(b) On a continuing basis: This new emergency administrative regulation will not impact the budget of the cabinet on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding necessary to implement this emergency administrative regulation will be from state general fund dollars.

(7) Provide an assessment of whether an 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 this new emergency administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. Health



care providers will need to follow the storage and handling protocols for the vaccine they choose to provide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 new emergency administrative regulation will impact the Division of Epidemiology and Health Planning in the Department for Public Health as well as all local health departments providing a COVID-19 vaccination.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2021 Extra. Sess. Ky. Acts Ch. 5

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY  
902 KAR 20:460E

This new emergency administrative regulation is necessary to immediately allow long-term care facilities to implement essential visitor programs during the COVID-19 pandemic. This new emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3. in order to meet an imminent deadline for promulgation of an administrative regulation as required by 2021 Ky. Acts chapter 3, sec. 1, subsections (4) and (5), and Senate Bill 2, sec. 1 from the 2021 Special Session of the General Assembly. This new emergency administrative regulation will expire on January 31, 2022, in accordance with the sunset provision established by 2021 Ky. Acts chapter 3, sec. 1 and Senate Bill 2, sec. 1 from the 2021 Special Session of the General Assembly. This new emergency administrative regulation will not be replaced by an ordinary administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General  
Division of Health Care  
(New Emergency Administrative Regulation)

902 KAR 20:460E. Essential visitor programs; visitation guidelines for long-term care facilities.

EFFECTIVE: October 1, 2021

RELATES TO: KRS 216.510(1)

STATUTORY AUTHORITY: 2021 Ky. Acts chapter 3, sec. 1, subsection (4), (5), Senate Bill 2, sec. 1 (2021 Special Session)

NECESSITY, FUNCTION, AND CONFORMITY: 2021 Ky. Acts chapter 3, sec. 1, subsection (4) requires the cabinet to develop administrative regulations and guidelines authorizing and regulating visitation by family members or legal guardians, or outside caregivers, friends, or volunteers who provided regular care and support to the resident prior to the pandemic, and who are designated as being important to the mental, physical, or social well-being of the resident in a long-term care facility. 2021 Ky. Acts chapter 3, sec. 1, subsection (5) and Senate Bill 2, sec. 1 (2021 Special Session) require the cabinet to develop administrative regulations and guidelines authorizing and regulating visitation by family members or legal guardians, or outside caregivers, friends, or volunteers who provided regular care and support to the resident prior to the pandemic, and who are designated as being important to the mental, physical, or social well-being of a resident in critical situations such as end of life, or in the instance of significant mental or social decline of the resident, or when exigent circumstances exist regarding a resident in a long-term care facility. In accordance with 2021 Ky. Acts chapter 3, sec. 1(4)(i) and 2021 Special Session Senate Bill 2, sec. 1(2)(g), long-term care facilities shall not be required to accept visitors except in limited situations as set out in Section 4 of this regulation and as allowed under guidance issued by the Centers for Medicare and Medicaid Services for federally certified nursing facilities. This new emergency administrative regulation establishes the process for long-term care facilities to follow if a facility voluntarily implements an essential personal care visitor program through January 31, 2022. Essential compassionate care and end of life visitation shall be allowed at all times regardless of a resident's vaccination status, the county's COVID-19 positivity rate, or an outbreak in the facility.

Section 1. Definitions. (1) "Essential personal care visitor" means a family member, legal guardian, outside caregiver, friend, or volunteer who:

(a) Is eighteen (18) years of age or older;

(b) Provided regular care and support to a long-term care facility resident prior to the COVID-19 pandemic;

(c) Is designated as being important to the mental, physical, or social well-being of the resident; and

(d) Meets an essential need of the resident, including companionship, assisting with personal care, or positively influencing the behavior of the resident.

(2) "Facility-onset" means a COVID-19 case that originates in a long-term care facility.

(3) "Long-term care facility" is defined by KRS 216.510(1).

(4) "Outbreak" means one (1) new COVID-19 case among facility staff or one (1) new facility-onset case among residents. A resident who is admitted with a COVID-19 diagnosis or who is confirmed COVID-positive within fourteen (14) days of admission shall not be:

(a) Considered a facility-onset case; or

(b) Constitute an outbreak.

(5) "Personal care" means assisting a long-term care facility resident with essential everyday activities, which may include grooming, dressing, and eating.

Section 2. Essential personal care visitation. (1) A long-term care facility that implements an essential personal care visitor program shall:

(a) Allow essential personal care visitation as an exception from any prohibition against general visitation during the COVID-19 pandemic; and

(b) Establish policies and procedures for the designation of an essential personal care visitor, including a process for changing the designation.

(2) A long-term care facility's designation of an essential personal care visitor shall:

(a) Be made in consultation with, and upon agreement by the:

1. Resident; and

2. Resident's representative, if applicable; and

(b) Ensure that there is no more than one (1) essential personal care visitor per resident.

- (3) A long-term care facility:
- (a) May require a written agreement with an essential personal care visitor; and
  - (b) Shall determine when to suspend essential personal care visitation based on a clinical or safety factor, including:
    - 1. The county's COVID-19 positivity rate;
    - 2. An outbreak in the facility;
    - 3. The resident's COVID-19 status; or
    - 4. Noncompliance by the essential personal care visitor with:
      - a. Safety protocols or other requirements established by this emergency administrative regulation; or
      - b. Any policies and procedures the facility deems necessary to keep staff and residents safe.
  - (4) An essential personal care visitor shall:
    - (a) Assume the risk of exposure to COVID-19 and other viruses;
    - (b) Limit visitation to the resident's room or a facility-designated room within the building; and
    - (c) Limit his or her movement within the facility.
  - (5) If the resident has a roommate, an essential personal care visitor shall:
    - (a) Not enter the resident's room if the roommate is there; and
    - (b) Be prohibited from staying in the room for more than fifteen (15) minutes unless otherwise approved by the roommate or roommate's representative.
  - (6) An essential personal care visitor shall follow the same safety protocols required for long-term care facility staff, including:
    - (a) Testing for communicable disease, which may be the responsibility of the essential personal care visitor. If testing is provided by the facility, essential personal care visitors shall be tested on the same schedule as staff;
    - (b) Health screens, including screening for signs and symptoms of COVID-19 and denial of entry of any individual with signs and symptoms;
    - (c) Wearing a face mask and using any other appropriate personal protective equipment (PPE);
    - (d) Washing or sanitizing hands regularly;
    - (e) Maintaining a distance of six (6) feet from staff and other residents at all times. Social distancing from the resident receiving an essential personal care visit may be relaxed for a short period of time under certain circumstances, e.g., providing assistance with a personal care activity; and
    - (f) Adhering to any other requirement the facility deems appropriate in accordance with guidance from the Centers for Disease Control and Prevention (CDC).
  - (7) A long-term care facility shall:
    - (a) Be responsible for verifying and tracking the testing status of each essential personal care visitor;
    - (b) Schedule essential personal care visits in advance or in accordance with a written agreement;
    - (c) Consider the number of other essential visitors who will be in the building at the same time when developing a visitation schedule;
    - (d) Establish limitations on the visitation frequency and length of the visits to keep staff and residents safe; and
    - (e) Sanitize the area's high-frequency touched surfaces after the visit.
  - (8) An essential personal care visitor shall inform the facility if he or she develops COVID-19 symptoms within fourteen (14) days of the visit.

Section 3. Training. (1) Each essential personal care visitor shall complete facility-designated training.

(2) Training shall include information on the core principles of COVID-19 infection prevention, including adherence to the following:

- (a) Screening of all who enter the facility for signs and symptoms of COVID-19;
- (b) Regular testing for COVID-19 in the same manner as required for staff;
- (c) Wearing a face mask covering mouth, nose, and chin;
- (d) Proper hand hygiene;
- (e) Social distancing; and

(f) How to put on and take off necessary PPE.

(3) A long-term care facility may post signage throughout the facility that demonstrate key instructions to reinforce safe practices.

Section 4. Essential compassionate care visitation and end of life visitation. (1) A long-term care facility shall allow essential compassionate care visitation and end of life visitation:

(a) As an exception from any prohibition against general visitation during the COVID-19 pandemic; and

(b) At all times regardless of:

- 1. A resident's vaccination status;
- 2. The county's COVID-19 positivity rate; or
- 3. An outbreak in the facility.

(2) A compassionate care situation refers to any of the following scenarios, which is not an exhaustive list as there may be other compassionate care scenarios:

(a) A resident is newly admitted to a long-term care facility and is struggling with the change in environment;

(b) A resident has a change in status to palliative care as determined by an order from the clinician;

(c) The emergence of a condition or disease, or a failure to thrive situation in which a resident's health is declining;

(d) Emotional distress; or

(e) Significant mental or social decline of the resident.

(3) End of life visitation refers to visitation with a resident who:

(a) Has a terminal condition or dementia-related disorder that has become advanced, progressive, or incurable; and

(b) Is in the active stages of dying, terminal within thirty (30) days.

(4) Essential compassionate care visitation and end of life visitation shall be:

(a) Scheduled in advance unless a resident's rapid decline makes advance scheduling impossible; and

(b) Conducted in the resident's room or a facility-designated room in the building.

(5) If a private room is not available and essential compassionate care visitation or end of life visitation occurs in the resident's room with a roommate present, a partition shall be in place between the living areas of the resident and the resident's roommate.

(6) Before an essential compassionate care visit or end of life visit takes place, a long-term care facility shall document the following:

(a) The resident's status related to the need for an essential compassionate care visit or end of life visit;

(b) Any interventions employed to improve the resident's status and the outcome; and

(c) 1. Verification that the resident has never been COVID-19 positive; or

2. If the resident has been COVID-19 positive, verification that the resident no longer requires transmission-based precautions as outlined by the CDC.

(7) A resident receiving an essential compassionate care visit or end of life visit shall:

(a) Wear a face mask covering mouth, nose, and chin if medically feasible; and

(b) Practice appropriate hand hygiene before and after the visit.

(8) The long-term care facility shall:

(a) Screen each essential compassionate care visitor or end of life visitor for signs and symptoms of COVID-19 in the same manner as for facility staff, but testing of compassionate care or end of life visitors shall not be required pursuant to CMS Memorandum QSO-20-39-NH Revised, which may be downloaded from the following Web address: <https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf>;

(b) Provide alcohol-based hand sanitizer to each essential compassionate care visitor or end of life visitor and demonstrate how to use it appropriately; and

(c) Sanitize the area's high-frequency touched surfaces after the visit.

(9) An essential compassionate care visitor or end of life visitor shall:

- (a) Be eighteen (18) years of age or older;
  - (b) Submit to screening for signs and symptoms of COVID-19 as required by subsection (8)(a) of this section and be denied entry if the individual has signs and symptoms;
  - (c) Be escorted to and from the visitation area and agree not to leave the designated visitation area;
  - (d) Wear a face mask covering mouth, nose, and chin during the entire visit;
  - (e) Perform appropriate hand hygiene immediately before and after the visit;
  - (f) Maintain a distance of six (6) feet from staff and other residents at all times. Social distancing from a resident receiving essential compassionate care visitation may be relaxed for a short period of time;
  - (g) Meet any other condition of visitation the facility deems necessary to protect resident health and safety;
  - (h) Assume the risk of exposure to COVID-19 and other viruses; and
  - (i) Not be permitted entry into the facility or otherwise asked to leave if the visitor is not able to meet all of the conditions of this subsection.
- (10) An essential compassionate care visitor or end of life visitor shall inform the facility if he or she develops COVID-19 symptoms within fourteen (14) days of the visit.

Section 5. Temporary Implementation of Essential Visitor Programs. In accordance with 2021 Ky. Acts chapter 3, sec. 1 and Senate Bill 2, sec. 1 from the 2021 Special Session, this new emergency administrative regulation shall remain in effect until January 31, 2022.

ADAM MATHER, Inspector General  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 26, 2021

FILED WITH LRC: October 1, 2021 at 10:03 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 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 will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written 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. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel, Stephanie Brammer-Barnes, or Krista Quarles

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This new emergency administrative regulation establishes guidelines for implementation of essential personal care, essential compassionate

care, and end of life visitor programs in long-term care facilities during the COVID-19 pandemic.

- (b) The necessity of this administrative regulation: This new emergency administrative regulation is necessary to comply with 2021 Ky. Acts chapter 3, sec. 1, subsections (4) and (5), and Senate Bill 2, sec. 1 (2021 Special Session). In addition, this emergency administrative regulation will sunset on January 31, 2022, in accordance with 2021 Ky. Acts chapter 3, sec. 1 and Senate Bill 2, sec. 1 (2021 Special Session).

- (c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation conforms to the content of 2021 Ky. Acts chapter 3, sec. 1, subsections (4) and (5), and Senate Bill 2, sec. 1 (2021 Special Session) by establishing guidelines for implementation of essential visitor programs, including essential personal care visitation, essential compassionate care visitation, and end of life visitation.

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation assists in the effective administration of the statutes by establishing guidelines for implementation of essential visitor 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: This is a new emergency administrative regulation.

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

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

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

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects licensed long-term care facilities that implement essential visitor programs. The cabinet is not able to predict with accuracy how many long-term care facilities may choose to implement voluntary essential personal care visitation programs through January 1, 2022. In addition to new state law, essential compassionate care visitation programs are mandatory in accordance with federal guidelines.

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

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Long-term care facilities may voluntarily implement essential personal care visitor programs until January 31, 2022. Essential compassionate care and end of life visitation shall be allowed at all times regardless of a resident's vaccination status, the county's COVID-19 positivity rate, or an outbreak in the facility.

- (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 significant costs to long-term care facilities to implement essential visitor programs.

- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Essential visitor programs are intended to help enhance the well-being and quality of life of Kentuckians residing in long-term care facilities.

- (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 emergency administrative regulation.

- (b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this emergency administrative regulation on a continuing basis as this administrative regulation will sunset on January 31, 2022, in accordance with 2021 Ky. Acts chapter 3, sec. 1 and Senate Bill 2, sec. 1 (2021 Special Session).

- (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 emergency administrative regulation impacts licensed long-term care facilities 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. 2021 Ky. Acts chapter 3, sec. 1, subsection (4), (5), Senate Bill 2, sec. 1 (2021 Special Session)

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

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

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

(c) How much will it cost to administer this program for the first year? This emergency administrative regulation imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this emergency administrative regulation on a continuing basis as this administrative regulation will sunset on January 31, 2022, in accordance with 2021 Ky. Acts chapter 3, sec. 1 and Senate Bill 2, sec. 1 (2021 Special Session).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

During the 2021 Regular Session, [Senate Bill 2](#) amended portions of KRS Chapter 13A. An emergency regulation may now be amended after its original filing, either after receiving comments during the public comment period or, with agreement of both the committee and the agency, during a legislative committee meeting. Emergency Amended After Comments regulations go into effect upon filing and regulations amended during a legislative committee meeting go into effect upon adjournment of the meeting.

**TRANSPORTATION CABINET**  
**Department of Highways**  
**Division of Maintenance**  
**(Emergency Amended After Comments)**

**603 KAR 10:040E. Advertising devices.**

**EFFECTIVE:** October 15, 2021

**Prior versions-**

**New Emergency Administrative Regulation: 48 Ky.R. 737**

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

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

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

Section 1. Definitions.

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

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

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

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

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

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

~~(5) [(6)] "Centerline of the highway" means a line:~~

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

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

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

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

~~(6) [(7)] "Commercial or industrial activities" is defined by KRS 177.830(9).~~

~~(7) [(8)] "Commercial or industrial land use":~~

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

~~(b) Does not mean:~~

- ~~1. The leasing of property for residential purposes;~~
- ~~2. An activity conducted in a building principally used as a~~

~~residence;~~

~~3. An agricultural, forestry, ranching, grazing, farming, or related enterprise, including a wayside fresh produce stand;~~

~~4. Operation, maintenance, or storage of an advertising device;~~

~~5. A railroad track or minor siding; or~~

~~6. A facility generally recognized as a utility such as a cell tower.~~

~~(8) [(9)] "Commercial or industrial zone" means an area adjacent to a highway zoned to allow business, commerce, or trade as established in local ordinance or regulation.~~

~~(9) [(10)] "Compensation" is defined by KRS 177.830(11).~~

~~(10) [(14)] "Conversion" or "converted" means to legally modify or change a legal permitted static advertising device to a legal permitted electronic advertising device or a legal permitted electronic advertising device to a legal permitted static advertising device and can include the replacement of the device face, facing, or structure.~~

~~(11) [(12)] "Department" means the Department of Highways within the Kentucky Transportation Cabinet.~~

~~(12) [(13)] "Destroyed" means an ~~a~~ ~~nonconforming~~ advertising device damaged beyond substantial repair due to weather related events, vandalism, or other criminal or tortious acts.~~

~~(13) [(14)] "Electronic advertising device":~~

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

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

~~(14) [(15)] "Enlargement" means an addition to the permitted area of the facing of an advertising device.~~

~~(15) [(16)] "Erect":~~

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

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

~~(16) [(17)] "Exchange credit" means a singular allotment of value assigned by the department for the removal of an approved eligible advertising device that can be transferred or redeemed by its owner in exchange for future qualification of an electronic advertising device permit.~~

~~(17) [(18)] "Extension" means a temporary addition to an advertising device for a message or copy.~~

~~(18) [(19)] "Face" means the part of the advertising device including trim and background that contains the message, copy, and informative content.~~

~~(19) [(20)] "Facing" means the face or faces displayed on the same advertising device and oriented in the same direction of travel.~~

~~(20) [(24)] "Federal-aid primary highway" is defined by KRS 177.830(3) and, pursuant to 23 U.S.C.131, refers to the existence of the highway on June 1, 1991.~~

~~(21) [(22)] "FHWA adjusted urban area boundaries" means a boundary, in addition to the urban area boundary, established by the department designed to encompass areas outside municipal boundaries that have urban characteristics with residential, commercial, industrial, or national defense land uses.~~

~~(22) [(23)] "Highway" means:~~

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

~~(b) A public road maintained by the department.~~

~~(23) [(24)] "Interstate highway" is defined by KRS 177.830(2).~~

~~(24) [(25)] "Lawfully erected" means erected in compliance with law and administrative regulations in effect at the time of erection~~

or as later allowed by law.

**~~(25)(26)~~** "Legal permit" means written authorization granting the erection or continued existence of an advertising device in compliance with current state law and administrative regulation.

**~~(26)(27)~~** "Main traveled way":

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

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

**~~(27)(28)~~** "Nit" means a unit of measurement of luminance used to specify the brightness or the intensity of visible light from a device.

**~~(28)(29)~~** "Noncompliant advertising device" means an advertising device that was erected within a protected area between the dates of April 24, 2020 and March 18, 2021 and that does not comply with current state law or this administrative regulation.

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

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

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

(b) Changed conditions such as:

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

**~~(29)(32)~~** "Nonconforming permit" means written authorization allowing the continued existence of a nonconforming advertising device, subject to current state law and this administrative regulation.

**~~(30)(33)~~** "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.

**~~(31)(34)~~** "Permit" means written authorization allowing the erection or continued existence of an advertising device, subject to current state law and this administrative regulation.

**~~(32)(35)~~** "Protected area" means the area adjacent to the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway, and being:

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

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

**~~(33)(36)~~** "Scenic byway" is defined by KRS 177.572.

**~~(34)(37)~~** "Scenic highway" is defined by KRS 177.572.

**~~(35)(38)~~** "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message or copy but can include a numerical display changed by an electronic or mechanical process that does not exceed one-half of the face.

**~~(36)(39)~~** "Substantial repair" means the cost to repair the advertising device would exceed sixty (60) percent of the costs to replace it with an advertising device of the same basic construction using new materials and at the same location.

**~~(37)(40)~~** "Substantial structure" means an affixed, solid, or strong permanent construction.

**~~(38)(41)~~** "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.

**~~(39)(42)~~** "Unzoned commercial or industrial area" is defined by KRS 177.830(8).

**~~(40)(43)~~** "Urban area" is defined by KRS 177.830(10) as well as any adjacent geographical area identified as FHWA Adjusted Urban Area Boundaries.

**~~(41)(44)~~** "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

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

(1) A static or an electronic advertising device located in a

protected area of an interstate, parkway, national highway system, or federal-aid primary highway displaying copy or a message, whether or not legible, that is visible from the main traveled way shall require a permit issued by the department.

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

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

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

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

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

1. A commercial or industrial zone; or

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

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

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

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

(a) Is abandoned;

(b) Is not clean and in good repair;

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

(d) Directs the movement of traffic;

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

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

(g) Is erected or maintained upon a tree;

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

(i) Is mobile, temporary, or vehicular;

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

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

(5) The spacing, measured perpendicular to and along the centerline of the highway, between static and electronic advertising devices with visible facings oriented in the same [per] direction of travel on:

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

1. 2,500 feet between electronic advertising devices;

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

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

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

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

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

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

(7) An electronic advertising device shall only be erected or

maintained within an urban area located within 660 feet of right-of-way of a highway.

(8) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to Section **6[8]** of this administrative regulation.

(9) An electronic advertising device shall not be converted to a static advertising device prior to receiving a permit pursuant to Section **6[8]** of this administrative regulation.

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

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

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

(d) Of a luminance less than 300 nits.

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

(a) Not have a facing larger than 672 square feet;  
(b) Not have more than one (1) face per facing;  
(c) Not contain extensions to the face;  
(d) Not have interior angles between two (2) facings that exceed forty-five (45) degrees; and

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

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

(a) Be static for at least eight (8) seconds;  
(b) Change from one (1) message or copy to another in less than two (2) seconds;  
(c) Not blink, scroll, or contain animation or video; and  
(d) Be programmed to freeze in a static display if a malfunction occurs.

(13) A static advertising device:

(a) Shall not:  
1. Exceed the maximum size of 1,250 square feet per facing as established in KRS 177.863(3)(a);  
2. Contain more than two (2) advertisements or faces per facing pursuant to KRS 177.863(3)(b); or  
3. Have interior angles between two (2) facings that exceed forty-five (45) degrees **if device has more than two (2) faces**; and  
(b) May contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size limits of the facing of the device established in KRS 177.863(3)(a).

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

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

(a) Be legible from the main traveled way;  
(b) Not be larger than twenty (20) square feet;  
(c) Be shown without other owner information; and  
(d) Not be considered an advertisement.

### Section 3. Exchange of Advertising Device for Permit.

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

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

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

(a) Currently nonconforming as established in Section 4 of this administrative regulation or pursuant to local regulations;  
(b) Not less than fifty (50) square feet per facing; and  
(c) Situated in an unpermissible location in a protected area~~;~~

or

**(d) Observable from a scenic highway.]**

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

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

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

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

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

### Section 4. Nonconforming Static and Electronic Advertising Devices.

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

(2) A nonconforming advertising device permit shall be required to be renewed annually pursuant to Section **6[8]** of this administrative regulation.

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

(a) Is not abandoned;  
(b) Has been subjected to only routine maintenance as established in subsection **4)[(6)]** of this section;  
(c) Was in compliance with state law and KAR Title 603 as well as local zoning, sign, or building restrictions at the time of erection; and

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

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

(a) In kind replacement of material components with a like material component;  
(b) Painting of supports and frames;  
(c) Changing existing nonstructural light fixtures for energy efficiency;  
(d) Replacement of nuts, bolts, or nails;  
(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers;

(f) Rebuilding a destroyed advertising device; or  
(g) Changing an advertising message or copy on an advertising device.

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

(a) Enlargement of the device;  
(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;  
(c) The addition of bracing, guy wires, or other reinforcement;  
(d) A change in the location or configuration of the device;  
(e) A change in the direction **or configuration** of the face or faces;

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

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

(6) Non-routine maintenance on a nonconforming advertising



device shall constitute a violation of this administrative regulation and result in the loss of nonconforming classification and action pursuant to Section 8[10] of this administrative regulation.

Section 5. ~~[Business Devices.~~

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

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

~~(a) Inside the activity boundary line; or~~

~~(b) No further than 400 feet from the activity boundary line.~~

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

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

~~(a) Twenty (20) feet in length, width, or height; and~~

~~(b) 150 square feet in area, including border and trim and excluding supports.~~

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

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

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

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

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

~~(a) Identify a business or businesses situated upon the same property parcel; or~~

~~(b) Display business activities being conducted upon the same property parcel.~~

~~(10) A business device shall not:~~

~~(a) Be of such intensity as to cause glare or impair the vision of a driver;~~

~~(b) Move, or have moving or animated parts;~~

~~(c) Be erected or maintained on a tree; or~~

~~(d) Be erected upon or overhanging the right-of-way.~~

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

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

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

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

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

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

~~(c) PVA parcel data.~~

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

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

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

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

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

~~1. A fine of \$500 per violation pursuant to KRS 177.990(2); and~~

~~2. Provisions as established in KRS 177.870.~~

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

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

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

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

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

~~1. A fine of \$500 per violation pursuant to KRS 177.990(2); and~~

~~2. Action pursuant to Section 10 of this administrative regulation.~~

Section 6. ~~Noncompliant Static and Electronic Advertising Devices.~~

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

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

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

~~(a) Is not abandoned;~~

~~(b) Has been limited to maintenance activities as established in Section 4(6) (b) through (f) of this administrative regulation to correct hazardous conditions determined to be in the interest of the safety of the traveling public; and~~

~~(c) Was in compliance with local zoning, sign, or building restrictions at time of erection.~~

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

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



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

**Section (7)].** Scenic Highways and Byways.

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

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

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

**Section 6.[Section 8.]** Permits, Renewals, and Transfers.

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

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

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

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

(5) Application for an advertising device permit and annual permit renewal shall require a fee pursuant to KRS 177.860(1) and as established in Section ~~7[9]~~ of this administrative regulation.

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

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

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

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

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

(b) Action pursuant to Section ~~8[10]~~ of this administrative regulation.

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

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

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

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

(b) Conditional suspension of the permit.

(13) Upon receipt of a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable

photographs, and payment of applicable fees and fines within sixty (60) days of the expiration, the suspended permit shall be reinstated if compliant with current law and this administrative regulation.

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

(a) Revocation of the permit;

(b) Loss of nonconforming ~~[or noncompliant]~~ classification for a nonconforming ~~[or noncompliant]~~ advertising device; and

(c) Action pursuant to Section ~~8[10]~~ of this administrative regulation.

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

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

(a) Enlargement of the device;

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

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

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

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

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

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

(17) Making a substantial change to a device without prior approval from [first-submitting-notification-to] the department constitutes a violation of this administrative regulation and shall result in action pursuant to Section ~~8[10]~~ of this administrative regulation.

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

**Section 7.[Section 9.]** Permit Fees.

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

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

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

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

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

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

**Section 8.[Section 10.]** Notice of Violations; Appeals.

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

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

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

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

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

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

(4) If the landowner, the advertiser, or the owner of an advertising device fails to request an administrative hearing or fails to cure the violation within thirty (30) days of notice, the department shall proceed pursuant to KRS 177.870.

**Section 9.[Section 11-] Penalties.**

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

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

**Section 10.[Section 12-] Incorporation by Reference.**

(1) The following material is incorporated by reference:

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

(b) "Application for Electronic Advertising Device", TC Form 99-222, October [99-221, July] 2021;

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: October 14, 2021

FILED WITH LRC: October 15, 2021 at 9:19 a.m.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email [jon.johnson@ky.gov](mailto:jon.johnson@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes amended provisions to correct first amendment constitutional issues as prescribed by the 6th Circuit Federal Court and defines prohibited and conforming activities relative to outdoor advertising in protected areas.

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

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

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of advertising devices located within the protected area.

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

(a) How the amendment will change this existing administrative regulation: The amended regulation removes the elements found by the court as being unconstitutional and provides the framework for an alternative, content-neutral compensation based regulatory model.

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

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

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

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

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Advertising Device Owners will be required to submit annual permit renewal documentation and the associated annual device renewal fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Advertising Device Owners: Applicable fees as established by KRS 177.860.

Landowners: There are no known direct financial impacts

Advertisers: There are no known direct financial impacts

KYTC: Approximately \$350,000 annually

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

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

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

(a) Initially: \$350,000.

(b) On a continuing basis: \$350,000.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will continue be administered pursuant to terms of the Federal/State Agreement. The statutory authorization to assess permit fees for advertising devices is expected to cover the administrative costs relative to regulating advertising devices.

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

(9) TIERING: Is tiering applied? No, all advertising devices will be treated equally.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.860 and 23 U.S.C. 131.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. For local government, costs should be minimal as the process is administratively driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

(c) How much will it cost to administer this program for the first year? Approximately \$350,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$350,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**  
**900 KAR 12:005**

Pursuant to 21 RS HB 140, Ky. Acts Ch. 67, Section 2(1)(d), the Cabinet for Health and Family Services is required to promulgate administration regulations to establish a glossary of telehealth terminology to provide standard definitions for all health care providers, state agencies, and payors. The terminology and definitions used in the uniform glossary will be included in the health benefit plans sold in the commonwealth in calendar year 2022. The health benefit plans to be sold in the private health insurance market in calendar year 2022 were required to be filed with the Kentucky Department of Insurance for review and approval by April 1, 2021. Pursuant to KRS 304.14-120, the department has sixty (60) days to review and approve the forms. Pursuant to KRS 304.14-120(2) and 304.14-120(4), the department as extended the review timeframe through July 30, 2021. However, because the deadline for insurers to submit final plan documents for certification to be sold on the exchange in calendar year 2022 is August 12, 2021, the July 30, 2021, deadline cannot be extended further. In order to meet this imminent deadline, the cabinet needs to file an emergency administrative regulation to establish the glossary of telehealth terminology. This administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3. as it meets the promulgation deadline that is established by state statute. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Health Data and Analytics**  
**Division of Telehealth Services**  
**(Emergency Amended After Comments)**

**900 KAR 12:005E. Telehealth Terminology and Requirements.**

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2)-(5), 304.17A-005(23), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

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

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

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

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

(3) **"Health care provider" is defined by 304.17A-005(23), unless the provider or service is otherwise regulated by KRS 205.8451(7).**

**(4) [(3)]** "Health care service" is defined by KRS 211.332(2).

**(5) [(4)]** "Professional licensure board" is defined by KRS 211.332(3).

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

**(7) [(6)]** "Telehealth" or "digital health" is defined by KRS 211.332(5).

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

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

(b) Maintain patient privacy and security in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9, unless waived by the applicable federal authority;

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

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

(e) **Establish guidelines to contact, refer, and obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [Obtain privileges by hospitals or facilities to admit and treat patients];**

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

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

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

(h) As appropriate for the service, provider, and recipient, utilize the following modalities of communication delivered over a secure communications connection that complies with the federal

Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:

1. Live or real-time audio and video synchronous telehealth technology;
2. Asynchronous store-and-forward telehealth technology;
3. Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;
4. Audio-only telecommunications systems; or
5. Clinical text chat technology when:
  - a. Utilized within a secure, HIPAA compliant application or electronic health record system; and
  - b. Meeting:
    - (i) The scope of the provider's professional licensure; and
    - (ii) The scope of practice of the provider; and
  - (i) Comply with the following federal laws to prevent waste, fraud, and abuse relating to telehealth:
    1. False Claims Act, 31 U.S.C. § 3729-3733;
    2. Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); and
    3. Physician Self-Referral, Section 1877 of the Social Security Act (42 U.S.C. § 1395nn).

Section 3. Incorporation by Reference.

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

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

ANDREW BLEDSOE, Deputy Executive Director  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 14, 2021

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

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

Contact person: Kim Minter or Krista Quarles

(1) Provide a brief summary of:

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

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing a telehealth glossary and requirements. KRS 211.334(1) authorizes the cabinet, in consultation with the Division of Telehealth Services within the Office of Health Data and Analytics, to provide guidance and direction to providers delivering health care services using telehealth or digital health; and to promote access to health care services provided via telehealth or digital health.

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

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

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

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

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

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

This administrative regulation is being further amended in response to comment to add a definition for health care provider, and clarify the responsibility of health care providers providing telehealth in addressing how to secure higher level of care services – including emergent services – for patients.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): No cost is imposed on the entities regulated by this administrative regulation.

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

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

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

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Centers for Medicare and Medicaid Services (CMS) funding, state restricted funding, and MCO capitation fees.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn
2. State compliance standards. Meeting federal standards by complying with privacy, security, waste, fraud, and abuse requirements.
3. Minimum or uniform standards contained in the federal mandate. Meeting federal standards by complying with privacy, security, waste, fraud and abuse requirements.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) and all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors.
  2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.105, 205.510, 205.559, 205.5591, 211.332(2)-(5), 211.334(1)(d), 211.336(3), 304.17A-005(23), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn
  3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
    - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue for state or local government in the first year.
    - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue for state or local government in subsequent years.
    - (c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering this administrative regulation in the first year.
    - (d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering this administrative regulation in subsequent years.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(As Amended at ARRS, October 12, 2021)

**16 KAR 2:180. One (1) year conditional certificate.**

RELATES TO: KRS 161.020, 161.028, 161.030, 161.1211  
STATUTORY AUTHORITY: KRS 161.030(3)(b)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3)(b) establishes a one (1) year conditional certificate for persons who have completed an approved teacher preparation program but have taken and failed to successfully complete the appropriate assessments selected by the Education Professional Standards Board (EPSB). KRS 161.030(3)(b) also requires the EPSB to promulgate an administrative regulation to establish the standards and procedures for issuance of the conditional certificate. This administrative regulation establishes the standards and procedures for issuance of the one (1) year conditional certificate.

Section 1. A teacher applicant for the one (1) year conditional certificate shall have:

- (1) Taken all of the appropriate assessments established in 16 KAR 6:010 corresponding to the approved teacher preparation program completed by the teacher applicant; and
- (2) Failed at least one (1) of the assessments required by subsection (1) of this section.

Section 2. (1) A superintendent, on behalf of the employing local board of education, shall be responsible for requesting the one (1) year conditional certificate.

(2) Application shall be made to the EPSB [on Form TC-1].

(a) The teacher applicant shall meet the requirements of 16 KAR 2:010, Section 3(1)[complete sections I and III of Form TC-1].

(b) The certification officer of the teacher applicant's approved teacher preparation program shall submit documentation to the EPSB[complete section IV of Form TC-1]:

1. Indicating that the teacher applicant has completed all required coursework of the teacher preparation program corresponding to each grade level and specialization for which certification is requested; and

2. Recommending the teacher applicant for the one (1)[1] year conditional certificate.

(3)(a) The teacher applicant shall submit an official college transcript from each college or university attended.

(b) The teacher applicant shall have at least a bachelor's degree with:

1. A cumulative grade point average of 2.75[2.50] on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30)[sixty—(60)] hours of credit completed, including undergraduate and graduate coursework.

(4) The employing school district shall submit the following materials to the EPSB[with Form TC-1]:

(a) A plan for providing technical assistance and mentoring to the conditionally-certified teacher to:

1. Offer support during in-class and out-of-class time to assist the conditionally-certified teacher in meeting the teacher's instructional responsibilities; and

2. Assist the conditionally-certified teacher in passing each appropriate assessment required by 16 KAR 6:010; and

(b) The name, contact person, and role for the collaborating teacher education institution.

(5) The employing school district shall be responsible for all costs associated with providing the technical assistance and mentoring to the conditionally-certified teacher.

Section 3. (1)(a) The conditional certificate shall be issued for a validity period not to exceed one (1) year.

(b) The one (1) year conditional certificate shall not be reissued or renewed.

(2) The one (1) year conditional certificate shall be:

(a) Issued in accordance with a grade level and specialization established in 16 KAR 2:010; and

(b) Valid for each grade level and specialization listed on the face of the certificate.

(3)(a) The one (1) year conditional certificate shall be issued at the rank corresponding to the degree held by the teacher applicant.

(b) Advanced degrees shall be considered in accordance with the requirements established in 16 KAR 8:020.[

~~Section 4. Incorporation by Reference. (1) Form TC-1, rev. 7/2001, Education Professional Standards Board, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(As Amended at ARRS, October 12, 2021)

**16 KAR 2:220. Emeritus Certificate.**

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

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

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

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

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

(c) Proof of:

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

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

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

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

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

(2) The certificate shall be valid for substitute teaching and employment in the noted certification area as allowed by KRS 161.005 and the administrative regulations of the Kentucky Teachers' Retirement System.

Section 3. Renewal. (1) A candidate shall be eligible for one (1) renewal of the emeritus certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following: Twenty-five (25) dollars paid through electronic payment on the EPSB's Web site; and

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

1. Qualifying employment; or

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

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

1. Qualifying employment; or

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

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

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

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

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

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

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

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(As Amended at ARRS, October 12, 2021)**

**16 KAR 3:070. Endorsement for individual intellectual assessment.**

RELATES TO: KRS 161.020, 161.028[161.025,] 161.030

STATUTORY AUTHORITY: KRS [156.070,] 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB[KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education]. This administrative regulation provides for a program of preparation and certification[preparation-certification] leading to a certificate endorsement for administering individual intellectual assessments.

Section 1. (1) Upon application to the EPSB and compliance with 16 KAR 2:010, Section 3(1), an[An] endorsement for individual intellectual assessment shall be issued [in accordance with the pertinent Kentucky statutes and State Board of Education administrative regulations] to an applicant who holds certification as a school[guidance] counselor and who has completed the approved

program of preparation for the endorsement at a teacher education institution approved in accordance with 16 KAR 5:010[under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted by 16 KAR 5:043].

(2) The program of preparation for the endorsement for individual intellectual assessment shall include the following twelve (12) hours of graduate credit:

(a) Three (3) semester hours of graduate credit in basic testing and measurement concepts;

(b) Six (6) semester hours of graduate credit which relate directly to individual intellectual assessment; and,

(c) Three (3) semester hours of graduate credit in a supervised practicum for administering, scoring, and interpreting individual intellectual assessments.

Section 2. (1) The endorsement for individual intellectual assessment shall be issued for a duration period of five (5) years and may be renewed upon completion of:

(a) Two (2) years [three (3) years] of experience with administering, scoring, and interpreting individual intellectual assessments as part of the job function; or

(b) Three (3) semester hours of additional graduate credit in counseling, school counseling, or intellectual assessments. [If any portion of renewal experience is not completed, the certificate may be renewed upon completion of six (6) semester hours of credit selected from the areas set forth in Section 3 of this administrative regulation.]

(2) If there is a lapse in the endorsement for individual intellectual assessment for lack of meeting renewal requirements, the endorsement may be reissued at a later date upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of six (6) semester hours of additional graduate credit in counseling, school counseling, or intellectual assessments.]

Section 3. An endorsement for individual intellectual assessment shall be issued to an applicant who holds certification as a guidance counselor and who has completed twelve (12) semester hours of graduate credit including:

(1) Three (3) semester hours of graduate credit in basic testing and measurement concepts.

(2) Six (6) semester hours of graduate credit which relate directly to individual intellectual assessment.

(3) Three (3) semester hours of graduate credit in a supervised practicum for administering, scoring, and interpreting individual intellectual assessments.

Section 4. Guidance counselors who have qualified to administer individual intellectual assessments in accordance with the provisions of 704 KAR 7:020 shall no longer qualify after September 1, 1989, except upon receiving the certificate endorsement for individual intellectual assessment. Guidance counselors holding such approval and who complete the following curriculum requirements by September 1, 1989, may qualify on a minimum of nine (9) semester hours of graduate credit including:

(1) Three (3) semester hours of graduate credit in basic testing and measurement concepts.

(2) Six (6) semester hours of graduate credit which relate directly to individual intellectual assessment.]

Section 3.[Section 4.]Section 5.] The endorsement for individual intellectual assessment shall be valid for administering individual assessments at all grade levels in the schools of the Commonwealth of Kentucky.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(As Amended at ARRS, October 12, 2021)

16 KAR 4:050. Dating of certification.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires professional school personnel to hold a certificate of legal qualifications for the position. KRS 161.028(1) authorizes the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate. This administrative regulation establishes the effective and expiration dates for certification.

Section 1. (1) The effective date for statements of eligibility, certificates, provisional and probationary certificates, and certificates issued for internship shall be determined in accordance with Sections 2, 3, and 4, and 5 of this administrative regulation.

(2) The calendar year of the effective date shall be the base year. The year of expiration shall be determined by adding the years of duration to the base year in accordance with the applicable certification administrative regulation in KAR Title 16.

Section 2. Statements of Eligibility. (1) If all requirements are completed on any date from July 1 to September 1 inclusive, a statement of eligibility shall be issued to become effective on July 1 [provided all requirements are completed on any date from July 1 to September 1 inclusive] and to expire on June 30 of the last year of duration.

(2) If requirements for a statement of eligibility are completed at the close of the spring semester of an academic year, the statement of eligibility shall become effective from the date all requirements are completed and shall [to] expire on June 30 of the last year of duration.

(3) If requirements are completed on any date after September 1 up to and including the close of the fall semester, the statement of eligibility shall become effective from the date all requirements are completed and[. The statement of eligibility] shall expire on December 31 of the last year of duration.

(4) If requirements are completed after the beginning of the spring semester and before the close of the spring semester, the statement of eligibility shall become effective from the date all requirements are complete and [The statement of eligibility] shall expire on June 30 of the last year of duration.

Section 3. Certificates. (1) If all requirements are completed on any date from July 1 to September 1 inclusive, a certificate shall be issued to become effective on July 1 [provided all requirements are completed on any date from July 1 to September 1 inclusive] and to expire on June 30 of the last year of duration.

(2) If requirements for a certificate are completed after the beginning of the spring semester and before July 1, the certificate shall become effective from the date all requirements are completed and shall [to] expire on June 30 of the last year of duration.

(3) If requirements are completed after September 1 up to and including the close of the fall semester, the certificate shall be dated to become effective from the date all requirements are completed and [The certificate] shall expire on June 30 of the last year of duration.

Section 4. Provisional and Probationary Certificates. (1) If all requirements are completed on any date from July 1 to September 1 inclusive, one (1) year provisional or probationary certificates shall be issued to become effective on July 1 [provided all requirements are completed on any date from July 1 to September 1 inclusive] and to expire on June 30 of the following year.

(2) If requirements are completed after the beginning of the spring semester and before July 1, the certificate shall become effective from the date all requirements are completed and shall [to] expire on December 31 of that year.

(3) If requirements are completed after September 1 up to and including the close of the fall semester, the certificate shall be dated to become effective from the date all requirements are completed and [The certificate] shall expire on June 30 of the following year.

Section 5.~~[Section 4.]~~ Certificates Issued for Internship. (1) Certificates for the internship shall be issued for the fall and spring semester of the school year provided the confirmation of employment is received by[ia] the Education Professional Standards Board (EPSB)~~[Office of Teacher Education and Certification]~~ in sufficient time for the applicant to complete seventy (70) days during the semester or 140 days during the school year.

(2) If [in the event] a person is employed during the fall semester but cannot complete the year of internship of 140 days, the internship may be established for one (1) semester and the certification shall become effective the date the confirmation of employment is received by[ia] the EPSB~~[Office of Teacher Education and Certification.]~~

(3) A certificate may be issued only when seventy (70) days exists to establish an internship.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(As Amended at ARRS, October 12, 2021)

16 KAR 5:010. Standards for accreditation of educator preparation providers[units] and approval of programs.

RELATES TO: KRS 161.028, 161.030, 164.945, 164.946, 164.947, 20 U.S.C. 1021-1022[h]

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB~~[board]~~. This administrative regulation establishes the standards for accreditation of an educator preparation provider[unit] and approval of a program to prepare an educator.

Section 1. Definitions. (1) "Accreditation Reviewers" means the evaluators who review educator preparation providers as part of the accreditation process.

(2) "Advanced programs" means educator preparation programs offered at the graduate level and designed to develop additional specialized professional skills or credentials for P-12 educators who have already completed an initial certification program.

(3) "CAEP" means the Council for the Accreditation of Educator Preparation that establishes a set of national accreditation standards for educator preparation that apply to the state accreditation process.

(4) "Educator Preparation Provider" (EPP) means the accredited unit at an institution responsible for the preparation of educators.

(5) "Initial programs" means educator preparation programs offered at the undergraduate or graduate levels to prepare an individual for a first professional teaching credential. These programs are designed to prepare candidates who have not yet earned a certificate to become P-12 educators.

(6) "Institution" means a college or university. ~~[(4) "AACTE" means the American Association of Colleges for Teacher Education.~~

(2) "Biennial report" means the report prepared by the EPSB



summarizing the institutionally-prepared annual reports for a two (2) year period.

(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.

(4) "EPSB" means the Education Professional Standards Board.

(5) "NCATE" means the National Council for Accreditation of Teacher Education.

(6) "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.]

(7) "National Specialized Professional Association" means the association that defines the content-area standards for specialized programs. EPSB approved National Specialized Professional Associations are published on the EPSB website.

(8)[(7)] "State accreditation" means recognition by the EPSB that an EPP[institution] has[a professional education unit that has] met accreditation standards as a result of review, including an on-site team review.

(9) "Technical visit" means an on-campus, in-person visit by EPSB staff to an institution or EPP to advise for program and accreditation reviews.

(10) "Unit" means the college, school, or department of education that is seeking a first-time EPSB accreditation.

(11) "Institutional accreditation" means the accreditation that is granted to an entire institution. This may be earned through a regional accreditor or national accreditor that is recognized by the U.S. Department of Education.

Section 2. General Accreditation Requirements. (1) A Kentucky[An] institution offering an educator preparation[certification] program shall have[or a program leading to a rank change]:

(a) National accreditation by an educator preparation accreditor approved by the EPSB; or

(b) State accreditation by the EPSB.[

(a) Shall be accredited by the state; and

(b) May be accredited by NCATE.];

(2) State accreditation shall be based[;

(a) A condition of offering an educator certification program or a program leading to a rank change; and

(b) Based] on the EPSB-approved national accreditation standards aligned to the components[which include the program standards] enumerated in KRS 161.028(1)(b), and that[which] are [set out in the "Professional Standards for the Accreditation of Teacher Preparation Institutions"]established by CAEP.[NCATE. The accreditation standards shall include:]

(a) The 2022 CAEP Initial-Level Standards shall be the accreditation standards for EPPs offering initial teacher certification programs.

(b) The CAEP Standards for Accreditation at the Advanced Level shall be the accreditation standards for EPPs offering advanced educator preparation programs.];

1. Standard 1 – Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

2. Standard 2 – Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicant qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.

3. Standard 3 – Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

4. Standard 4 – Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and

diverse students in P-12 schools.

5. Standard 5 – Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

6. Standard 6 – Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.];

(3)[(4)] All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Postsecondary Education under KRS 164.945, 164.946, 164.947, and 13 KAR 1:020 shall be approved by[;

(a) Be accredited by the state through] the EPSB under this administrative regulation as a condition of offering an educator preparation[certification] program or a program leading to rank change.]; and

(b) Comply with the EPSB "Accreditation of Preparation Programs Procedure".];

(4) For continuing national or state accreditation, an EPP **shall [must]** submit the following evidence as part of the accreditation process:

(a) Documentation submitted to the EPSB staff for Title II compliance, indicating that the EPP's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent; and

(b) Documentation of institutional accreditation. Required documentation shall include a copy of the current institutional accreditation letter or report that indicates institutional accreditation status.

Section 3. Developmental Process for New Educator Preparation Institutions[Programs]. (1) Institutions[New educator preparation institutions] requesting approval from the EPSB to be recognized as a new EPP[develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation] shall follow the four (4) stage developmental process established in this Section to gain temporary authority to admit and exit candidates and operate one (1) or more educator preparation programs. The developmental process is required whether an institution intends to seek national or state accreditation.

(2) Stage One: Application.

(a) The [educator preparation] institution shall submit to the EPSB for review and acceptance an official notice of intent[letter] from the chief executive officer and the governing board of the institution [to the EPSB for review and acceptance by the board] indicating the institution's intent to begin the developmental process to become an educator preparation provider[establish an educator preparation program].

(b) The EPSB staff shall make a technical visit to the institution.

(c) The institution shall submit the following documentation:

1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;

2. A chart or narrative that lists all educator preparation programs to be offered by the institution, including any nontraditional and alternative programs, and shall depict:

a. The degree or award levels for each program;

b. The administrative location for each program; and

c. The structure or structures through which the unit implements its oversight of all programs;

3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this

paragraph, prepared for each location at which off-campus programs are geographically located;

4. An organizational chart of the institution that depicts the educator preparation unit and indicates the unit's relationship to other administrative units within the college or university;

5. The name and job description of the head of the unit and an assurance that the head has the authority and responsibility for the overall administration and operation of the unit;

6. The policies and procedures that guide the operations of the unit. Required documentation shall include the cover page and table of contents for codified policies, bylaws, procedures, and student handbooks;

7. The unit's processes, including a description of the quality assurance system, to regularly monitor and evaluate its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates;

8. Program review documentation identified in Section 18 of this administrative regulation; and

9. The institutional accreditation. Required documentation shall include a copy of the current institutional accreditation letter or report that indicates institutional accreditation status.[

1. Program descriptions required by Section 11 of this administrative regulation;

2. Continuous assessment plan required by Section 11(2) of this administrative regulation; and

3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.

(d) The EPSB shall provide for a paper review of this documentation by the Reading Committee and the Continuous Assessment Review Committee.]

(d) Stage One documentation shall be [is] reviewed by EPSB staff and the Program Review Committee. The Program Review Committee shall make one (1) of the following recommendations:

1. Concerns identified and reported to the educator preparation unit for resolution; or

2. Recommendation to proceed to Stage Two.

(e) Following a recommendation from the Program Review Committee [review of the documentation], EPSB staff shall make an additional technical visit to the institution.

(3) Stage Two: On-Site visit and Accreditation Audit Committee Recommendation.

(a) Nine (9) months prior to the scheduled on-site visit, the institution shall submit to the EPSB a written narrative self-study to describe the process and document that the unit has evaluated its practices against the EPSB approved accreditation standards. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information and shall not exceed 100 pages in length.

(b)[(a)] A [board of examiners] team of trained reviewers identified by EPSB staff shall make a one (1) day visit to the institution to verify the self-study evidence[paper review].

(c)[(b)] The team of three (3) shall be comprised of:

1. One (1) representative from a public postsecondary institution;

2. One (1) representative from an independent postsecondary institution; and

3. One (1) representative from a P-12 organization.[the Kentucky Education Association.]

(d)[(c)] The team shall submit a written report of its findings to the EPSB staff.

(e)[(d)] The EPSB staff shall provide a copy of the written report to the institution.

(f)[(e)] 1. The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.

2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.

(g)[(f)] The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(4) Stage Three: EPSB Ruling.

(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(b) An institution receiving approval or approval with conditions shall:

1. Hold this temporary authorization for two (2) years; and

2. Continue the developmental process by pursuing[and the first] accreditation [process] as established in this administrative regulation.

(c) An institution denied temporary authorization may reapply twelve (12) months after the EPSB's decision.

(d) During the two (2) year period of temporary authorization, the institution shall:

1. Admit and exit candidates;

2. Monitor, evaluate, and assess the academic and professional competency of candidates; and

3. Provide reports[Report regularly] to the EPSB staff on the institution's progress as requested.

(e) During the two (2) year period of temporary authorization, the EPSB staff:

1. May schedule additional technical visits; and

2. Shall monitor progress by [paper] review of annual reports and[-] admission and exit data[- and trend data].

(5) Stage Four: Initial Accreditation Visit.

(a) The institution shall pursue either national or state level accreditation [host a first accreditation visit] within two (2) years of the approval or approval with conditions of temporary authorization.

(b) If the institution pursues national accreditation, all[AH] further accreditation activities shall be governed by Section 4[9] of this administrative regulation.

(c) If the institution pursues state accreditation, all further accreditation activities shall be governed by Section 6 of this administrative regulation.

Section 4. National Accreditation. (1) An EPP may pursue initial or continuing national accreditation, if the national accreditor has been approved by the EPSB as demonstrating the requirements of KRS 161.028.

(2) A national accreditor seeking EPSB approval shall apply to the EPSB and submit documentation of the following:

(a) Established rigorous standards for educator preparation that align with KRS 161.028(1)(b) and guide institutions in establishing and maintaining high quality programs that produce evidence of academic achievement and educator performance;

(b) Attestation that all accreditation standards be met [in order] for an educator preparation provider to obtain and maintain accredited status;

(c) The scope of accreditation;

(d) The capacity for staff and resources to carry out the operations of the organization;

(e) Public dissemination of information about the accreditation status of educator preparation providers including length of a term of accreditation, reasons for awarding accreditation status, information about any deficiencies in relation to accreditation standards and policies and reasons for conditional approval or denial of accreditation;

(f) A system of quality assurance for standards, policies, and procedures that is reviewed on a cyclical basis;

(g) Policies and procedures and a governance structure that support the established accreditation and decision-making processes; and[.]

(h) Letter(s) of support and interest from a Kentucky EPP.

(3) National accreditors approved by the EPSB shall notify the EPSB in writing of any changes to the requirements of subsection (2) of this section and shall include the rationale for the changes.

(4) If an EPP pursues initial or continuing accreditation from a national accreditor approved by the EPSB, the accreditation decision of the national accreditor shall be presented for

recognition by the EPSB at the next scheduled meeting following the national accreditation decision.

(5) If the EPP is denied accreditation by the national accreditor, the EPP may seek Emergency Authorization to Operate from the EPSB as outlined in Section 5 of this administrative regulation.

(6) As part of national accreditation, an EPP's programs leading to educator certification and rank change shall be reviewed through the state program review process as established in Section 17 of this administrative regulation. Twenty-four (24) months prior to the scheduled on-site visit, the EPP shall submit programs for review in accordance with **Section 18 [the program review section]** of this administrative regulation.

(7) Prior to the scheduled on-site evaluation visit, EPSB staff shall participate in the pre-visit to the institution to serve as a state consultant to the national chair.

(8) At least one (1) EPSB staff member shall be assigned as support staff and liaison during the national accreditation visit and one (1) state representative trained in the standards of the national accreditor shall serve as a member of the site visit team.

(9) To maintain continuing national accreditation, the EPP shall follow the cycle and timelines established by the national accreditor.

**Section 5. Emergency Authorization to Operate (EAO).** (1) If a Kentucky EPP seeks initial or continuing national accreditation from a national accreditor approved by the EPSB and is denied accreditation, the EPP may apply for an EAO.

(2) An EAO **shall allow [allows]** the EPP to temporarily operate for one (1) year or two (2) academic terms.

(3) The EPP **shall not [cannot]** admit new candidates during the EAO period.

(4) The application for an EAO shall be made from the EPP to the EPSB within five (5) business days of the date of the official notification by the national accreditor that the EPP was denied national accreditation.

(5) The EPSB staff **shall [will]** conduct a technical visit to the EPP within ten (10) business days of receipt of the request for EAO.

(6) The EPP shall submit a Corrective Action Plan (CAP) addressing all identified deficiencies from their national accreditation within fifteen (15) calendar days following the technical visit.

(7) The CAP **shall [will]** be reviewed by the Accreditation Audit Committee for recommendation to the EPSB for state accreditation, state accreditation with conditions, state accreditation with probation, or denial.

(8) The EPSB shall review the recommendation from the Accreditation Audit Committee at the next EPSB meeting and make the determination to grant the EPP state accreditation, state accreditation with conditions, state accreditation with probation, or deny accreditation.

**Section 6. State Accreditation.** (1) EPPs seeking first or continuing state accreditation **shall be [are]** on a seven (7)-year review cycle.

(2) If an EPP held national accreditation prior, but now seeks state accreditation, the EPP **shall [would]** be reviewed for state accreditation in the same year as their previous national cycle.

(3) Twenty-four (24) months prior to the scheduled on-site visit, the EPP shall submit programs for review in accordance with Section 18 of this administrative regulation.

(4) Nine (9) months prior to the on-site visit the EPP shall submit a self-study document and supporting evidence that address the state accreditation standards.

(5) Assigned accreditation reviewers shall conduct an offsite review of the self-study and supporting evidence and produce a Formative Feedback Report to the EPP.

**Section 4. Schedule and Communications.** (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular

accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) year interval.

(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.

(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.

(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.

(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE or state accreditation shall give public notice of the upcoming visit.

(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

**Section 5. Annual Reports.** (1)(a) Each institution shall report annually to the EPSB to provide data about:

1. Faculty and students in each approved program;
2. Progress made in addressing areas for improvement identified by its last accreditation evaluation; and
3. Major program developments in each NCATE standard.

(b)1. An institution seeking accreditation from NCATE and EPSB shall complete the Professional Educator Data System (PEDS) sponsored by AACTE and NCATE and located online at <http://www.aacte.org>. After the PEDS is submitted electronically, the institution shall print a copy of the completed report and mail it to the EPSB at 100 Airport Road, Frankfort, Kentucky 40601.

2. An institution seeking state-only accreditation shall complete the Annual State-Only Institutional Data Report online at <http://www.kyepsb.net/teacherprep/index.asp> and submit it electronically to the division contact through the EPSB Web site.

(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.

(b) The EPSB may pursue action against the unit based on data received in this report.

(3) The Accreditation Audit Committee shall submit a biennial report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.

**Section 6. Content Program Review Committee.** (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.

(b) Nominations for the content program review committees shall be solicited from the education constituent groups listed in Section 13 of this administrative regulation.

(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.

(b) A content program review committee shall examine program content and faculty expertise.

(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.

(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.

**Section 7. Continuous Assessment Review Committee.** (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.

(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan.

(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.

(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.

Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.

(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.

(3) For first accreditation, the Reading Committee shall:

(a) Review the preconditions documents prepared by the institution; and

(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.

(4) For continuing accreditation and program approval, the Reading Committee shall:

(a) Determine that a submitted material meets requirements;

(b) Ask that EPSB staff resolve with the institution a discrepancy or omission in the report or program;

(c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or

(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.

(5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff for recommendation to the full EPSB.

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2) of this section.

(2) As a precondition for experiencing an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:

(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:

1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;

2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:

a. The degree or award levels for each program;

b. The administrative location for each program; and

c. The structure or structures through which the unit implements its oversight of all programs;

3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this paragraph, prepared for each location at which off-campus programs are geographically located; and

4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.

(b) Precondition Number 2. A dean, director, or chair is

officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.

(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, bylaws, procedures, and student handbooks.

(d) Precondition Number 4. The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:

1. The vision and mission of the institution and the unit;

2. The unit's philosophy, purposes, and goals;

3. Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;

4. Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and

5. A description of the system by which the candidate proficiencies described are regularly assessed.

(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:

1. A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or Web page) listing the basic requirements for entry to, retention in, and completion of professional education programs offered by the institution, including any nontraditional, alternative or off-campus programs; and

2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:

a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and

b. A compilation of results on the unit's own assessments.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:

1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and

2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.

(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate regional institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current regional accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall provide the following information:

(1) The unit's conceptual framework for the preparation of school personnel which includes:

(a) The mission of the institution and unit;

(b) The unit's philosophy, purposes, professional commitments, and dispositions;

(c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;

(d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and

(e) The system by which candidate performance is regularly assessed;

(2) The unit's continuous assessment plan that provides:

(a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;

(b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;

(c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit; and

(d) A monitoring plan for candidates from admission to exit;

(3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:060, and relevant state performance standards established in 16 KAR 1:010 or incorporated by reference into this administrative regulation including:

(a) NCATE Unit Standards established in Section 2(2)(b) of this administrative regulation;

(b) Kentucky's Safety Educator Standards for Preparation and Certification;

(c) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards; and

(d) Kentucky's Standards for Guidance Counseling Programs;

(4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:010; and

(b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the Kentucky Teacher Standards as established in 16 KAR 1:010;

(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and

(6) A curriculum guide sheet or contract provided to each candidate before or at the time of admittance to the program.

Section 12. Teacher Leader Master's Programs and Planned Fifth-Year Programs for Rank II. (1) All master's programs for rank change or planned fifth-year program for Rank II approved or accredited by the EPSB prior to May 31, 2008 shall no longer be approved or accredited as of December 31, 2010.

(a) Master's programs for initial certification shall be exempt from the requirements of this section.

(b) A master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall cease admitting new candidates after December 31, 2010.

(c) Candidates admitted to a master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall complete the program by January 31, 2013.

(d) An institution of higher learning with a master's program or a planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2008.

(e) An institution may become operational beginning January 1, 2009, if the institution:

1. Submits a redesigned master's program or a planned fifth-year program for Rank II for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the EPSB pursuant to Section 22 of this administrative regulation.

(f) 1. The EPSB shall appoint a Master's Redesign Review Committee to conduct reviews of redesigned master's programs and planned fifth-year programs for Rank II submitted for approval after May 31, 2008.

2. A master's program or a planned fifth-year program for Rank II submitted for approval after May 31, 2008 shall not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the EPSB pursuant to Section 22(2) of this administrative regulation, but shall be reviewed by the Master's Redesign Review Committee.

3.a. After review of a master's program or planned fifth-year program for Rank II, the Master's Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

(i) Approval;

(ii) Approval with conditions; or

(iii) Denial of approval.

b. The EPSB shall consider recommendations from staff and the Master's Redesign Review Committee and shall issue a decision pursuant to Section 22(4) of this administrative regulation.

(2) Beginning May 31, 2008, the educator preparation unit shall prepare and submit to the EPSB for each separate master's program or planned fifth-year program for Rank II for which the institution is seeking approval a concise description which shall provide the following information:

(a) Program design components which shall include the following descriptions and documentation of:

1. The unit's plan to collaborate with school districts to design courses, professional development, and job-embedded professional experiences that involve teachers at the elementary, middle, and secondary levels;

2. The unit's collaboration plan with the institution's Arts and Science faculty to meet the academic and course accessibility needs of candidates;

3. The unit's process to individualize a program to meet the candidate's professional growth or improvement plan;

4. The unit's method to incorporate interpretation and analysis of annual P-12 student achievement data into the program; and  
5. The institution's plan to facilitate direct service to the collaborating school districts by education faculty members;

(b) Program curriculum that shall include core component courses designed to prepare candidates to:

1. Be leaders in their schools and districts;  
2. Evaluate high-quality research on student learning and college readiness;  
3. Deliver differentiated instruction for P-12 students based on continuous assessment of student learning and classroom management;

4. Gain expertise in content knowledge, as applicable;  
5. Incorporate reflections that inform best practice in preparing P-12 students for postsecondary opportunities;

6. Support P-12 student achievement in diverse settings;  
7. Enhance instructional design utilizing the Program of Studies, Core Content for Assessment, and college readiness standards;

8. Provide evidence of candidate mastery of Kentucky Teacher Standards utilizing advanced level performances and Specialized Professional Associations (SPA) Standards if applicable; and

9. Design and conduct professionally relevant research projects; and

(c) The unit's continuous assessment plan that includes, in addition to the requirements of Section 11(2) of this administrative regulation:

1. Instruments to document and evaluate candidate ability to demonstrate impact on P-12 student learning;  
2. Clinical experiences and performance activities; and  
3. A description of a culminating performance-based assessment.

(3)(a) A master's program for rank change approved pursuant to this section shall be known as a Teacher Leader Master's Program.

(b) Upon completion of a Teacher Leader Master's Program and recommendation of the institution, a candidate may apply to the EPSB for a Teacher Leader endorsement.

(c)1. An institution with an approved Teacher Leader Master's Program may establish an endorsement program of teacher leadership coursework for any candidate who received a Master's degree at an out of state institution or who received a master's degree from a Kentucky program approved prior to May 31, 2008.

2. Upon completion of the teacher leadership course work and recommendation of the institution, a candidate who has received a master's degree at an out of state institution or a master's degree from a Kentucky program approved prior to May 31, 2008, may apply to the EPSB for a Teacher Leader endorsement.

**Section 7. [Section 7.]**13. Accreditation Reviewers[Board of Examiners]. (1) Accreditation Reviewers[A Board of Examiners] shall be comprised of::

(a) Be [recruited and appointed by the EPSB. The board shall be comprised of an equal number of] representatives from three (3) constituent groups:]

(a)[1.] Teacher educators;

(b)[2.] P-12 teachers and administrators; and

(c)[3.] State and local policymaker groups.]; and

(b) Include at least thirty-six (36) members representing the following constituencies:

1. Kentucky Education Association, at least ten (10) members;  
2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and

3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:

a. Kentucky Association of School Administrators;

b. Persons holding positions in occupational education;

c. Kentucky Branch National Congress of Parents and Teachers;

d. Kentucky School Boards Association;

e. Kentucky Association of School Councils;

f. Kentucky Board of Education;

g. Kentucky affiliation of a national specialty program

association;

h. Prichard Committee for Academic Excellence;

i. Partnership for Kentucky Schools; and

j. Subject area specialists in the Kentucky Department of Education.

(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.

(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.]

(2) Accreditation reviewers shall be trained on the CAEP accreditation standards.

(3)[(4)] The EPSB staff shall select and appoint for each scheduled on-site accreditation a team of Accreditation Reviewers[examiners] giving consideration to the number and type of programs offered by the institution. [Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed][.]

(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to co-chaired be by an NCATE appointed team member and a state team chair appointed by the EPSB.

(a) The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state – six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2).

(b) The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.]

(4)[(5)] The (6) For an institution seeking state-only accreditation, the] EPSB staff shall identify[appoint] a chair for the team[from a pool of trained Board of Examiners members.

(7) For state-only accreditation, the Board of Examiners shall have six (6) members.

(8) The EPSB shall make arrangements for the release time of a Board of Examiner member from his or her place of employment for an accreditation visit.

Section 14. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:

(1) The faculty handbook;

(2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;

(3) Faculty vitae or resumes;

(4) A random sample of graduates' transcripts;

(5) Conceptual framework documents;

(6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;

(7) Course syllabi;

(8) Policies, criteria, and student records related to admission and retention;

(9) Samples of students' portfolios and other performance assessments;

(10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;

(11) Student evaluations, including student teaching and internship performance; and

(12) Data on performance of graduates, including results of state licensing examinations and job placement rates.]

Section 8[45]. State Accreditation Previsit to the Institution. No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSB staff and team chair shall conduct a pre-visit to the institution to make a final review of the arrangements.[ For an NCATE-accredited institution, the previsit shall be coordinated with

NCATE.]

Section 9.~~[Section 14.]~~ State On-site Accreditation Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation visit.

(2) The educator preparation institution shall reimburse a state team member for travel, lodging, and meals in accordance with 200 KAR 2:006. ~~[A team member representing NCATE shall be reimbursed by the educator preparation institution.]~~

(3) The ~~Accreditation Reviewers~~~~[evaluation team]~~ shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program. ~~[The evaluation team shall make use of the analyses prepared through the preliminary review process.]~~

(4)(a) An off-campus site ~~that~~~~[which]~~ offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSB shall negotiate special arrangements.

(b) Off-campus programs shall be:

1. Considered as part of the unit and the unit shall be accredited, not the off-campus programs; and

2. Approved in accordance with Section 23~~[28]~~ of this administrative regulation.

(5) ~~Accreditation reviewers shall recommend findings on each of the accreditation standards.~~~~[In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards.]~~ A ~~recommendation~~~~[determination]~~ about each standard shall be limited to the following options:

(a) Met;

(b) Met, with one (1) or more defined areas for improvement; or

(c) Not met.

(6)(a) The ~~Accreditation Reviewers~~~~[Board of Examiners]~~ shall review each program and cite the areas for improvement for each, if applicable.

(b) The ~~Accreditation Reviewers~~~~[Board of Examiners]~~ shall define the areas for improvement in its report.

(7) The EPP may submit within thirty (30) working days of receipt of the report a written rejoinder that may be supplemented by materials pertinent to a conclusion found in the evaluation report.

(a) The accreditation documentation shall be provided for review by the Accreditation Audit Committee and EPSB.

(b) An unmet standard or area of improvement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder.]

(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.

(8) The on-site evaluation process shall end with a brief oral report:

(a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or

(b) By the state team chair for a state-only visit.

Section 17. ~~Preparation and Distribution of the Evaluation Report.~~ (1) For a state-only visit, the evaluation report shall be prepared and distributed as required by this subsection.

(a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.

(b) The first draft shall be typed and distributed to Board of Examiners members.

(c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.

(d) The unit head shall submit written notification to the EPSB confirming receipt of the draft.

(e) The unit head shall submit to the EPSB and Board of Examiners chair within ten (10) working days either:

1. A written correction to the factual information contained in the report; or

2. Written notification that the unit head has reviewed the draft and found no factual errors.

(f) The Board of Examiners chair shall submit the final report to the EPSB and a copy to each member of the Board of Examiners.

(g) The final report shall be printed by the EPSB and sent to the institution and to the Board of Examiners members within thirty (30) to sixty (60) working days of the conclusion of the on-site visit.

(2) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as required by this subsection.

(a) The NCATE chair shall be responsible for the preparation, editing and corrections to the NCATE report.

(b) The state chair shall be responsible for the preparation, editing and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.

(c) The EPSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the format prescribed by NCATE for State/NCATE accreditation visits and available on its Web site at <http://www.ncate.org/boe/boeResources.asp>.

Section 18. ~~Institutional Response to the Evaluation Report.~~

(1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.

(b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.

(c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSB.

(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.

(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.

(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 24 of this administrative regulation shall be followed.

(4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.]

Section 10.~~[Section 19.]~~ Accreditation Audit Committee. (1)

The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB. The EPSB shall appoint the Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2)~~[One (1)]~~ classroom teachers~~[teacher]~~, appointed from nominees provided by the Kentucky Education Association];

(c) Four (4) ~~EPP~~~~[Two (2) teacher education]~~ representatives, two (2)~~[one (1)]~~ from a state-supported institution and two (2)~~[one (1)]~~ from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and

(d) One (1)~~[Two (2)]~~ school administrator, [administrators appointed from nominees provided by the Kentucky Association of School Administrators.]

(2) The ~~chair~~~~[chairperson]~~ of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its ~~chair~~~~[chairperson]~~.

(3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner

consistent with the provisions for initial appointment.].

(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.].

(4) [(5)] Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the accreditation reviewers [evaluation team], and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB.

(a) The committee shall review procedures of the Accreditation Reviewers [Board of Examiners] to determine whether approved accreditation guidelines were followed.

(b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.

(c) For first accreditation, one (1) of four (4) recommendations shall be **[made]**:

1. Accreditation;
2. Provisional accreditation with conditions;
3. Provisional Accreditation with probation [Denial—of accreditation]; or
4. Denial [Revocation] of accreditation.

(d) For regular continuing accreditation, one (1) of four (4) recommendations shall be **[made]**:

1. Accreditation;
2. Accreditation with conditions;
3. Accreditation with probation; or
4. Revocation of accreditation.].

(6) For both first and continuing accreditation, the Accreditation Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners team, and institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:

- (a) Approval;
- (b) Approval with conditions; or
- (c) Denial of approval.].

(5) The Accreditation Reviewers [(7) The Board of Examiners] Team Chair may write a separate response to the recommendation of the Accreditation Audit Committee [Committee's] if the Accreditation Audit Committee's [Committee] decision differs from the Accreditation Reviewer's [Board of Examiners'] evaluation report.].

(8) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.].

Section 11. [Section 20.] Official State Accreditation Action by the EPSB [Education Professional Standards Board]. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB.

(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the state accreditation of the EPP [educator preparation unit].

(3) Decision options following a first accreditation visit shall be "accreditation", "provisional accreditation with conditions", "provisional accreditation with probation", or "denial of accreditation" [—, or "revocation of accreditation"].

(a) Accreditation.

1. This accreditation decision indicates that the EPP [unit] meets each of the [six—(6)—NCATE] standards for [unit] accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the educator preparation [professional education] unit shall be expected to describe progress made in addressing the areas for improvement cited in the EPSB's action report.

2. The next on-site visit shall be scheduled **for seven (7)** [five (5)] years following the semester of the visit.

(b) Provisional accreditation with conditions.

1. This accreditation decision indicates that the EPP [unit] has three (3) or more areas for improvement within one (1) standard or multiple areas for improvement across multiple standards. [not met one (1) or more of the NCATE standards.]. The EPP [unit] has accredited status but shall satisfy conditions [provisions] by providing evidence of addressing each area for improvement [meeting each previously-unmet standard]. The EPSB shall require submission of documentation that addresses the areas for improvement [unmet standard or standards] within six (6) months of the accreditation decision. Following the review of the documentation, the EPSB shall decide to [—, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

- a. Accredited; [or]
- b. Provisionally accredit with probation; or
- c. Deny accreditation.]
- b. Revoke accreditation.].

2. If the EPP [unit] is accredited, the next on-site visit shall be scheduled for seven (7) [five—(5)] years following the semester of the first accreditation visit.

(c) Provisional Accreditation with Probation.

1. This accreditation decision indicates that the EPP has not met one (1) or more of the accreditation standards. The EPP has accredited status but is on probation. The EPP shall schedule an on-site visit within two (2) years of the semester in which the provisional probationary decision was rendered. The EPP as part of this visit shall address the unmet standard and the identified areas for improvement. Following the on-site review, the EPSB shall decide to:

- a. Accredited; or
- b. Deny accreditation.

2. If the EPP is accredited, the next on-site visit shall be scheduled for seven (7) years following the semester of the first accreditation visit.

(d) [(e)] Denial of accreditation. This accreditation decision indicates that the EPP [unit] does not meet two (2) [one—(1)] or more of the [NCATE] standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates.].

(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.].

(4) Decision options following a continuing accreditation visit shall be "accreditation", "accreditation with conditions", "accreditation with probation", or "revocation of accreditation".

(a) Accreditation.

1. This accreditation decision indicates that the EPP [unit] meets each of the [six—(6)—NCATE] standards for [unit] accreditation. Areas for improvement may be cited, indicating problems warranting the EPPs [institution's] attention. In its subsequent annual reports, the EPP [professional education unit] shall [be expected to] describe progress made in addressing the areas for improvement cited in EPSB's action report.

2. The next on-site visit shall be scheduled for seven (7) years following the semester of the visit.

(b) Accreditation with conditions.

1. This accreditation decision indicates that the EPP [unit] has met all standards, but has three (3) or more areas of improvement within [not met] one (1) standard or multiple areas for improvement across multiple accreditation [or more of the NCATE] standards. If the EPSB renders this decision, the EPP [unit] shall maintain its accredited status, but shall satisfy conditions by addressing each area for improvement in a written report [meeting previously-unmet standards]. EPSB shall require submission of documentation that addresses the areas for improvement [unmet standard or standards] within six (6) months of the decision to accredit with conditions [—, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the



~~accreditation with conditions decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the review of the documentation [focused visit], the EPSB shall decide to:~~

- ~~a. Continue accreditation; or~~
- ~~b. Continue accreditation with probation; or~~
- ~~c. [b.] Revoke accreditation.~~

~~2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for seven (7) years following the semester in which the continuing accreditation visit occurred.~~

~~(c) Accreditation with probation.~~

~~1. This accreditation decision indicates that the EPP[unit] has not met one (1) or more of the accreditation [NCATE] standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The EPP[institution] shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. The EPSB Staff shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with probation decision was granted. [This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point.] Following the on-site review, the EPSB shall decide to:~~

- ~~a. Continue accreditation; or~~
- ~~b. Revoke accreditation.~~

~~2. If accreditation is continued, the next on-site visit shall be scheduled for seven (7) [five (5)] years after the semester of the continuing accreditation [probationary] visit.~~

~~(d) Revocation of accreditation. This decision follows a probationary [Following a comprehensive site] visit and [that occurs as a result of an EPSB decision to accredit with probation or to accredit with conditions, this accreditation decision] indicates that the EPP[unit] does not meet one (1) or more of the accreditation [NCATE] standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation shall be revoked if the unit:~~

- ~~1. No longer meets requirements of [preconditions to] accreditation, such as loss of state program approval, national accreditation for educator preparation, or institutional [regional] accreditation;~~
- ~~2. Misrepresents its accreditation status to the public;~~
- ~~3. Falsely reports data or plagiarized information submitted for accreditation and program review purposes; or~~
- ~~4. Fails to submit annual reports or other documents required for accreditation and program review.~~

~~(5) Notification of the EPSB action to revoke continuing accreditation or deny first accreditation, including failure to remove conditions, shall include notice that:~~

~~(a) The EPP[institution] shall inform candidates [students] currently admitted to a certification or rank program of the following:~~

~~1. A candidate [student] recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank; and~~

~~2. A candidate [student] who does not meet the criteria established in subparagraph 1. of this paragraph shall transfer to an EPSB [a state] accredited EPP [education preparation unit] [in order] to receive the certificate or advancement in rank, and]~~

~~(b) An institution for which the EPSB has denied or revoked accreditation may [shall] seek national or state accreditation. For state accreditation, the [through completion of the first accreditation process. The] on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation. During this two (2) year period,~~

~~candidates may not be admitted to any educator preparation program.~~

~~Section 12. [Section 21.] Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises [in] between accreditation visits, staff shall bring a complaint to the EPSB for initial review.~~

~~(2) After review of the allegations in the complaint, the EPSB may change the accreditation status of the EPP or refer the matter to the Accreditation Audit Committee for further investigation.~~

~~(3)(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the EPP [institution].~~

~~(b) Within thirty (30) days of receipt of the complaint, the EPP [institution] shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.~~

~~(4)(a) The Accreditation Audit Committee shall review any evidence supporting the allegations and any information provided by the EPP [institution].~~

~~(b) Upon completion of the review, the Accreditation Audit Committee shall issue a report containing one (1) of the following four (4) recommendations to the EPSB:~~

- ~~1. Accreditation;~~
- ~~2. Accreditation with conditions;~~
- ~~3. Accreditation with probation; or~~
- ~~4. Revocation of accreditation.~~

~~(5) The EPP [institution] shall receive a copy of the Accreditation Audit Committee's report and may file a response to the Accreditation Audit Committee's recommendation.~~

~~(6)(a) The recommendation from the Accreditation Audit Committee and the EPP's [institution's] response shall be presented to the EPSB.~~

~~(b) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the accreditation of the EPP [educator preparation unit].~~

~~Section 22. Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.~~

~~(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee, and the Reading Committee.~~

~~(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.~~

~~(4) Program approval decision options shall be:~~

~~(a) Approval, with the next review scheduled during the regular accreditation cycle unless a subsequent substantial revision is made;~~

~~(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:~~

- ~~1. Approval; or~~
- ~~2. Denial of approval; or~~

~~(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.~~

~~(5) The EPSB shall order a review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Executive Director of the EPSB as~~

the basis for a recommendation to the full EPSB for:

- (a) Approval;
- (b) Approval with conditions; or
- (c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:

(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and

(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.]

Section 13.~~[Section 23.]~~ Public Disclosure. (1) After an accreditation and~~[a unit or]~~ program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the EPSB~~[board]~~ for the meeting in which the official action was taken by the EPSB.].

(3) ~~Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations or individuals.]~~

Section 14.~~[Section 24.]~~ Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:

- (a) A prescribed standard was disregarded;
- (b) A state procedure was not followed; or
- (c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Accreditation Reviewers~~[Board of Examiners]~~ who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.].

Section 25. ~~Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(s) or (t) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028" as a condition of offering an educator certification program or program leading to a rank change.~~

~~(2) The EPSB shall consider a waiver upon request of the institution offering the alternative route program. The request shall be submitted in writing no later than thirty (30) days prior to the next regularly-scheduled EPSB meeting. In granting the waiver, the board shall consider the provisions of this administrative regulation and any information presented that supports a determination of undue restriction.]~~

Section 15. Interim Reports. (1) Each state accredited EPP shall report to the EPSB in the third year following its previous accreditation visit to provide data about:

(a)1.1 Progress made in addressing areas for improvement identified by its last accreditation evaluation;

(b)2.1 Changes in the institution's institutional accreditation status; and

(c)3.1 Continuous improvement efforts relating to the accreditation standards.

(2)(a) The EPSB staff shall review each EPP's interim report to monitor the progress of the EPP to continue a program of high quality.

(b) The EPSB may pursue action against the EPP based on data received in this report.

Section 16.~~[Section 26.]~~ In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1022f and 1022g, the EPSB shall identify an EPP~~[educator preparation unit]~~ as:

(1) "At-risk of low performing" if an EPP~~[educator preparation program]~~ has received a:

- (a) State accreditation rating of "provisional"; ~~[or]~~
- (b) State accreditation rating of "accreditation with conditions"; ~~[or]~~

(c) Summative Praxis II pass rate below eighty (80) percent [80%]; ~~or~~

(d) National accreditation rating of "accreditation with stipulation"; ~~or~~

(2) "Low performing" if an EPP~~[educator preparation program]~~ has received a state or national accreditation rating of "accreditation with probation".

Section 17.~~[Section 27.]~~ The Education Professional Standards Board shall maintain data reports related to the following~~[produce a state report card, which shall include]~~:

(1) Current accreditation status of all institutions with EPSB approved programs~~[General information on the institution and the educator preparation unit.]~~

(2) Contact information for the person responsible for the EPP~~[educator preparation unit]~~;

(3) ~~[Type or types of accreditation the unit holds;~~

~~(4) Current state accreditation status of the educator preparation unit;~~

~~(5) Year of last state accreditation visit and year of next scheduled visit;~~

~~(4) [(6)] Table of the EPP's [unit's] approved certification program or programs;~~

~~(5) [(7)] Tables relating the EPP's [unit's] total enrollment disaggregated by ethnicity and gender for the last three (3) years;~~

~~(6) [(8)] Tables relating the EPP's [unit's] faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;~~

~~(7) [(9)] Table of the number of program completers (teachers and other school professionals [administrators]) for the last three (3) years;~~

~~(8) [(10)] Table relating pass rates on the required assessments;~~

~~(9) [(11)] Table relating pass rates for the Kentucky Teacher Internship Program (if applicable);~~

~~(10) [(12)] Table relating pass rates for the Kentucky Principal Internship Program (if applicable);~~

~~(11) [(13)] Table indicating student teacher satisfaction with the preparation program;~~

~~(12) [(14)] Table relating teacher intern satisfaction with the preparation program; and~~

~~(13) [(15)] Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.~~

Section 18. Program Review Components for Developmental Process. (1) [In order] To operate a program leading to certification or rank change, the EPP shall have its program review documents reviewed by the EPSB for each separate program of educator preparation for which the EPP is seeking approval.

(2) The following information shall [must] be demonstrated in the program review documentation:

(a) An overview that includes:

- 1. The context and unique characteristics;
- 2. Description of the organizational structure;
- 3. The vision, mission, and goals; and
- 4. The shared values and beliefs for educator preparation.

(b) A description of its systematic approach for continuous improvement;

(c) A description of its clinical partnerships;

(d) An alignment of the program's coursework and field and clinical experiences with the content standards of the relevant National Specialized Professional Association, student academic expectations as established in 703 KAR 4:060, and relevant state performance standards in Title **16[XVII]** of the Kentucky Administrative Regulations;

(e) Identification and alignment of the program assessments to the state performance standards to assure each candidate's mastery prior to exit from the program;

(f) Identification of how the program addresses the applicable regulatory requirements of Title **16[XVII]** of the Kentucky Administrative Regulations;

(g) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, qualifications for the program, and status of employment within the program and the university; and

(h) A curriculum guide provided to each candidate that includes the following:

1. Name of the program and resulting certification and rank;
2. Program admission criteria;
3. Program coursework;
4. Program exit requirements;
5. Certification requirements if they differ from the program exit requirements.

Section 19. New Program Approval for an Accredited EPP. (1) An accredited EPP shall submit a program proposal for each new educator preparation program.

(2) A program proposal shall demonstrate the following components:

(a) A description of its clinical partnerships relevant to the new program;

(b) A description of the application of the EPP's continuous improvement plan as it pertains to the new program;

(c) An alignment of the program's coursework and field and clinical experiences with the content standards of the relevant National Specialized Professional Association, student academic expectations as established in 703 KAR 4:060, and relevant state performance standards in Title **16[XVII]** of the Kentucky Administrative Regulations;

(d) Identification and alignment of the program assessments to the state performance standards to assure each candidate's mastery prior to exit from the program;

(e) Identification of how the program addresses the applicable regulatory requirements of Title **16[XVII]** of the Kentucky Administrative Regulations;

(f) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, qualifications for the program, and status of employment within the program and the university; and

(g) A curriculum guide provided to each candidate that includes the following:

1. Name of the program and resulting certification and rank;
2. Program admission criteria;
3. Program coursework;
4. Program exit requirements; and
5. Certification requirements if they differ from the program exit requirements.

(3) A program **shall [must]** receive EPSB approval prior to admission of students to the program. The Program approval decision options shall be:

(a) Approval with the next review scheduled during the regular accreditation cycle;

(b) Approval with conditions with a maximum of one (1) year probationary extension for correction of a specific problem to be documented through written materials or through an onsite visit. At the end of the extension, the EPSB shall decide if the documentation supports:

1. Approval; or
2. Denial.

(c) Denial **of** approval indicating that a serious problem exists which jeopardizes the quality of preparation for school personnel.

Section 20. Continuing Program Approval. (1) **An EPP[s]** that **has [have]** been granted approval for each of **its** educator preparation programs, shall submit the following for each educator preparation program for which it **[is]** seeks continuing approval:

(a) Report of any changes in the program since the last EPSB review;

(b) Summary analysis of the program assessment data to identify areas of strength and weakness relevant to the educator performance standards; **and**

(c) Description of the program's continuous improvement plan based on the program analysis.

(2) The EPSB shall order a review of an educator preparation program if it has cause to believe that the quality of the preparation is seriously jeopardized.

(a) The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference.

(b) Phase One Review shall require a written report about the identified program(s) and the continuous improvement plans.

(c) The Phase Two Review shall require an on-site review to be conducted by EPSB staff and a team of trained reviewers.

(d) The review shall result in a report to which the EPP may respond.

(e) The review report and EPP response shall be used by the Program Review Committee as the basis for a recommendation to the full EPSB for:

1. Approval;
2. Approval with conditions; or
3. Denial of approval for the program.

(f) If the EPSB denies approval of a program, the EPP shall notify each candidate currently admitted to that program of the EPSB action. The notice shall include the following information:

1. A candidate recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and
2. A candidate who does not meet the criteria established in subparagraph 1. of this paragraph shall transfer to an EPSB approved program to receive the certificate or advancement in rank.

Section 21. Content Review Committee. (1)(a) EPSB staff shall identify and train a content review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Program Review Committee.

(b) Nominations for the content review committees shall be solicited from the education constituent groups.

(2)(a) A content review committee shall review all new educator preparation program proposals to establish congruence of the program with standards of National Specialized Professional Association and appropriate state performance standards in Title **16[XVII]** of the Kentucky Administrative Regulations.

(b) EPSB staff may initiate a content review committee for a continuing approval review as determined by program changes that may have occurred since the last review.

(3) A content review committee shall submit written comments to EPSB staff and the Program Review Committee for use in the program review process.

(4) A content review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 22. Program Review Committee. (1) The EPSB shall appoint and EPSB staff shall train a Program Review Committee representative of the constituent groups to the EPSB.

(2) The Program Review Committee shall conduct a preliminary review of the Development Process Stage One documentation for adequacy, timeliness, and conformity with the

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

corresponding standards and Kentucky Administrative Regulations.

(3) The Program Review Committee shall send a Program Review Update to the Stage One applicants indicating whether the documentation satisfies the submission requirements. If a requirement has not been met, the applicant shall be asked to revise or send additional documentation.

(4) For new program approval, the Program Review Committee shall:

(a) Determine that the submitted material meets requirements;

(b) Ask EPSB staff to resolve with the EPP a discrepancy or omission in the report or programs;

(c) Make a recommendation for program approval to the EPSB; or

(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the program.

(5) For continuing program approval, the Program Review Committee shall:

(a) Determine that the submitted material meets requirements;

(b) Identify additional components of the program to be reviewed;

(c) Ask EPSB staff to resolve with the EPP a discrepancy or omission in the report or programs;

(d) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or

(e) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the program.

(6) EPSB staff shall discuss a recommendation for termination with the EPP. The EPP may submit a written response that shall be presented with the Program Review Committee comments and program review documents to the full EPSB.

Section 23.[Section 28.] Approval of Off-site ~~[and]~~ [On-line] Programs. (1) Institutions in Kentucky with educator preparation programs shall seek approval from the EPSB[Education Professional Standards Board] before offering courses or whole programs at an off-campus site.

(a) The institution shall submit a written request to the EPSB[board] to begin offering courses at the off-site location describing the location and physical attributes of the off-campus site, resources to be provided, faculty and their qualifications, and a list of courses or programs to be offered.

(b) The off-site location shall be approved by the EPSB[board] before the institution may begin offering courses at the location.[]

~~(2)(a) Until May 31, 2008, initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program's state of origin.~~

~~(b) Beginning June 1, 2008, initial and continuing on-line educator preparation programs originating from outside Kentucky shall be regionally accredited, accredited or approved, as applicable, by the program's state of origin, and accredited by NCATE.[]~~

Section 24.[Section 29.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2022 CAEP Initial Level Standards", December 2020;

(b) "CAEP Standards for Accreditation at the Advanced Level", June 2021; and[]

(a) "Professional Standards for the Accreditation of Teacher Preparation Institutions", 2008 Edition, National Council for Accreditation of Teacher Education;

(b) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;

(c) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028", August 2002;[]

(c)[(d)] "Education Professional Standards Board Emergency Review of Certification Programs Procedure", 2020.[September 2003;

(e) "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;

(f) "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement

Programs, Credentialing Standards", July 2000; and

(g) "Kentucky's Standards for Guidance-Counseling Programs" derived from the Council for Accreditation of Counseling and Related Education Programs (CACREP) Standards, Education Professional Standards Board, November 2004.[]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 300 Sower Boulevard, 5th Floor,[Education Professional Standards Board, 100 Airport Road, 3rd Floor,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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.

### DEPARTMENT OF LAW

#### Civil Division

#### Office of Civil and Environmental Law Open Records and Meetings Division (As Amended at ARRS, October 12, 2021)

#### 40 KAR 1:040. Standardized Open Records Request Form.

RELATES TO: KRS 61.870, 61.872, 61.876(4)

STATUTORY AUTHORITY: KRS 61.876(4)

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Attorney General's Web site at [https://ag.ky.gov/Documents/2021\\_Standardized\\_Open\\_Records\\_Request\\_Form\\_V3.pdf](https://ag.ky.gov/Documents/2021_Standardized_Open_Records_Request_Form_V3.pdf). 40 KAR 1:040.

CONTACT PERSON: Marc Manley, Division Director, Open Records and Meetings Division, Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5478, email Marc.Manley@ky.gov.

### FINANCE AND ADMINISTRATION CABINET

#### Department of Revenue

#### (As Amended at ARRS, October 12, 2021)

#### 103 KAR 16:320. Claim of right doctrine.

RELATES TO: KRS 134.580, 141.010, 141.039[(43)], 141.050, 26 U.S.C. 1341

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: [Internal Revenue Code 1341, 26 U.S.C. 1341, provides for an adjustment pursuant to the claim of right doctrine. KRS 141.039 determines a corporation's Kentucky net income.]KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. Internal Revenue Code Section 1341, 26 U.S.C. 1341, provides for an adjustment to income tax where a taxpayer restores a substantial amount held

~~under claim of right. This administrative regulation interprets the application of the claim of right doctrine for Kentucky corporation income tax purposes. [how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.]~~

Section 1. Definition. "Internal Revenue Code" is defined ~~by [in]~~ KRS 141.010 ~~(21)(15)(14)]~~.

Section 2. General. If a corporation has made a claim of right adjustment in its federal tax return, a claim of right adjustment may be made to the Kentucky corporation income tax return in accordance with this section.

(1) If the year the income or deduction was originally reported or deducted ~~remains open under the statutory period authorizing a refund of money paid into the State Treasury under KRS 134.580 [an amendment to the Kentucky corporation income tax return]~~, the claim of right shall be made by amending the corporation's tax return for the year the income or deduction was reported. ~~[is still open under the statute of limitations, the claim of right shall be made by amending that same year's corporation income tax return.]~~

(2) If the year the income or deduction was originally reported or deducted is closed ~~due to the expiration of the statutory period authorizing a refund of money paid into the State Treasury under KRS 134.580 [an amendment to the Kentucky corporation income tax return]~~, ~~[as the statute of limitations has expired,]~~ the claim of right shall be made in the same taxable year as the credit or deduction was claimed for federal purposes.

(a) The amount of the federal adjustment shall be adjusted for differences between the Internal Revenue Code and KRS Chapter 141. ~~[KRS.]~~

(b) ~~Example. A corporation reported claim of right income in the amount of \$1,000,000 in a prior year closed under the statutory period authorizing a refund of money paid into the State Treasury under KRS 134.580 [an amendment to the return], and apportioned twenty (20) percent of its apportionable income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000. The adjustment to the corporation's tax liability attributable to the claim of right shall not exceed \$12,000 in the taxable year in which the claim is allowed, regardless of whether the corporation's apportionable income to Kentucky in the year in which the claim is allowed exceeds twenty (20) percent of the corporation's total apportionable income. This principle shall also apply if the tax rate in the year the adjustment attributable to the claim of right differs from the year the income was originally reported, or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right. [For example, if a corporation reported claim of right income of \$1,000,000 in a prior year, which is closed by the statute of limitations, and apportioned twenty (20) percent of its business income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000, then the adjustment for the claim of right shall not exceed a \$12,000 tax effect in the taxable year in which the claim is allowed, even though the corporation's business apportionment factor the year in which the claim is allowed is sixty (60) percent. This principle shall also apply if the tax rates differ between the applicable years or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right.]~~

Section 3. Documentation. The burden of proof shall be on the corporation to ~~establish [show]~~ that the income or deduction subject to a claim of right was taxed or subject to tax in Kentucky, and the amount of tax ~~actually paid on the income underlying the claim. [which was paid on the income.]~~ Separate computations shall be attached to the return, when filed, showing the claim of right for federal tax purposes and the amount claimed to be attributable ~~for~~ Kentucky income tax purposes. ~~[to Kentucky.]~~

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**(As Amended at ARRS, October 12, 2021)**

**103 KAR 16:352. Corporation income taxes policies and circulars.**

RELATES TO: KRS 131.130(1), ~~(8)~~, 141.010, ~~141.0101, 141.012, 141.039, 141.040, 141.044, 141.050, 141.120, 141.140, 141.160, 141.170, [141.200,] 141.210, 141.206, 141.990~~

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. ~~Prior to the enactment of KRS Chapter 13A, the department issued policies and circulars as guidance for the administration of Kentucky's tax laws. Since that time, changes to corporation income tax law have created conflict with these policies and circulars. [The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws.] This administrative regulation rescinds corporation income tax [taxes] policies and circulars.~~

Section 1. The following corporation income ~~and license tax~~ [taxes] policies [and circulars] of the ~~department [Department of Revenue]~~ are rescinded and shall be ~~[null,] void[, and unenforceable]~~.

(1) Revenue Policy 41P010 - Cooperatives. This policy ~~shall be~~ [is being] rescinded because it conflicts with KRS 141.160 and 141.170.

(2) Revenue Policy 41P020 - Short period return or change in tax period resulting from change in ownership. This policy ~~shall be~~ [is being] rescinded because it restates KRS 141.140(1).

(3) Revenue Policy 41P030 - Six-year statute of limitations. This policy ~~shall be~~ [is being] rescinded because it restates KRS 141.210(2).

(4) Revenue Policy 41P040 - Declaration of estimated tax penalty. This policy ~~shall be~~ [is being] rescinded because it is made obsolete by KRS 141.044(2)(c). ~~[restates KRS 141.990(3).]~~

(5) Revenue Policy 41P070 - Income and deductions. This policy ~~shall be~~ [is being] rescinded because it is obsolete ~~and restates KRS 141.010, 141.039, and 141.050.~~

(6) Revenue Policy 41P071 - Claim of right. This policy ~~shall be~~ [is being] rescinded because it was incorporated into 103 KAR 16:320.

(7) Revenue Policy 41P080 - Coal royalty income. This policy ~~shall be~~ [is being] rescinded because it restates KRS 141.039(1)(d). ~~[141.010(12)(d).]~~

(8) Revenue Policy 41P090 - Jobs Tax Credit. This policy ~~shall be~~ [is being] rescinded because it conflicts with KRS Chapter 13A.

(9) Revenue Policy 41P100 - Deductibility of state taxes. This policy ~~shall be~~ [is being] rescinded because it is obsolete due to the repeal of the New York Subsidiary Capital tax. ~~The department issued guidance pursuant to KRS 131.130(8) on the deductibility of state taxes. [103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income, provides guidance on the deductibility of the New York Franchise Tax on Business Corporations which includes subsidiary capital in the tax base.]~~

~~(10)(9) Revenue Policy 41P110 - Deductibility of state taxes. This policy shall be [is being] rescinded because it restates KRS 141.039(2)(c)1. and guidance has been issued by the department pursuant to KRS 131.130(8). [guidance on the deductibility of the Massachusetts corporation excise tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.]~~

~~(11)(40) Revenue Policy 41P120 - Deductibility of state taxes.~~

This policy ~~shall be~~<sup>is being</sup> rescinded because the Indiana gross receipts tax was repealed effective January 1, 2003, making this policy obsolete.

~~(12)(14)~~ Revenue Policy 41P121 - Deductibility of state taxes. This policy ~~shall be~~<sup>is being</sup> rescinded because it restates KRS 141.039(2)(c)1. and guidance has been issued by the department pursuant to KRS 131.130(8). ~~[guidance on the deductibility of the West Virginia Business and Occupations Tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.]~~

~~(13)(12)~~ Revenue Policy 41P125 - Windfall profit tax. This policy ~~shall be~~<sup>is being</sup> rescinded because it restates KRS 141.039(2)(c) ~~[41.040(13)]~~ and the provision of the Internal Revenue Code referred to in the policy has been repealed.

~~(14)(13)~~ Revenue Policy 41P130 - Taxation of income from activities on the outer continental shelf. This policy ~~shall be~~<sup>is being</sup> rescinded because it restates provisions in KRS 141.010, 141.039, ~~[KRS 141.040(12), (13), (14)]~~ and 141.120 and the holding of a court decision.

~~(15)(14)~~ Revenue Policy 41P140 - Subpart F Income. This policy ~~shall be~~<sup>is being</sup> rescinded because it conflicts with KRS 141.039(1)(b). ~~[41.040(12)]~~

~~(16)(15)~~ Revenue Policy 41P150 - Expenses Related to Nonbusiness or Nontaxable Income. This policy ~~shall be~~<sup>is being</sup> rescinded because it was incorporated into 103 KAR 16:060.

~~(17)(16)~~ Revenue Policy 41P160 - First-Year Net Operating Loss. This policy ~~shall be~~<sup>is being</sup> rescinded because it restates KRS 141.012, which was repealed effective for taxable years beginning on or after January 1, 2006.

~~(18)(17)~~ Revenue Policy 41P170 - Sales Factor. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Guidance on the ~~receipts~~<sup>sales</sup> factor is provided by 103 KAR 16:270.

~~(19)(18)~~ Revenue Policy 41P180 - Property Factor. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Guidance on the property factor is provided by 103 KAR 16:290.

~~(20)(19)~~ Revenue Policy 41P190 - Net Rental Income. This policy ~~shall be~~<sup>is being</sup> rescinded because guidance on the treatment of net rental income in the property factor is provided by 103 KAR 16:290, Apportionment; Property Factor.

~~(21)(20)~~ Revenue Policy 41P200 - Partnership and Joint Venture Income Classified Business Income. This policy ~~shall be~~<sup>is being</sup> rescinded because it conflicts with KRS 141.206.

~~(22)(21)~~ Revenue Policy 41P210 - Business Apportionment Factor for Corporations Reporting Income on Completed Contract Method. This policy ~~shall be~~<sup>is being</sup> rescinded because it was incorporated into 103 KAR 16:340.

~~(23)(22)~~ Revenue Policy 41P220 - Separate Accounting. This policy ~~shall be~~<sup>is being</sup> rescinded because it restates KRS 141.120(12) and ~~was~~ <sup>[statements in the policy conflict with KRS 141.200(15). Parts of the policy not in conflict with KRS 141.200(15) were]</sup> incorporated into 103 KAR 16:330.

~~(24)(23)~~ Revenue Policy 41P230 - Financial Organizations. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. ~~[was incorporated into 103 KAR 16:150.]~~

~~(25)(24)~~ Revenue Policy 41P240 - Homeowners Associations. This policy ~~shall be~~<sup>is being</sup> rescinded because it restates KRS 141.010, 141.039, and 141.040.

~~(26)(25)~~ Revenue Policy 41P250 - Taxation of Foreign Sales Corporations and Domestic International Sales Corporations. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:370, Corporation Income Tax Treatment of Foreign Sales Corporations and Domestic International Sales Corporations.

~~(27)(26)~~ Revenue Policy 41P260 - Corporate Distributions, Liquidations and Reorganizations. This policy ~~shall be~~<sup>is being</sup> rescinded because it restates KRS 141.0101(10).

~~(28)~~ Revenue Policy 41P500 – Agreement to extend statute of limitations. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(29)~~ Revenue Policy 41P520 – Capital. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was

~~repealed in 2005.~~

~~(30)~~ Revenue Policy 41P530 – Borrowed moneys. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(31)~~ Revenue Policy 41P540 – Unearned leasehold income. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(32)~~ Revenue Policy 41P550 – Borrowed moneys. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(33)~~ Revenue Policy 41P560 – Outer continental shelf. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(34)~~ Revenue Policy 41P570 – Corporation license tax apportionment factor. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(35)~~ Revenue Policy 41P580 – Sales factor. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(36)~~ Revenue Policy 41P590 – Homeowners associations. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(37)~~ Revenue Policy 41P600 – Real estate investment trust. This policy ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. Corporation license tax was repealed in 2005.

Section 2. The following corporation income tax circulars of the department are rescinded and shall be void:

(1) Revenue Circular 40C005 – Kentucky depreciation system. This circular shall be rescinded because it restates provisions in KRS 141.0101.

(2) Revenue Circular 40C010 – Reporting requirements for nonresident partners' of S-corporation shareholders' combined Kentucky income tax return. This circular shall be rescinded because it was superseded by KRS 141.206.

(3) Revenue Circular 40C030 – Corporation and individual income tax-special reporting procedures. This circular shall be rescinded because it is obsolete.

(4)(27) Revenue Circular 41C020 - Safe harbor or finance leases. This circular ~~shall be~~<sup>is being</sup> rescinded because it is obsolete. [Updated guidance is provided in 103 KAR 16:380, Safe Harbor or Finance Leases.]

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, October 12, 2021)**

**103 KAR 18:020. Withholding return adjustment.**

RELATES TO: KRS 141.330, 141.355

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires~~directs~~ the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. This administrative regulation establishes~~explains~~ the procedure [which] the employer is required to~~shall~~ <sup>[is to]</sup> use in correcting errors in the withholding and payment of Kentucky income tax.

Section 1. General. If the amount of tax withheld by the employer exceeds or is less than the tax required to be withheld and [If more or less than the correct amount of tax is withheld, for any period, or more or less than the correct amount of tax is] paid to the department for any period, proper adjustment may be made on the return for a subsequent period of the same calendar year.

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

Every return on which an adjustment for a preceding period is reported ~~shall~~ must include a statement explaining the adjustment and designating the period in which the error occurred. A claim for refund may be filed for any overpayment.

Section 2. Under-withholding. If less than the correct amount of the tax required to be withheld is deducted from any wage payment, the employer ~~may~~ is authorized to deduct the under-collection from the remuneration of the employee under his or her control. If there is no ~~[such]~~ remuneration under the control of the employer, the matter is one for settlement between the employer and the employee, but the amount under-collected shall be the liability of the employer. ~~[employer is responsible for the underwithholding.]~~

Section 3. Over-withholding. If more than the correct amount of tax required to be withheld is deducted from any wage payment, the over-collection may be repaid to the employee. The employer shall obtain and keep, as part of his or her records, the written acknowledgement of receipt of the repayment by the employee ~~[receipt of the employee]~~ showing the date and amount of the repayment. Any over-collection not repaid and receipted for by the employee ~~shall~~ must be reported and paid to the department ~~[Department of Revenue]~~ for the period in which the over-collection was made.

Section 4. Other Errors. Employers ~~shall~~ should consult the department for correction of errors in withholding which cannot be adjusted in a return for a subsequent period of the same calendar year.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, October 12, 2021)

#### 103 KAR 18:090. Payroll records.

RELATES TO: KRS 131.130, 141.050, 141.310, ~~141.315, 141.325~~

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires ~~[directs]~~ the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. This administrative regulation provides guidelines for the maintenance and retention of records relative to income tax withholding by employers.

Section 1. Maintain Records. (1)(a) Every employer required to deduct and withhold income tax upon wages ~~[the tax]~~ shall keep employee withholding exemption certificates and records showing the following:

1. The number of persons employed during the year whose wages are subject to withholding;
2. The ~~[the]~~ periods of employment; and
3. The ~~[the]~~ amounts and dates of payment to each person ~~[such persons.]~~

(b) No specific form for ~~[such]~~ records has been prescribed by the department.

(2) Records required by this administrative regulation shall be maintained for a period of at least four (4) years after the date the withholding return is filed or the date tax withheld by the employer is paid, whichever is later.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High

Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, October 12, 2021)

#### 103 KAR 27:050. Sourcing of retail sales by florists.~~[Florists and nurserymen.]~~

RELATES TO: KRS 139.010, 139.105, 139.200, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130(1), 139.105  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. KRS 139.105 requires florist wire sales to be sourced in accordance with an administrative regulation promulgated by the department. This administrative regulation interprets the sales and use tax law as it applies to sales by florists ~~and nurserymen~~.

Section 1. Sales of ~~the following~~ are examples of items that shall be subject to the sales and use tax:

- (1) Balloons;
- (2) Bouquets;
- (3) Candy;
- (4) Flowers;
- (5) Potted plants;
- (6) Shrubbery;
- (7) Vases;
- (8) Wreaths; and
- (9) Other similar items of tangible personal property ~~[flowers, wreaths, bouquets, potted plants, shrubbery, and other such items of tangible personal property are subject to the sales and use tax.]~~

Section 2. Florist Transactions through a Florists' Wire Delivery Association. If a ~~[Where]~~ florist conducts ~~[florists conduct]~~ transactions through a florists' wire ~~[telegraphic]~~ delivery association, the following rules shall ~~[will]~~ apply in the computation of tax liability:

(1) On all orders taken by a Kentucky florist and sent ~~[telegraphed]~~ to a second florist in Kentucky for delivery in Kentucky, the sending florist shall ~~[will]~~ be liable for the tax based upon gross receipts from the customer who places the order;

(2) If a ~~[In cases where a]~~ Kentucky florist receives an order and subsequently sends ~~[pursuant to which he gives telegraphic]~~ instructions to a second florist located outside Kentucky for delivery of tangible personal property ~~[flowers]~~ to a point outside Kentucky, the Kentucky tax owed shall be based upon gross ~~[tax will likewise be owing with respect to the total]~~ receipts of the sending florist from the customer who places the order; and

(3) If a ~~[In cases where]~~ Kentucky florist receives ~~[florists receive]~~ ~~[telegraphic]~~ instructions from another florist ~~[other florists]~~ ~~[either]~~ within or outside of Kentucky for the delivery of tangible personal property ~~[flowers]~~, the receiving florist shall ~~[will]~~ not be held liable for tax with respect to any receipts realized ~~[which he may realize]~~ from the transaction. In this instance, if the order originated in Kentucky, the tax shall ~~[will]~~ be due ~~[from]~~ and payable by the Kentucky florist who first received the order and then sent ~~[gave the telegraphic]~~ instructions to the second florist.

Section 3. Florist Transactions not through a Florists' Wire Delivery Association. If a florist conducts ~~[florists conduct]~~ transactions through any other means other than a florists' wire delivery association, all orders shall be sourced to the destination where the tangible personal property is delivered, pursuant to KRS 139.105. The florist shall collect and remit the sales and use tax accordingly on the retail sale of the tangible personal property. ~~[When a nurseryman or florist sells shrubbery, young trees or similar items, and as part of the transaction transplants them to the~~

land of the purchaser for a lump sum or a flat rate, the vendor so selling and installing must make a segregation of that portion of the charge which is for tangible personal property sold and that portion of the charge which is for installation. Failure to segregate the charge will subject the entire amount of the transaction to the sales tax.}]

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**(As Amended at ARRS, October 12, 2021)**

**103 KAR 27:150. Repairers and reconditioners of tangible personal property.**

RELATES TO: KRS 139.010, 139.200, 139.215, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the sales and use tax requirements for parts and materials used by repairers and reconditioners of tangible personal property.

Section 1. Definitions. (1) "De minimis" is defined by KRS 139.215.

(2) "Extended warranty services" is defined by KRS 139.010(13).

Section 2. (1) A repairer or reconditioner of tangible personal property shall be classified as a retailer of taxable tangible personal property sold (including repair parts, replacement parts, and materials) along with all service, installation, and repair charges associated with installing or applying the taxable tangible personal property sold.

(2) Examples of repairers or reconditioners shall include repairers or reconditioners of:

- (a) Airplanes;
- (b) Bicycles;
- (c) Boats;
- (d) Cellular phones;
- (e) Computers;
- (f) Furniture;
- (g) Machinery;
- (h) Motor vehicles;
- (i) Musical instruments;
- (j) Radios; or
- (k) Television sets.

Section 3. Taxable and Nontaxable Service and Installation Labor for Repairers or Reconditioners of Tangible Personal Property. (1) Charges for labor or services provided in installing or applying taxable tangible personal property, digital property, and services sold shall be subject to sales and use tax. For example, an appliance repair shop that sells and installs a new drain pump on a washing machine shall collect and remit sales tax on the sale of the drain pump and any service, installation, or labor charge associated with the installation of the drain pump. Since the drain pump sold is subject to sales and use tax, the service, installation, or labor charges associated with the installation of the drain pump also shall be subject to sales and use tax.

(2) Service, installation, or labor charges made to tangible personal property where there is no sale of taxable tangible personal property, digital property, or service shall not be subject to sales and use tax. For example, the charge for an appliance repair shop to merely reconnect a loose drain hose shall not be subject to sales and use tax. If the appliance repair shop only reconnects a

loose drain hose with no sale of taxable property or services, then the service, installation, or labor charge associated with the repair shall not be subject to sales and use tax.

(3) If tangible personal property, digital property, or services sold are not subject to sales and use tax, the charges for labor or services provided in installing or applying the property or services sold also shall not be subject to sales and use tax. For example, an appliance repair shop that sells and installs a washing machine electronic control panel receives a fully completed Resale Certificate, Form 51A105, Streamlined [Streamlined] Sales and Use Tax Agreement—Certificate of Exemption, Form 51A260 [51A206], or Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate—Multijurisdictional, for the purchase of the electronic control panel. Since the electronic control panel is exempt from sales and use tax, the service, installation, or labor charge associated with the sale and installation of the electronic control panel also shall not be subject to sales and use tax.

Section 4. De Minimis Parts and Materials. [(1) A repairer or reconditioner of tangible personal property shall be classified as a retailer of parts and materials furnished in connection with repair work in which the value of the parts and materials is substantial in relation to the total charge.

(2) Examples of a repairer or reconditioner shall include: repairers of motor vehicles, airplanes, bicycles, machinery, farm implements, musical instruments, computers, radios, television sets, boats, and furniture.

(3) The repairer or reconditioner shall segregate on the invoices to their customers and in their books and records the price of the parts and materials from the charges for labor of repair, reconditioning, installation and other services. The tax shall be applicable to the sales price of the property.

(4) If the labor and other services are not separately stated from the price of the property furnished as required by subsection (3) of this section, it shall be presumed that the entire charge represents the sale price of the property and the tax shall apply to the entire charge.

Section 2.] (1) According to the provisions of KRS 139.215, if the value of the parts and materials used in the repair or reconditioning of tangible personal property is less than ten (10) percent of the total value of the parts and materials, labor, and [charges for the labor or] other services performed and if no separate charge is made for the property, the repairer or reconditioner shall be classified as the consumer of the property, and the suppliers of parts and materials shall be classified as retailers subject to the tax with respect to the property which they sell to the repairer or reconditioner.

(2) The list in this subsection shall serve as examples of repairs or alterations in which the parts and materials used are less than ten (10) percent in relation to the charges for labor or other services performed.[:]

- (a) Repairs of:
  - 1. Clothing;
  - 2. Dental prosthesis;
  - 3. Eyeglass frames;
  - 4.[2.] Fishing rods;
  - 5.[3.] Jewelry;
  - 6.[4.] Tires;
  - 7.[5.] Tubes; or
  - 8.[6.] Watches; or

(b) Alterations performed by the retailer to refit clothes and other garments for the use for which they were originally produced.

Section 5. Extended Warranty Services. (1)(a) Effective July 1, 2018, receipts from the sale of extended warranty services, including the sale of optional service, maintenance, or extended warranty contracts related to taxable tangible personal property, shall be subject to sales and use tax.

(b) The person performing repair work under the provisions of an extended warranty service agreement or contract subject to tax sold on or after July 1, 2018, may purchase the repair parts used in



fulfilling the contract exempt from sales and use tax using the Resale Certificate, Form 51A105, the Streamlined Sales and Use Tax Agreement- Certificate of Exemption, Form 51A260 [51A206], or the Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate-Multijurisdictional pursuant to KRS 139.270.

(c) Charges by an entity to perform repair labor under the provisions of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(d) Charges by a third party to perform repair work for an extended warranty service agreement provided under the provision of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(e) Charges for repair work made outside the provisions of an existing extended warranty service agreement or contract that include taxable service, installation, or repair labor are included in gross receipts pursuant to KRS 139.010(15)(a)(6) and **shall be** subject to sales tax.

(f) Deductibles charged as part of the provision of a taxable extended warranty service contract shall be subject to sales and use tax.

(2) (a) Receipts from the sale of optional service, maintenance, or extended warranty contracts sold prior to July 1, 2018, not required as part of the sale of taxable tangible personal property, shall not be subject to sales and use tax if the retailer separately itemized the charge for the sale of the service, maintenance, or extended warranty contract on the customer's invoice and in the retailer's books and records.

(b) The person performing the repair work under a contract described in subsection (2)(a) of this section sold prior to July 1, 2018, shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of the contract.

Section 6. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

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

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

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

~~Section 7. [Section 3. If the method of repairing or reconditioning tangible personal property involves commingling property delivered to a repairer or reconditioner with similar property so that the customer receives repaired or reconditioned property which may not be the identical property delivered to the repairer or reconditioner but which is exactly the same kind of property or derived from exactly the same kind of property as that delivered, tax shall apply to the entire amount charged by the repairer or reconditioner for the exchange of property, and a deduction shall not be allowed for services involved since the exchange and other acts incidental to it constitute an integral transaction. This shall apply, for example, to the exchange of a reconditioned vehicle motor for a worn motor.~~

~~Section 4. (1) Receipts from the sale of optional service, maintenance, or extended warranty contracts offered but not required as a part of the sale of taxable tangible personal property shall not be subject to sales and use tax if the retailer separately itemizes the charge for the sale of the service, maintenance, or extended warranty contract on the customer's invoice and in the retailer's books and records. The person performing the repair work under the contract shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of optional service, maintenance, or extended warranty contracts.~~

~~(2) Receipts from the sale of service, maintenance, or extended warranty contracts that are included as part of the sale of taxable tangible personal property shall be included in the sales~~

~~price subject to tax as provided in KRS 139.010.~~

Section 5. (1) This administrative regulation shall replace Revenue Circular 51C020 and Revenue Policy 51P190.

(2) Revenue Circular 51C020 and Revenue Policy 51P190 are hereby rescinded and shall be null, void, and unenforceable.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email [Gary.Morris@ky.gov](mailto:Gary.Morris@ky.gov).

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, October 12, 2021)**

**103 KAR 30:091. Sales to farmers.**

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

STATUTORY AUTHORITY: 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS [139.010,]131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.480 exempts specified property from sales and use taxes. This administrative regulation establishes the sales and use tax requirements for sales to farmers.

Section 1. Definitions. (1) "Attachments" means tangible personal property that:

(a) Is necessary for the operation of farm machinery and is purchased primarily to improve efficiency to diversify the function which the machinery is capable of performing; and

(b) Includes replacement attachments, or repair or replacement parts for the attachments.

(2) "Crops" means plants, trees, or shrubs grown for sale, including corn, flowers, fruit, hay, sod, soybeans, straw, timber, tobacco, vegetables, and wheat, ~~straw, fruit, vegetables, timber, and flowers~~.

(3) "Farmer" means any person that is regularly engaged in the occupation of:

(a) Tilling and cultivating the soil for the production of crops as a business;

(b) Raising livestock or poultry, if the livestock or poultry, or the products of the livestock or poultry, are for sale;

(c) Producing milk for sale; or

(d) Breeding or producing:

1. Aquatic organisms;

2. Buffalos;

3. Cervids;

4. Llamas or alpacas; or

5. Ratites.

1. Ratites;

2. Llamas or alpacas;

3. Buffalos;

4. Aquatic organisms; or

5. Cervids.]

(4) "Farm machinery" is defined by KRS 139.480(11).

(5) "Livestock" means animals of a kind the products of which ordinarily constitute food for human consumption.

(6) "On-farm facility" means property used in the pursuits provided under KRS 139.480 as follows:

(a) Fencing or structures permanently affixed to or installed on the premises of the property;

(b) Improvements to real property such as ponds;

(c) Any materials incorporated into the construction, renovation, or repair of the fencing, structures, or improvements described in paragraph (a) or (b) **of this subsection**; and

(d) Any equipment, machinery, or attachments including repair or replacement parts for the equipment, machinery, or attachments used in the operation of the facility.

**VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

(7) "Person" is defined by KRS 139.010(26)(49).

Section 2. The examples of taxable and nontaxable items contained in this administrative regulation shall be used for illustrative purposes only and are not intended to be all inclusive.

Section 3. Farm Machinery. In addition to the more commonly recognized items that are classified as "farm machinery", the list provided in this section shall serve as examples of the items that shall qualify for exemption if used exclusively and directly for farming as provided in KRS 139.480(11):

- (1) All terrain vehicles (ATV) or utility vehicles;
- (2) Automatic or portable feeding equipment including:
  - (a) Livestock creep feeders; and
  - (b) Poultry feeders;
- (3) Automatic egg gathering systems;
- (4) Automatic washers;
- (5) Automatic waterers;
- (6) Brooders;
- (7) Bulk tanks (mechanical);
- (8) Bush hogs;
- (9) Chain saws;
- (10) Cleaning machinery (mechanical);
- (11) Clippers for livestock;
- (12) Coke stoves for curing tobacco;
- (13) Cooling units or cooling fans;
- (14) Egg processing machinery;
- (15) Farm wagons;
- (16) Grain or hay elevators;
- (17) Hay mowers;
- (18) Heaters (portable);
- (19) Incubators;
- (20) Insecticide sprayers (hand-held);
- (21) Irrigation systems;
- (22) Log splitters;
- (23) Milking machines;
- (24) Posthole diggers (mechanical);
- (25) Roller mills;
- (26) Seed sowers (automatic);
- (27) Shop welders or other machinery (mechanical) used exclusively to maintain other farm machinery;
- (28) Silo unloaders (augers);
- (29) Tilt table for livestock;
- (30) Tobacco curing machinery;
- (31) Tobacco setter;
- (32) Tobacco transplant system machinery, including:
  - (a) Clipping equipment;
  - (b) Heating equipment;
  - (c) Injector systems;
  - (d) Seeding equipment; and
  - (e) Ventilation equipment; or
- (33) Tractor mounted sprayer.

Section 4. Exempt Chemicals. In addition to more commonly recognized items that are classified as "farm chemicals", the list provided in this section shall serve as examples of items that shall qualify for the farm chemical exemption as provided in KRS 139.480(8):

- (1) Adjuvant to enhance herbicide coverage of crops;
- (2) Antiseptic wipes to clean cows' udders;
- (3) Insecticidal dipping chemicals;
- (4) Insecticidal ear tags;
- (5) Lime or hydrated lime for disinfectant;
- (6) Methyl bromide gas or similar tobacco chemicals; or
- (7) Seed flow enhancers to optimize seed planting and spacing, including talc or graphite.

Section 5. Exempt Feed. The list provided in this section shall serve as examples of items that shall qualify for the feed and feed additive exemptions as provided in KRS 139.480(9):

- (1) Bag or block salt;
- (2) Dietary supplements as a feed additive;
- (3) Fish pellets, grain, corn gluten, peanut hulls, soybean hulls,

or distiller's grain;

- (4) Milk replacer;
- (5) Mineral blocks;
- (6) Protein blocks;
- (7) Protein supplements; or
- (8) Special medicated feed pre-mixes.

Section 6. On-farm Facilities. The list provided in this section shall serve as examples of items the sale or purchase of which shall qualify for the exemption provided for all on-farm facilities under KRS 139.480:

- (1) Branding iron heaters or irons;
- (2) Bucket racks;
- (3) Building materials, including:
  - (a) Concrete;
  - (b) Gravel;
  - (c) Guttering;
  - (d) Insulation;
  - (e) Lumber;
  - (f) Nails;
  - (g) Paint;
  - (h) Rock;
  - (i) Roofing materials; or
  - (j) Sand;
- (4) Culvert pipe;
- (5) Drainage tile;
- (6) Erosion mats;
- (7) Farm gates;
- (8) Feeding system materials or equipment, including:
  - (a) Feed buckets;
  - (b) Feed bunks for farm wagons;
  - (c) Hoses;
  - (d) Nozzles;
  - (e) Pipelines;
  - (f) Round bale feeders;
  - (g) Salt or mineral feeders; or
  - (h) Tubes;
- (9) Fencing materials, including:
  - (a) Cattle guards;
  - (b) Fence chargers;
  - (c) Insulators or other components used in an electrical fence system;
  - (d) Planks;
  - (e) Posts;
  - (f) Staples; or
  - (g) Wire;
- (10) Handling facilities, including:
  - (a) Corral panels, chutes, or sweeps;
  - (b) Farrowing crates;
  - (c) Headgates; or
  - (d) Holding crates or hutches;
- (11) Insect control (electric);
- (12) Livestock oilers;
- (13) Manure pit for livestock;
- (14) Pond sealers;
- (15) Silos, silo covers, or silage covers;
- (16) Water hydrants or water tanks; or
- (17) Water pipe including plastic or other material.

Section 7. Packaging Materials. The list provided in this section shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax if used in the packaging of products for sale, in addition to the exemption provided for twine and wire used for baling hay and straw in KRS 139.480(26)(27):

- (1) Bags or sacks;
- (2) Baskets;
- (3) Crates;
- (4) Net Wrap [Shrink-wrap]; or
- (5) Shrink Wrap [Net-wrap].

Section 8. Farm Work Stock. The list provided in this section shall serve as examples of farm work stock the sale or purchase of which shall be exempt from sales and use tax as provided in KRS

**VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

139.480(6):

- (1) Donkeys or burros;
- (2) Draft horses;
- (3) Guard dogs, including the Pyrenees or Polish Tatra breeds, to protect sheep, goats, or other livestock;
- (4) Herd dogs for herding sheep, cattle, or other livestock;
- (5) Jacks; or
- (6) Mules.

Section 9. Attachments, Repair and Replacement Parts. (1) Attachments sold or purchased for use on farm machinery which are necessary to the operation of the farm machinery shall be exempt from sales and use tax. The list provided in this subsection shall serve as examples of items of sale or purchase of which shall be exempt from sales and use tax:

- (a) Dual wheel assemblies;
- (b) Hitches;
- (c) Hydraulic systems;
- (d) Water tanks; or
- (e) Weights.

(2) Repair and replacement parts sold or purchased for use on farm machinery which are necessary to the operation of the machinery shall be exempt from sales and use tax. The list provided in this subsection shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax:

- (a) Batteries;
- (b) Bolts;
- (c) Chain saw repair parts;
- (d) Cutting parts;
- (e) Fan belts;
- (f) Farm machinery filters;
- (g) Miscellaneous motor repair parts;
- (h) Mufflers;
- (i) Plow points;
- (j) Spark plugs;
- (k) Springs;
- (l) Tires; or
- (m) V-belts.

Section 10. Taxable Items. The list provided in this section shall serve as examples of items commonly used on farms, the sale or purchase of which shall not be exempt from the sales or use tax as provided by KRS 139.480:

(1) Hand tools or wholly hand-operated equipment, including:

- (a) Axes;
- (b) Barn brooms;
- (c) Barn forks;
- (d) Brooms;
- (e) Drench guns;
- (f) Grease guns;
- (g) Hoes;
- (h) Jacks (manual or electronic);
- (i) Ladders;
- (j) Pitchforks;
- (k) Pliers;
- (l) Post hole diggers (manual);
- (m) Rakes;
- (n) Shovels;
- (o) Tobacco balers (hand operated);
- (p) Wheelbarrows; or
- (q) Wrenches;

(2) Accessories not essential to the operation of the farm machinery except if sold as a part of an assembled unit, including:

- (a) Air conditioning units;
  - (b) Cabs;
  - (c) Canopies;
  - (d) Cigarette lighters;
  - (e) Deluxe seats;
  - (f) Lubricators;
  - (g) Radios;
  - (h) Seat cushions or covers; or
  - (i) Tool or utility boxes;
- (3) Miscellaneous equipment, materials, or supplies, including:

(a) Antifreeze, oil, grease, lubricant, hydraulic fluid, or transmission fluid;

(b) Bedding materials including:

1. Chicken bedding;
  2. Chicken litter;
  3. Straw;
  4. Sawdust; or
  5. Wood shavings;
- (c) Bird seed;
- (d) Bromo gas applicators;
- (e) Bumper hitch trailers;
- (f) Calcium chloride;
- (g) Castrators or elastrator bands or rings;
- (h) Chains;
- (i) Charcoal for cistern filtration;
- (j) Chicken transport cages;
- (k) Coke for curing tobacco;
- (l) Copper sulphate;
- (m) Dehorers;
- (n) Dog food;
- (o) Feed for work stock animals;
- (p) Identification tags;
- (q) Lawn or garden equipment, including:

1. Push mowers;
  2. Riding lawn mowers;
  3. Rotor tillers;
  4. Weed eaters; or
  5. Zero turn mowers;
- (r) Livestock oil unless containing insecticide;
- (s) Milk cans, milk strainers, or milk storage tanks;
- (t) Rope;
- (u) Snaps or washers;
- (v) Tobacco canvas or other plant bed covers;
- (w) Tobacco knives, tobacco spears, or tobacco sticks;
- (x) Tobacco transplant system materials, including:

1. Plastic;
  2. Trays; or
  3. Ventilation curtains.
- (y) Tractor paint;
- (z) Truck batteries and truck tires; or
- (aa) Work shoes or boots, work clothes, or safety goggles;
- (4) Items sold or purchased for use in raising, feeding, showing, exhibiting, or breeding of horses except water as provided in KRS 139.470(12);[(14);]

(5) Items sold or purchased for use in the raising and keeping of bees:

- (6)[(5)] Medicines, vaccines, vitamins, or wormers; or [or]
- (7)[(6)] Veterinary instruments, including:
- (a) Needles;
  - (b) Operating tables; or
  - (c) Syringes.

Section 11. Exemption Certificates. (1) A farmer shall issue a Farm Exemption Certificate, Form 51A158, [Farm Exemption Certificate,] or a Streamlined Sales and Use Tax Agreement – Certificate of Exemption, Form 51A260, [Streamlined Sales and Use Tax Agreement – Certificate of Exemption, which are incorporated by reference in 103 KAR 3:020,] for the exempt purchase of tangible personal property other than tangible personal property referenced in subsection (2) [2] of this section. [exempted under KRS 139.480.]

(2)(a) A farmer shall issue an On-farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, Form 51A159, [which is incorporated by reference in 103 KAR 3:020,] for the exempt purchase of tangible personal property for incorporation into the construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(b) A farmer shall issue a separate, individual certificate for new construction, repairs, or renovations. Unless the certificate has an expiration date when submitted jointly with a contractor, the certificate shall remain effective for each project type (new construction, repairs, or renovations) until the purchaser notifies the seller in writing that it is no longer valid.

(3)(a) A contractor may jointly execute an On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a farmer for building materials, machinery, and equipment that are for incorporation into the construction, repair, or renovation of an on-farm facility.

(b) A contractor shall not use the certificate for the purchase, rental, or lease of construction equipment, consumable supplies, or other tangible personal property that is not for incorporation into the on-farm facility.

(c) A jointly executed On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a contractor shall be acceptable only for purchases made for periods within the effective dates indicated on the certificate at the time of purchase.

(d) A contractor shall jointly execute a new certificate with a farmer for additional purchases of materials, machinery, or equipment required for the same project after the initial expiration date or for additional projects.

Section 12. Service Providers. (1) Persons engaged in spraying fertilizer, hauling agricultural lime, or providing other services to persons regularly engaged in farming shall not qualify for the farm machinery exemption.

(2) The service provider shall not execute an exemption certificate on behalf of the farmer for the purchase of fertilizer, agricultural lime, or other tangible personal property used to perform the service.

(3) Services otherwise treated as landscaping services pursuant to KRS 139.200(2)(g), including fence clearing, mowing, spraying, and tree trimming provided to a farmer where the service is performed on land that is regularly used in the business of farming shall [are] not be subject to sales tax.

Section 13. Non-taxable service and installation labor. If installing or applying property that is not subject to sales tax, charges for labor or services to install or apply the property [rendered in installing or applying property sold that is not subject to sales tax] shall also not be subject to sales tax. This treatment shall include [includes] charges for the installation or repair of tax-exempt farm machinery and any tax-exempt attachments, repair, or replacement parts thereto.

Section 14[13]. (1) This administrative regulation shall replace Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, 51P135 and 51P360.

(2) Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, 51P135 and 51P360 are hereby rescinded and shall be null, void, and unenforceable. ~~[103-KAR-30:091]~~

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, October 12, 2021)**

**103 KAR 30:120. Machinery for new and expanded industry.**

RELATES TO: KRS 139.010, 139.470, 139.480, 241.010, 243.030, 243.040

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. KRS 139.480 exempts specified property from sales and use taxes. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to exemption qualification for "machinery for new and expanded industry."

Section 1. Definitions. (1) "Directly used in the manufacturing or industrial processing process" is defined by KRS 139.010(12).

(2) "Industrial processing" is defined by KRS 139.010(17).

(3) "License" is defined by KRS 241.010(34).

(4) "Machinery" means machines, in general, or collectively; also, the working parts of a machine, engine, or instrument; such as, the machinery of a watch. (Webster's New International Dictionary). This definition does not require [specify that] machinery to [must] have working parts and be able to perform a function in and of itself, as a "machine" would. The machinery of a manufacturing operation is composed of all the components making up the process, including the fixed and nonmoving parts as well as the moving parts. This is illustrated in the example of the machinery of a watch.

(5) "Machinery for new and expanded industry" is defined by KRS 139.010(19).

(6) "Manufacturing" is defined by KRS 139.010(20).

(7) "Plant facility" is defined by KRS 139.010(28).

(8) "Premises" is defined by KRS 241.010(44).

(9) "Recycled materials" is defined by KRS 139.010(31).

Section 2. Requirements for Exemption. The machinery and the appurtenant equipment necessary to the completed installation of the [such] machinery, together with the materials directly used in the installation of the [such] machinery and appurtenant equipment, which are incorporated for the first time into new or existing plant facilities or licensed premises as provided in KRS 139.010(19), or which are installed in the place of existing [plant] machinery having a lesser productive capacity, and which are directly used in a manufacturing or industrial processing [processing-production] operation shall be exempt from the sales and use tax. [The term "processing-production" shall include: the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone and natural gas.] In summary, the following four (4) specific requirements shall [must] be met before machinery qualifies for exemption:

(1) It shall [must] be machinery.

(2) It shall [must] be used directly in the manufacturing or industrial processing process.

(3) It shall [must] be incorporated for the first time into:

(a) Plant [plant] facilities established in this state; or

(b) The premises of alcohol beverage producers in this state that include a retail establishment licensed under KRS 243.030 or KRS 243.040.

(4) It shall [must] not replace other machinery.

Section 3.[2.] Analysis of Requirements. (1) It shall [must] be machinery. [The term "machinery" shall mean: machines, in general, or collectively; also, the working parts of a machine, engine, or instrument; as, the machinery of a watch. (Webster's New International Dictionary). This definition does not specify that machinery must have working parts and be able to perform a function in and of itself, as a "machine" would. The machinery of a manufacturing operation is composed of all the components making up the process, including the fixed and nonmoving parts as well as the moving parts. This is illustrated in the example of the machinery of a watch.]

(2) It shall [must] be used directly in the manufacturing or industrial processing process. Machinery shall [must] be intimately involved in production in order to be considered used "directly" in the manufacturing or industrial processing process. The fact that machinery is necessary for a manufacturing or industrial processing process shall [does] not automatically qualify it for exemption. A single manufacturer may, within its [his] primary manufacturing process, have more than one (1) production activity.

(a) Primary manufacturing process.

1. The primary manufacturing process is the production operation resulting in a finished product which will be transferred from the producing plant for distribution to customers or for further processing at another plant site. Production begins at a point

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

where the raw material enters a process and is acted upon to change its size, shape, or composition or is transformed in some manner. Production ends when the finished goods are packaged or ready for sale. Packaging is considered complete when the product is in the container in which it is normally received by the purchaser.

2. All activities preceding the point of introduction of the raw material into the manufacturing process and following the point at which the finished product is packaged or ready for sale are not production activities and the machinery used therein shall be ~~is~~ subject to tax.

3. Storage facilities, including those provided for the storage of in-process materials which have been removed from the production line to await further processing, are not used directly in the manufacturing process and shall be ~~are~~ subject to tax. Proximity of storage facilities to the production line is immaterial.

(b) Contributory or secondary manufacturing process. This activity generally falls into one (1) of four (4) categories:

1. The manufacture of industrial tools to be used in the manufacturing process. Examples include the manufacture of dies, patterns, rolls, molds, cutters and cutter blades, and like property. The exemption for machinery used shall be ~~herein is~~ determined by the same criteria used for determining the exemption provided in the primary manufacturing process.

2. The processing of materials which do not become an ingredient of the finished product but are consumed as industrial supplies directly in the primary manufacturing process. Examples include water cooling systems, bottle washing preparatory to filling, and chemical processes whereby the chemical is used as a catalyst directly on the product being manufactured. This machinery exemption begins at the point where the material is acted upon to condition it for use in the manufacturing process or at the point where it performs a function itself, if it is not acted upon prior to that point. The exemption ends when the material leaves the process.

3. Electrical machinery and similar equipment used directly in the operation of other machinery which is used directly in the manufacturing process.

4. Machinery used exclusively for quality control of in-process material or the efficient operation of machinery. Examples are air cooling or air conditioning systems, control panels, exhaust systems, and similar activities.

(3) It shall ~~must~~ be incorporated for the first time into plant facilities or licensed premises established in this state. To meet this requirement, the machinery shall ~~must~~ be installed in this state for the first time and it shall ~~must~~ be incorporated into plant facilities or licensed premises in this state. Machinery which has been once installed into manufacturing facilities or licensed premises in this state may be subject to tax ~~as provided in 103 KAR 30:200~~ when subsequently sold by that manufacturer. Machinery purchased and delivered in Kentucky shall be ~~is~~ subject to tax when the machinery is not acquired for installation in Kentucky.

(4) It shall ~~must~~ not replace other machinery. New machinery purchased to replace other machinery in the plant or licensed premises shall be ~~is~~ subject to tax unless the new machinery increases the consumption of recycled materials at the plant facility or licensed premises by not less than ten percent (10%), performs a different function, manufactures a different product, or has a greater productive capacity, measured by units of production, than the machinery replaced.

(a) Modification of existing machinery may qualify for exemption if the modification is to perform a different function or manufacture a different product ~~[qualifies for exemption]~~. Modification of existing machinery is not replacement machinery but maintenance of existing machinery; therefore, modifications that merely provide a greater productive capacity as measured by units of production shall not qualify for exemption.

(b) Modification of existing machinery that results in automation of non-automated functions without performance of a different function or manufacture of a different product shall not qualify for exemption.

Section 4. Pursuant to KRS 139.470(22), charges for labor or

services to apply, install, repair, or maintain tangible personal property directly used in manufacturing or industrial processing process shall not be subject to sales and use tax if the charges for labor or services are separately stated. Purchasers may issue a fully completed "Certificate of Exemption Labor or Services on Manufacturing Equipment," Form 51A360, or "Streamlined Sales and Use Tax Agreement—Certificate of Exemption," Revenue Form 51A206, to claim the applicable exemption for the labor or service charges on tangible personal property directly used in the manufacturing or industrial processing process.

Section 5. ~~[Section 3.]~~ In all cases where a question arises concerning the exemption of machinery for new and expanded industry, the burden of proof that each qualification has been met shall be on ~~is upon~~ the one seeking the exemption.

Section 6. Forms. The forms referenced herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

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

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

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

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email [Gary.Morris@ky.gov](mailto:Gary.Morris@ky.gov).

### FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, October 12, 2021)

#### 103 KAR 30:190. Interstate and foreign commerce.

RELATES TO: KRS 139.010, 139.105, 139.260, 139.340, 139.470, 139.486

STATUTORY AUTHORITY: KRS 131.130(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret the] sales and use tax law as it applies to sales in interstate and foreign commerce. The purpose of this administrative regulation is to state, generally, the application of the Commerce Clause of the Constitution of the United States of America to the sales and use tax law.

Section 1. Definitions. (1) "Consummated" means the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction.

(2) "Industrial machinery" is defined by KRS 139.486(1).

(3)(a) "Receive" means:

1. (a) Taking possession of tangible personal property;

2. (b) Making first use of services; or

3. (c) Taking possession or making first use of digital products, whichever comes first; and

(b) (d) "Receive" does not include possession by a shipping company on behalf of the purchaser.

(4) (3) "Seller" is defined by KRS 139.010(39).

(5) (4) "Use" is defined by KRS 139.010(44). [The purpose of this administrative regulation is to state generally the application of the Commerce Clause of the Constitution of the United States to the Sales and Use Tax Law.]

Section 2. Sales Tax: Transactions Consummated in Kentucky.

(1) Where tangible personal property is located in this state at the time of its sale ~~[{or is subsequently produced in this state}]~~, and then delivered in this state to the purchaser, the seller shall be ~~is~~

[subject to the sales tax if the sale is at retail and is consummated in Kentucky. A sale ~~shall not be~~~~is not~~ presumed to be made in interstate commerce if the purchaser or ~~its~~~~his~~ representative receives ~~physical~~ possession of tangible personal property, receives digital property, or makes first use of taxable services~~[such property]~~ in this state. This is true notwithstanding the fact that the purchaser may, after receiving ~~physical possession of~~ the property in this state, transport or send the property out of the state for use outside the state or for use in the conduct of interstate commerce.

(2) (a) ~~The sales tax shall~~~~does~~ not apply to gross receipts from sales if, under the terms of its agreement with the purchaser, the seller makes delivery of tangible personal property sold from a point in this state to a point outside this state, not to be returned to a point within this state if delivery is actually made. Tangible personal property may be delivered by carrier, mail, or any other method of delivery.

(b) The sales tax shall not apply if a shipping company, on behalf of a purchaser, takes possession of the tangible personal property in this state for delivery outside this state, not to be returned to a point within this state, and delivery is actually made.

(3) The sales tax shall not apply to gross receipts from sales of tangible personal property to a common carrier under the conditions that are exempt pursuant to KRS 139.470(4).

(a) ~~[in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods sold from a point in this state to a point outside this state, not to be returned to a point within this state, provided that such delivery is actually made. The tax does not apply to gross receipts from sales in which the seller, under the terms of his agreement with the purchaser, delivers the goods by carrier or by mail from a point in this state to a point outside this state not to be returned to a point within this state.~~

(3) ~~Pursuant to KRS 139.470(5), the sales tax does not apply to gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to an out-of-state destination for use by the carrier in the conduct of its business as a common carrier.] Normally, when a sale by a Kentucky retailer involves a transfer of title and possession of the goods to the purchaser outside this state, the sale ~~shall not be~~~~is not~~ subject to Kentucky sales tax. The purpose of the exemption in KRS 139.470(4)~~[(5)]~~ is to place common carriers on the same footing as other out-of-state purchasers who take title and possession of goods outside this state~~[out-of-state]~~ without requiring retailers to use some other common carrier to transport the goods outside this state~~[out-of-state]~~ to the purchasing common carrier. Thus, the exemption shall apply only~~[applies]~~ to~~[-to]~~ tangible personal property shipped as cargo via the purchasing carrier. It ~~shall~~~~does~~ not apply to tangible personal property placed in use by the purchasing common carrier in this state.~~

(b) Examples of when the exemption ~~shall~~~~does~~ apply include:

1. Bulk~~[bulk]~~ purchases of inventory items by a common carrier for immediate transport and storage outside this state;

2. Purchases~~[purchases]~~ of tangible personal property by a common carrier for immediate shipment outside this state~~[out-of-state]~~ without removal of the property from its original container within this state; and

3. Purchases~~[purchases]~~ of jet fuel by a common carrier placed in a tanker vehicle in this state for immediate transport outside this state~~[out-of-state]~~ where the fuel will be placed in the tanks of the planes which will consume it.

(c) Examples of when the exemption ~~shall~~~~does~~ not apply include:

1. Purchases~~[purchases]~~ of repair parts by a common carrier for the carrier's own vehicles which are installed within this state;

2. Purchases~~[purchases]~~ of components and furnishings for the common carrier's vehicles which are placed in use in this state; and

3. Purchases~~[purchases]~~ of jet fuel placed in the tanks of the common carrier's plane which will consume it within this state,

regardless of whether all of the fuel purchased will be consumed within this state.

(d) Mere compliance with the bill of lading requirements pursuant to KRS 139.470(4) shall not exempt a purchase~~[of the exemption statute does not entitle a purchase to exempt status]~~ if the tangible personal property is placed in use before leaving this state.

(4) The sales tax ~~shall~~~~does~~ not apply to gross receipts from sales of property sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad if the property is~~and~~ actually carried to a foreign destination, with title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property is being used or consumed in the United States.

(5) The sales tax ~~shall~~~~does~~ not apply to gross receipts from sales of industrial machinery for use out of state pursuant to KRS 139.486. [As defined by KRS 139.486 when such machinery is delivered to a manufacturer or processor, or their agent for use out of state. Industrial machinery will be presumed for sale, use, storage or consumption out of state if:

(a) Delivery is to a common carrier, whether chosen by the seller or by the purchaser, and whether F.O.B. seller's shipping point or F.O.B. purchaser's destination, provided the shipping document indicates delivery to a location outside the state; or

(b) Delivery is made by seller's own transportation vehicles to a location outside the state.]

(6) To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this state to a point outside this state, under the terms of an agreement with the purchaser, the seller shall~~[will]~~ [be required to] retain in its~~[his]~~ records documentary evidence which satisfies the department~~[cabinet]~~ that there was [such] an agreement and a bona fide delivery outside this state of the property ~~[which was]~~ sold.

Section 3. Use Tax: Transactions Consummated Outside Kentucky. (1) The use tax shall apply~~[applies]~~ to sales consummated outside Kentucky if~~[when]~~ the tangible personal property sold is delivered~~[shipped]~~ to the purchaser in this state or digital property is purchased for storage, use, or other consumption in this state. Examples of ~~[such]~~ transactions subject to use tax ~~shall~~ include:

(a) An order for goods ~~[is]~~ consummated~~[completed and accepted (consummated)]~~ outside Kentucky and the seller's branch office or other place of business in this state is utilized in any way, such as in receiving the order, distributing the goods, ~~[and]~~ or billing for the merchandise; ~~[-or]~~

(b) An order for goods ~~[is]~~ given in this state to an agent of an out-of-state seller who transmits the order to a point outside Kentucky for acceptance; ~~[-or]~~

(c) An order for goods that results from the solicitation in this state of the purchaser by an agent of an out-of-state seller and the order is sent by the purchaser directly to a point outside Kentucky for acceptance.

(2) The use tax shall apply~~[applies]~~ with respect to any tangible personal property or digital property purchased for storage, use, or other consumption in this state, the sale of which is exempt from sales tax under this administrative regulation, except property not subject to the sales or use tax or property held or stored in this state for sale in the regular course of business or subsequent use solely outside this state, and except property purchased for use in interstate or foreign commerce, placed in use in interstate or foreign commerce, prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce.~~[-]~~

(3) "Storage" and "use" do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

~~Section 4. The term "consummated" as used in this administrative regulation means the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction.]~~

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, October 12, 2021)**

**103 KAR 30:250. Property used in the publication of newspapers.**

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330, 139.470(9)(40), 139.480(10)

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes sales and use tax requirements for manufacturing activities relating to the publication of newspapers.

Section 1. Definitions. (1) "Manufacturing" is defined by [in] KRS 139.010(20).

(2) "Plant facility" is defined by [in] KRS 139.010(28)(24).

Section 2. Requirements for Exemption. The storage, use, or other consumption of tangible personal property for use in the manufacturing process of newspaper publication shall be exempt from the sales and use tax in accordance with KRS 139.470(9), [according to the provisions of KRS 139.170, 139.470(10), 139.480(10), and 103 KAR 30:120.

Section 3. Manufacturing Process. The manufacturing process within a plant facility commences with the movement of raw materials from storage into a continuous, unbroken, integrated process, and ends when the finished product is packaged and ready for sale. The manufacturing process shall include the following newspaper publication operations performed at a plant facility in a continuous, unbroken, integrated process: ~~operations flow:]~~

(1) Prepress operations:[]

(a) Type-setting that transforms the text and images from the final preprint edit format into a design, layout, or paste-up format ready for printing whether performed electronically, digitally, by hard copy [hardeopy] layout, or by other printing technology now in existence or later devised; and

(b) The production of printing plates made photo mechanically or digitally;

(2) Press room and printing process:[]

(a) Printing and collating the hard copy newspaper pages in accordance with the preprint design;

(b) Examples of conventional printing processes shall include:

1. Letterpress;
2. Flexography;
3. Lithography; or
4. Gravure; and

(3) Mail room operations, including addressing, labeling, and packaging for distribution.

Section 4. Nonmanufacturing Process. The following operations shall not constitute activities performed within the manufacturing process of newspaper publication:

(1) Photography and reporting, except for development of

negatives and the production of prints at the newspaper plant facility;

(2) Newsroom activities. The list in this subsection shall serve as examples of newsroom activities:

(a) Monitoring of news events or related research;

(b) Composition of news stories, opinions, or editorials for editorial review;

(c) Editing process; or

(d) Layout and page design by editorial staff;

(3) Selling and design of advertisements;

(4) Library and research, including the use of servers, computers, and other equipment to compile and index information; or

(5) Storage and loading dock operations, including the storage of paper or other raw materials or the conveyance of packaged newspapers for storage, loading, or distribution.

Section 5. Subscription charges for wire services for the transmission of unedited text shall be considered purchases of services not subject to the sales and use tax.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C012.

(2) Revenue Circular 51C012 is hereby rescinded and shall be null, void, and unenforceable.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

**FINANCE AND ADMINISTRATION CABINET  
Department for Facilities and Support Services  
(As Amended at ARRS, October 12, 2021)**

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

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

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

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes uniform rules for the governance of state facilities and grounds. While all state facilities and grounds are owned by the people of the Commonwealth at large, it is sometimes detrimental to the effective carrying-out of the people's business for persons, or groups of persons, to disregard reasonable conditions established for use of state facilities and state grounds. The purpose of this administrative regulation is to balance the interests of the citizens of the commonwealth at large with the interests of individual citizens, or groups of citizens, to use state facilities and grounds in a reasonable fashion in order to redress their grievances and coordinate various uses of public buildings and Grounds, to preserve Historic Properties, to ensure the health and safety of the public and state employees while on state property, and to protect the public from unnecessary financial losses. KRS 42.019(1) requires the Division of Historic Properties to oversee the management and preservation of state-owned historic properties. KRS 42.425(1)(c) entrusts the Department for Facilities and Support Services with primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings. KRS 56.010 requires the Finance and Administration Cabinet to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control. KRS 56.463(8) requires the Finance and Administration Cabinet to promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the commonwealth's real property.

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

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

(3) "Application" means the Application to Use State Facilities and Grounds form ~~created and~~ maintained by the Department for Facilities and Support Services, or a substantially similar agency specific application approved by the department, [Division of Historic Properties] that allows individuals, organizations, and entities to request approval [the ability] to conduct an event at a state facility or on state grounds [historic properties].

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

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

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

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

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

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

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

(11) "Face covering" means material covering, consisting of at least two (2) layers of fabric, fit snugly to the face that completely covers the nose, mouth, and optionally chin of the wearer, but does not otherwise materially obscure the face, head, or neck area. "Face covering" does not mean face shields, bandanas, scarves, gaiters, or any face covering with exhalation valves, slits, or holes.

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

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

(14)(13)(40) "Historic properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.

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

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

(a) Rifles;~~;~~

(b) Carbines;~~;~~ and

(c) Shotguns.

(17)(16)(44) "Normal business hours" means:

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

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

(18)(17)(42) "Organization" means any group or association of individuals joined together to accomplish shared goals or to advance shared interests or values, inclusive of its employees, agents, invitees, or guests.

(19)(18)(43) "Public meeting" means a "meeting," as defined by KRS 61.805(1).

(20)(19)(44) "Rally" means a gathering of twelve (12) or more visitors for the purpose of actively promoting a cause.

(21)(20)(45) "Solicit" and "solicitation" are defined by KRS 367.650(4).

(22)(21)(46) "Spontaneous event" means an event where twelve (12) or more visitors gather to exercise their First Amendment rights in facilities and on grounds open to the general public in response to a triggering event that has occurred within the preceding calendar week, or is currently occurring. Regularly scheduled events, or events that are advertised by any means seven (7) or more calendar days prior to the starting date of the event are presumptively not "spontaneous events."

(23)(22)(47) "State facilities" or "facilities" means any buildings owned or managed by the Finance and Administration

Cabinet pursuant to KRS 56.463.

(24)(23)(48) "State grounds" or "grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(25)(24)(49) "Tenant" means an individual or organization, except for an agency that is:

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

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

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

(a) Assigned commonwealth land or property; and

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

(27)(26)(20) "Triggering event" means a previously unknown or unpredicted event where, because of its unknown or unpredicted nature, a group of visitors could not reasonably be expected to submit an application seven (7) days in advance.

(28)(27)(24) "Visitor" means:

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

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

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

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

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

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

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

(d) The department, or delegatee, [division] shall deny an application if:

1. The application is incomplete;

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

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

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

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

(e) If an application is approved, the department, or delegatee, [division] shall issue a written approval specifying:

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

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

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

4. The amount of any advance deposit required; ~~and~~

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

6. Any applicable restrictions.

(f) If an application is denied, the department, or delegatee, [division] shall issue a written denial specifying:

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

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



information;

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

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

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

(h) Except as provided by paragraph (j)(2)(f)) of this subsection, the department, or delegatee, [division] may revoke prior approval to hold an event at a state facility or on state grounds [historic property] if the property is requested for a state sponsored activity. If the department, or delegatee, [division] revokes prior approval for an applicant to use state [a-historic] property, it shall either:

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

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

(i) The department may delegate authority to review and approve applications for use of specific facilities and grounds to a tenant agency of the facility or grounds assigned for the tenant agency's use.

1. Delegation of review and approval authority shall be posted on the department's Web site at: <https://finance.ky.gov/department-for-facilities-and-support-services/Pages/default.aspx>.

2. The division, or its designee, shall review and approve applications for the use of historic properties.

3. The department shall post a link on its Web site to any delegated tenant agency review and approval process regarding specific facilities or grounds.

(j) Historic properties. 1. The division may relocate a previously approved event at a historic property as established in the Rules for Use of Public Areas for the Capitol [State Facilities] and Grounds.

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

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

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

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

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

(4) The department may delegate authority to review and approve a Rental Application and Lease Agreement to a tenant agency of the facility or grounds assigned for the tenant agency's use.

(a) Delegation of review and approval authority shall be posted on the department's Web site at: <https://finance.ky.gov/department-for-facilities-and-support-services/Pages/default.aspx>.

(b) The division, or its designee, shall review and approve rental applications for the use of historic properties.

(c) The department shall post a link on its Web site to any delegated tenant agency review and approval process regarding specific facilities or grounds.

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

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

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

(c) Inserting the following information regarding the areas

assigned to agency use available to rent:

1. Identification of available areas;

2. Capacity of available areas;

3. Whether food or drink may be consumed in available areas;

4. Equipment available to rent; and

5. Hours when available areas may be rented.

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

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

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

(c) Disposition of fees collected.

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

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

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

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

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

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

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

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

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

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

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

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

2. Minor[or minor] children celebrating Halloween; ; and ;

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

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

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

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

of people in the event of a fire or similar emergency.

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

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

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

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

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

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

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

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

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

1. Any equipment, apparatus, or machinery that fails to conform with local fire codes;
2. Skateboards, roller skates, rollerblades, bicycles, mopeds, motor bicycles, motorcycles, and hoverboards; exclusive of mobility devices used by a disabled individual; and
3. Any personal property that interferes with any electrical or mechanical system in a state facility.

(t)(u) Individuals openly carrying a deadly weapon may be ordered to leave state facilities and grounds when:

1. Brandishing a firearm or other deadly weapon in an unsafe manner, including **[but not limited to]:**

a.[1.] Pointing the muzzle of a firearm at another individual;[1]

b.[2.] Failing to keep the safety of a firearm in the "on" position while carrying a firearm;[1]

c.[3.] Failing to keep their finger outside of the trigger guard of a firearm;[1] or

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

2.[5.] Failing to fully comply with the provisions of **paragraph (v) of this subsection [Section 3(1)(w)]**, the other provisions of **this** administrative regulation, or the lawful direction of facility security personnel.

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

(v)(w) Individuals authorized to enter a state facility with one (1) or more firearms shall:

1. Securely maintain handguns in a holster with two (2) or more retention security features;
2. Securely maintain long guns behind the back using a strap slung over the shoulder, muzzle pointing up, in a manner to prevent muzzle rocking rearward during movement;
3. Be in possession of no more ammunition than can be loaded into the firearm at one (1) time; and
4. Possess no more than one (1) magazine, whether attached or detached from the firearm.

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

1. Tourism, Arts, and Heritage Cabinet administered facilities

and properties;

2. Tenants of state facilities;
3. Inmates and other incarcerated persons; or
4. Other individuals in the care, custody, or control of the state.

(2) Operating hours and access requirements.

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

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

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

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

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

1. Meeting with an agency or legislator in regard to a public matter;
2. Attending a scheduled public meeting; or
3. Escorted by a state employee for the purpose of conducting state business.

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

(g) If an agency allows individuals to remain in a state facility after normal business hours, it may be found to be jointly liable for damage caused by unescorted visitors.

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

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

(3) Commercial activity.

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

1. Selling, displaying, or vending commercial products;
2. Solicitation; and
3. Advertising.

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

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

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

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

5. Notice boards specifically set aside for public posting.

(4) Administration of usage conditions.

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

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

law enforcement officers; or

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

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

(c) This administrative regulation shall not:

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

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

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

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

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

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

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

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

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

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

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

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

(b) "Rental Application and Lease Agreement", October 2021 [June 2019];

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

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

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

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

Administration Cabinet, Office of General Counsel, Capital Annex Room 392, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

**(3) This material is also available on the cabinet's Web site at <https://finance.ky.gov/office-of-the-secretary/Pages/finance-forms.aspx>.**

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

## BOARDS AND COMMISSIONS

### Board of Nursing

(As Amended at ARRS, October 12, 2021)

**201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.**

RELATES TO: KRS 218A.171, 218A.172, 218A.202, 218A.205(3)(a), (b), 314.011(7), (8), 314.042, 314.091, 314.193(2), 314.195[~~314.196~~]

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314, and authorizes the board to require by administrative regulation that licensees and applicants utilize a specific method of submission of documents or information that is required to be provided to the board, including electronic submission. KRS ~~[Chapter]~~ 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "Immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law, daughter-in-law, brother in-law, sister in-law, step-parent, step-child, step-sibling, or other relative residing in the same residence as a prescribing practitioner.

(5) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting System established in KRS 218A.202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions established in scope and standards of practice statements adopted

by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;

(m) Oncology Nursing Scope and Standards of Practice;

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education; **and**

(o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives; **and**

**(p) Standards for Professional Nursing Practice in the Care of Women and Newborns.**

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, diagnostic tests, and performing certain procedures that shall be consistent with the scope and standards of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined by KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the:

1. Name;

2. Practice address;

3. Phone number;

4. License number of both the advanced practice registered nurse and each physician who is a party to the agreement; and

5. Population focus and area of practice of the advanced practice registered nurse.

(b) ~~[Pursuant to KRS 314.196(2),]~~ An advanced practice registered nurse shall use the Common CAPA-NS form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the APRN Prescriptive Authority Notification Form.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall consider the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS, shall obtain a United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate and shall report all DEA numbers, including a DEA-X Controlled Substance Registration Certificate, and any change in the status of a certificate by providing a copy of each registration certificate to the board within thirty (30) days of

issuance.

(b) An APRN ~~[with a CAPA-CS]~~ shall register for a master account with the Kentucky All Schedule Prescription Electronic Reporting System (KASPER) within thirty (30) days of obtaining a DEA Controlled Substance Registration Certificate, and prior to prescribing controlled substances. A copy of the KASPER master account registration certificate shall be submitted to the board via the online APRN Update portal within thirty (30) days of receipt of confirmation of registration by KASPER. **[An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.]**

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.

(6) If an APRN's CAPA-NS ends unexpectedly for reasons outside the APRN's control **such as being ended by the physician without notice, the physician's license becoming no longer valid in Kentucky, or the death of a physician,** the APRN may continue to prescribe non-scheduled legend drugs for thirty (30) days, after documenting in each patient's medical record the applicant's professional determination that the continued prescribing is justified based on the individual facts applicable to the patient's diagnosis and treatment. This thirty (30) day grace period shall not be extended or occur successively. The APRN with a CAPA-CS shall cease prescribing controlled substances if the collaborative agreement unexpectedly ends, until the CAPA-CS is resumed or the APRN enters into a new CAPA-CS. ~~[If the collaborating physician's license is suspended, the APRN shall follow the procedures established in KRS 314.196 for a CAPA-NS. The APRN with a CAPA-CS shall cease prescribing controlled substances until the suspension is lifted or a new collaborating physician signs a new CAPA-CS.]~~

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's Web site, [kbn.ky.gov](http://kbn.ky.gov), utilizing the tab APRN Update. The board shall not accept documents or information sent in any other format.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except if a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or if the prescribing occurred within the grace period established[specified] in Section 6(6)[, subsection 6] of this administrative regulation [provisions of KRS 314.196(4)(b) apply].

Section 8. The board may make an unannounced visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to APRN with a CAPA-CS, if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits established in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric-mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all KASPER report identification numbers and the

date of issuance of each KASPER report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued once the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, including the risk of tolerance and drug dependence with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient. The APRN shall maintain in the patient's record all KASPER report identification numbers and the date of issuance of each KASPER report or a copy or saved image of the KASPER report. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's KASPER report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN. In addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical record. An APRN certified in psychiatric - mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled

substances with the patient, the patient's parent if the patient is an unemancipated minor child, the patient's legal guardian, or health care surrogate, including the risks of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to that treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure of the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient with submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

a. Substitutes a controlled substance for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v), federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of

multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate shall review a reverse KASPER report for the preceding six (6) months to determine if the information contained in KASPER is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information, by:

- (a) First contacting the reporting pharmacy;
- (b) Contacting law enforcement if suspected fraudulent activity;

or

(c) Contacting the Drug Enforcement Professional Practices Branch, Office of Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except if:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options that justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically. Electronic prescription shall be as established in KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may/could have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 10. Immediate Family and Self-prescribing or Administering Medications. (1) An APRN shall not self-prescribe or administer controlled substances.

(2) An APRN shall not prescribe or administer controlled substances to his or her immediate family except as established in subsections (3) and (4) of this section.

(3) An APRN may prescribe or administer controlled substances to an immediate family member:

- (a) In an emergency situation;
- (b) For a single episode of an acute illness through one (1) prescribed course of medication; or

(c) In an isolated setting, if no other qualified practitioner is available.

(4)(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (3)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (3)(c) of this section shall maintain a provider-

practitioner relationship and appropriate patient records.

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

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017 Edition, American Association of Critical-Care Nurses;

(b) "ACCN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2014, American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(k) "Standards for Office Based Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse Midwives;

(m) "Oncology Nursing Scope and Standards of Practice", 2019 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2012 Edition, American College of Nurse Midwives;

(p) "Standards for Professional Nursing Practice in the Care of Women and Newborns", 2019 Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

(q) "APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing; and

(r) "Common CAPA-NS Form", 6/2015, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov)

VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, October 12, 2021)**

**201 KAR 21:035. Seal.**

RELATES TO: KRS 312.019

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(4) requires [provides that] the board to [shall] adopt a seal which shall be affixed to all licenses, certifications, and registrations issued by the board and to such other documents as the board deems necessary. This administrative regulation adopts the seal that shall be used by the Kentucky Board of Chiropractic Examiners.

Section 1. The official seal of the board shall consist of two (2) concentric circles with the words "[The]Kentucky [State]Board of Chiropractic Examiners" between the two (2) circles. The likeness of two (2) hands in the position of [an]a chiropractic adjustment shall appear within the inner circle with the words "Utile Dulce" immediately below the likeness.

Section 2. The official seal shall be affixed to all licenses, certifications, and registrations issued by the board and to other documents the board deems necessary or appropriate.

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Chiropractic Examiners, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0714, fax (502) 564-4818, email august.pozgay@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, October 12, 2021)**

**201 KAR 21:054. Emergency orders.**

RELATES TO: 312.019(3)

STATUTORY AUTHORITY: KRS 312.019(3), 312.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(1) authorizes the Board of Chiropractic Examiners to promulgate[establish] administrative regulations relating to the practice of chiropractic. KRS 312.019(3) authorizes the board to suspend or limit any license issued by it. This administrative regulation establishes procedures for the emergency suspension or restriction of a license if there is [a risk to the public]an immediate danger to the health, welfare, or safety of a patient or the general public.

Section 1. Emergency Order of Suspension or Limitation. (1) The board president or the board as a whole may take emergency action, which shall be in accordance with KRS 13B.125, by issuing an emergency order to suspend or limit a license to practice chiropractic. An emergency order shall:

(a) Be based upon a finding by the board president ~~[and vice president]~~or the board as a whole that:

1. The emergency order is in the public interest; and  
2. There is substantial evidence of immediate danger to the health, welfare, or safety of a patient or the general public;

(b) Specify the factual basis that caused the emergency condition to exist;

(c) Specify the statutory or regulatory violation that caused the emergency condition to exist; and

(d) Be served on a licensee in accordance with KRS 13B.050(2).

(2) Upon receipt of an emergency order, a licensee shall immediately comply with the emergency order of suspension or limitation.

(3) A licensee may appeal the emergency order. An appeal shall be:

(a) Made by a written request to the board;

(b) In accordance with KRS 13B.125; and  
(c) Made within thirty (30) days after receipt of the order.

(4) A chiropractor's license shall be revoked if:

(a) The licensee does not request a hearing; or

(b) The condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

(5) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Chiropractic Examiners, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0714, fax (502) 564-4818, email august.pozgay@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Physical Therapy**  
**(As Amended at ARRS, October 12, 2021)**

**201 KAR 22:045. Continued competency requirements and procedures.**

RELATES TO: KRS 12.355, 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on KRS Chapter 327 and 201 KAR Chapter 22.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a physical therapist assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium.

(2) Category 1 continued competency shall be:

(a) Completion of courses, seminars, workshops, symposia, or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, the Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensing agency;

(b) Completion of courses, seminars, workshops, symposia, or home study courses consisting of less than three (3) contact hours that have been produced and developed by the American Physical Therapy Association (APTA) or its state chapters and sections;

(c) Completion or auditing of an accredited postsecondary educational institution credit course meeting "continued competency" as defined by Section 1(2) of this administrative regulation.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(d) Presentation of a continued competency course, workshop, seminar, or symposium that has been approved by the board or its designee, the Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensure agency. Contact hours shall be awarded equal to contact hours awarded to a participant with a maximum of two (2) events of the same course per biennium;

(e) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(g) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(h) American Board of Physical Therapy Specialties (ABPTS) certification. Twenty-eight (28) contact hours shall be awarded per biennium;

(i) ABPTS recertification or other certifications and recertifications within the scope of physical therapy practice. A maximum of twenty-eight (28) contact hours per biennium shall be awarded;

(j) Completion of a clinical residency program or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(k) Engaging in the practice of "physical therapy" as defined by KRS 327.010(1) at least 1,000 hours per biennium. Five (5) contact hours [per biennium] shall be awarded per biennium;

(l) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(m) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(n) Election or appointment to a position with[of] the APTA Kentucky[Physical Therapy Association], APTA, or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; [or]

(o) Member of a committee or task force for one (1) of the organizations in paragraph (m) or (n) of this subsection. One (1) contact hour shall be awarded per biennium; [-]

(p) Completion of the APTA's PTA Advanced Proficiency Pathways Program (APP). A maximum of ten (10) contact hours shall be awarded in the biennium during which the certification or recertification of the APP is granted; or

(q) Member of the APTA. One (1) contact hour shall be

awarded per year and a maximum of two (2) contact hours per biennium.

(3) Category 2 continued competency shall be:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;

(f) Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;

(g) Participation as a mentor or mentee in a mentorship program developed by APTA KY. A maximum of one[Member of the APTA. One] (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(h) Completion of cardiopulmonary resuscitation initial certification or re-certification. A maximum of two (2) contact hours shall be awarded per biennium; or

(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of at least[at least] three (3) years from the end of the biennium.

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board.

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by April 30 of the odd-numbered year in the renewal cycle for which the extension is sought; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

- a. Age;
- b. Disability;
- c. Medical condition;
- d. Financial condition; or
- e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continued competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continued competency requirements as



established in KRS 12.355.

Section 3. Incorporation by Reference. (1) "Exemption or Extension for Completion of Continued Competency Form", September 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: M. Keith Poynter, General Counsel, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 210-7112, fax (502) 584-5055, email MartinK.Poynter@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Licensure for Professional Art Therapists**  
**(As Amended at ARRS, October 12, 2021)**

**201 KAR 34:070. Inactive status.**

RELATES TO: KRS 309.1315(17)

STATUTORY AUTHORITY: KRS 309.1315(1), (17)

NECESSITY FUNCTION AND CONFORMITY: KRS 309.1315(1) requires the board to promulgate administrative regulations necessary to carry out the provisions of KRS 309.130 to 309.1399. KRS 335.1315(17) requires the board to establish conditions for inactive status and return to active status for license holders. This administrative regulation establishes the conditions for inactive status and return to active status for license holders.

Section 1. Request for Inactive Status. (1) A licensee may request that the licensee's license be placed on inactive licensure status by submitting to the board a written request for the licensee's license to be placed on inactive status.

(2) **If the board grants [Upon the board granting] the request for inactive status, the board shall notify the licensee that the licensee is[shall be] relieved of the licensee's obligation to pay the license renewal fee established in 201 KAR 34:020 for the licensee's license level.**

**(3) If the request for inactive status is denied, the licensee shall have thirty (30) days from the date of the denial to pay the renewal fee.**

Section 2. Inactive Status. (1) While on inactive status, the licensee shall meet the requirements for continuing education as established in 201 KAR 34:030.

(2) The licensee may remain on inactive status for two (2) years, unless an extension of time is granted under Section 3 **of this administrative regulation.**

(3) The two (2) year period of inactive status shall begin when the board **notifies the licensee that it has granted[grants] the request for inactive status.**

Section 3. Extension of Inactive Status. (1) A licensee whose license is on inactive status may request one extension, not to exceed two (2) years, of the inactive-license status for an undue hardship or an extenuating circumstance, such as a prolonged illness, loss of a job, or an inability to competently engage in the practice of professional art therapy.

(2) The licensee shall submit to the board:

(a) A written request to continue the license on inactive status;

(b) An explanation of the undue hardship or extenuating circumstance; and

(c) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 34:030.

(3) The extension request shall be received by the board no sooner than ninety (90) days and no later than sixty (60) days before the end of the two (2) year period of inactive status.

**(4) If the appropriate paperwork is received timely, a two**

**(2) year extension shall be automatically granted.**

**(5) If the extension is denied, the licensee shall have thirty (30) days to resubmit the request.**

Section 4. License Expiration. If the licensee does not submit a request for extension of the inactive-license status or the licensee fails to reactivate the licensee's license before the license expiration date, the license shall expire.

Section 5. Return to Active-License Status. (1) At any time within the two (2) year period of being granted inactive-licensure status, a licensee may request the licensee's license be returned to active status by submitting to the board:

(a) A written request to the board to return the licensee's license to active status;

(b) Payment of the current license renewal fee as set forth in 201 KAR 34:020; and

(c) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 34:030.

(2) **The board will notify the licensee in writing that his or her license is reactivated and will be effective upon the date listed in the written correspondence.[If the licensee returns to active status, the licensee's renewal date shall be the date of return to active status].**

Section 6. Renewal of Expired License. Following expiration of a license under Section 4 of this administrative regulation, a licensee who desires to practice professional art therapy in Kentucky shall:

(1) File with the board the appropriate application for licensure under **201 KAR 34:025[201 KAR 34:024];**

(2) Pay the initial fees for application and licensure under 201 KAR 34:020; and

(3) Meet current requirements for initial licensure, as established by **KRS Chapter 309 and 201 KAR Chapter 34[statute and administrative regulation].**

Section 7. This administration regulation **shall[does]** not apply to a licensed professional art therapist or a licensed professional art therapist associate, who under KRS 309.1335(4), enters into retirement status or wishes to resume practice after a period of retirement.

CONTACT PERSON: Shan Dutta, Attorney for the Board of Licensure for Professional Art Therapists, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0766, fax (502) 564-4818, email sdutta@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Durable Medical Equipment Suppliers**  
**(As Amended at ARRS, October 12, 2021)**

**201 KAR 47:010. Home medical equipment and supplier licenses, requirements, and fees.**

RELATES TO: KRS [47.500, Chapter 209, 224.10-052,] 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420, **324B.030, 324B.040, Pub. L. 104-191[439.3404]**

STATUTORY AUTHORITY: KRS 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420, **324B.030, 324B.040**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.404(4) and 309.406(1)(a) authorize the board to promulgate administrative regulations governing home medical equipment and service providers. This administrative regulation establishes the minimum requirements for the licensing of a home medical equipment and services provider.

Section 1. License Required. Unless exempted by KRS 309.412(2), **an entity [a person]** engaged in providing home medical equipment and services in the commonwealth shall hold a license.

Section 2. Initial License. (1) An applicant for licensure that does not currently hold or that has not previously held a license in the commonwealth shall submit:

(a) ~~Form 1, [An] Application for Licensure[Home—Medical Equipment License] or Renewal; and~~

(b) ~~A license fee of \$350; and~~

(c) Evidence of the ability to comply with KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47. To demonstrate the ability to comply with those provisions, the applicant shall:

1. At the time of application, submit proof of accreditation or exemption by a national accreditation organization approved by the Centers for Medicare and Medicaid Services that accredits suppliers of durable medical equipment; or

2. Within sixty (60) days of application, submit to an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47. The board shall not consider a license application, a license shall not be issued, and the applicant shall not engage in the business of providing home medical equipment or services until the board is provided a final report from the inspector demonstrating the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47.

(2)(a) An applicant issued a license based on proof of accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services shall maintain accreditation during the license period.

1. Each licensee shall advise the board in writing of any change in accreditation, including if the accreditation is revoked, suspended, not renewed, or expires.

2. If the accreditation is revoked, suspended, not renewed, or expires, the licensee shall request and submit to an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47.

(b) An applicant that does not maintain an accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services and is issued a license based upon an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47 shall submit to an annual inspection by the board.

Section 3. License Renewals. A licensee seeking to renew a license shall submit:

(1) ~~Form 1, [An] Application for Licensure[Home—Medical Equipment License] or Renewal; and~~

(2) The evidence required by Section 2(1)(b)(c) of this administrative regulation; and

(3) ~~A license renewal fee of \$350.~~

Section 4. Reciprocal Licenses. An applicant seeking licensure pursuant to KRS 309.420 on the basis of reciprocity shall submit:

(1) ~~Form 1, [An] Application for Licensure[Home—Medical Equipment License] or Renewal;~~

(2) A certified copy of the applicant's license issued in a contiguous state that[which] grants reciprocity to Kentucky licensees[another state];

(3) A copy of the applicant's discipline history certified by the licensing authority that issued the license referenced in subsection (2) of this section; and

(4) The evidence required by Section 2(1)(b) of this administrative regulation; and

(4) ~~A reciprocal license fee of \$350.~~

Section 5. ~~[License Fee Refunds. If an applicant's license is denied or remains incomplete for more than sixty (60) days following submission, \$150 of the license fee shall be refunded to the applicant.~~

~~Section 6.~~(1) Annual Training Requirement. Licensees[Licenses] shall provide to employees and persons engaged in the provision of home medical equipment and services

operating under its license at least six (6) hours of annual training related to providing home medical equipment and services, which may be provided in-house by the licensee.

(2) The training shall include programs in:

(a) Infection control and blood borne pathogens;

(b) Occupation Safety and Health Administration (OSHA)[OSHA] and safety issues to include fire safety, disaster preparedness, and office security;

(c) Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (HIPAA)[HIPAA], privacy and security; and

(d) Any new home medical equipment or services the licensee plans to provide.

Section 6.~~[Section 7.]~~ Safety Requirements. Each licensee shall:

(1) Refrain from modifying home medical equipment in a way that might reasonably cause harm to its user;

(2) Maintain electrical components on licensed premises in a manner to prevent fire or shock hazard;

(3) Provide adequate lighting for the licensed premises;

(4) Provide adequate ventilation for the licensed premises;

(5) If essential to maintain life or if the lack of service might reasonably cause harm to the user, provide services twenty-four (24) hours daily if contracted for by supplier and user;

(6) Ensure that all home medical equipment is free of defects and operates within the manufacturer's specifications;

(7) Document the chain of custody and possession of home medical equipment;

(8) Establish, maintain, and adhere to a protocol for retrieving home medical equipment if a recall is initiated;

(9) Ensure that home medical equipment bears the appropriate labels, including:

(a) Warning labels and tags; and

(b) A label that contains the licensee's name, ~~[address;]~~and telephone number;

(10) Maintain in a secure location all home medical equipment stored on the licensed premises;

(11) Establish, maintain, and adhere to procedures for accurately and precisely tracking records of all home medical equipment shipped or received that includes the home medical equipment purchased or the services rendered in each transaction, the date of the transaction, the quantity of the transaction, and an itemized description of the home medical equipment and services rendered; and

(12) Establish, maintain, and adhere to procedures that establish[set forth] a detailed description of how the operation shall[will] comply with applicable federal, state, or local laws or administrative regulations.

Section 7.~~[Section 8.]~~ Sanitation Requirements. A home medical equipment supplier shall:

(1) Instruct users of the home medical equipment on proper cleaning techniques as specified by the manufacturer;

(2) Repair and clean all components of home medical equipment in a confined and properly ventilated area;

(3) Maintain and store home medical equipment to ensure proper lighting, ventilation, temperature, humidity control, sanitation, space, and security; and

(4) Establish, maintain, and adhere to a protocol for cleaning and disinfecting home medical equipment that addresses both aerobic and anaerobic pathogens. The protocol shall include:

(a) Maintaining[Maintain] segregated areas on the licensed premises and in delivery vehicles for clean, dirty, and contaminated home medical equipment; and

(b) Cleaning and disinfecting home medical equipment according to manufacturer specifications.

Section 8.~~[Section 9.]~~ Record Retention and Inspection. (1) Licensees shall maintain the following records for a period of at least three (3) years:

(a) Invoices and receipts for all home medical equipment and services provided;

(b) A complete and accurate list that includes the following

# VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

information for the licensee's employees:

1. Names;
2. Addresses;
3. Telephone numbers;
4. Criminal history, if any; and
5. Dates of employment;

(c) Records of training required by Section 5[6] of this administrative regulation, which shall include:

1. The names of the persons attending the training;
2. The date of attendance;
3. The title of the course;
4. The entity offering the course; and
5. A certificate of completion or similar document;

(d) Documentation of home medical equipment and services that includes:

1. The types of home medical equipment;
2. The manufacturer;
3. The model number;
4. The serial number;
5. Date of repair;
6. Specific repair made; and
7. The name of the person performing the repair;

(e) Documentation of any complaints received and how the complaint was resolved;

(f) Documentation of a function and safety check of home medical equipment that was performed prior to delivery of the home medical equipment and that the user of the home medical equipment is provided instruction on its proper use, safety, and maintenance; and

(g) A [material]safety data sheet (SDS)[(MSDS)] documenting the solutions, products, and procedures used in cleaning and disinfecting home medical equipment.

(2) A licensee shall provide the records required by subsection (1) of this section to the board for inspection within three (3) business days of a request by the board. The board shall state[specify] the location to which the records shall be delivered and if the board shall require electronic or hard copies of the records.

~~Section 9.[Section 10. Other fees. Pursuant to KRS 309.406(1)(f), the board shall charge the following fees for services:] Fees. (1) License fees. An applicant for licensure shall pay[the following licensing fees]:~~

~~(a) An initial license fee of [three hundred and fifty dollars (\$350)].~~

~~(b) A renewal license fee of [three hundred and fifty dollars (\$350)]; or[and]~~

~~(c) A reciprocal license fee of [three hundred and fifty dollars (\$350)].~~

~~(2) Inspection fees. An applicant for licensure shall pay the [following]inspection fees established in paragraphs (a) through (c) of this subsection.[:]~~

~~(a) If an inspection is required within the Commonwealth, the fee for the[such] inspection shall be [three hundred and fifty dollars (\$350).[:]]~~

~~(b) If an inspection is required outside of the Commonwealth, the fee for the[such] inspection shall be the cost of the inspection, including inspector's hourly rate, mileage, and travel expenses.[: and]~~

~~(c) For any inspection, the sum of [three hundred and fifty dollars (\$350 shall be)]-is] due before the inspection occurs. Any remaining balance shall be[is] payable before the license is issued.~~

~~(3) Other fees.[:]~~

~~(a) Duplicate License fee shall be[of] twenty-five (25) dollars.[:(\$25);]~~

~~(b) License verification fee shall be[of] ten (10) dollars.[:(\$10);]~~

~~(c) Mailing list fee for a noncommercial purpose shall be[of] fifteen (15) dollars.[:(\$15); and]~~

~~(d) Mailing list fee for a commercial purpose shall be[of] seventy-five (75) dollars.[:(\$75)].~~

Service	Fee
Duplicate license	\$15

Discipline history	\$15
Paper copies of documents	\$10 per page if for a noncommercial purpose; or \$25 per page if for a commercial purpose
Disks	\$2.00 per disk if for a noncommercial purpose; or \$10.00 per disk if for a commercial purpose
Mailing lists	\$15.00 per list if for a noncommercial purpose; or \$75.00 per list if for a commercial purpose

Section 10.[Section 11.] Department of Professional Licensing. Pursuant to KRS 309.404, 324B.030, and 324B.040[224.10-052], the Department of Professional Licensing may accept payments, employ inspectors, receive complaints, and receive appeals on behalf of the board.

Section 11.[Section 12.] Incorporation by Reference. (1) Form 1, "Application for Licensure[Home Medical Equipment License] or Renewal", June 2021[December 2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, 23SC32, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., and is available at <http://kdbdmes.ky.gov/>.

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Durable Medical Equipment Suppliers, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40601, phone +1 (502) 782-0714, fax +1 (502) 564-4818, email [august.pozgay@ky.gov](mailto:august.pozgay@ky.gov).

## BOARDS AND COMMISSIONS Board of Durable Medical Equipment Suppliers (As Amended at ARRS, October 12, 2021)

### 201 KAR 47:030. Complaint and disciplinary process.

RELATES TO: KRS 309.406, 309.412, 309.414, 309.416, 309.418, 309.420

STATUTORY AUTHORITY: KRS 309.406, 309.418

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.406(1)(d) authorize the board to promulgate administrative regulations governing home medical equipment and service providers. KRS 309.406(1)(d) authorizes the board to investigate complaints or violations of the home medical equipment laws and the administrative regulations. This administrative regulation establishes[details] the process by which the board investigates complaints and violations.

Section 1. Definitions. (1) "Board" is defined by KRS 309.402.

(2) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS 309.400 through 309.422 or 201 KAR Chapter 47.

(3) "Complaint" means a written complaint alleging a violation of KRS 309.400 through 309.422 and 201 KAR Chapter 47.

(4) "Complainant" means a person who files a complaint pursuant to this administrative regulation.

(5) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(6) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that establishes[sets forth] charges against a licensee or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(7) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in unlicensed practice or using a

VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

title without holding a license. **A certified copy of a court record for a misdemeanor or felony conviction constitutes a valid initiating complaint.**

(8) "Order" means the whole or a part of a final disposition of a hearing.

(9) "Respondent" means the individual or entity against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) An initiating complaint may be initiated by the board, an individual, an organization, an entity, or a governmental agency. **[A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.]**

(2) **An initiating complaint[complaints]** shall:

- (a) Be in writing;
- (b) Clearly identify the individual or entity against whom the initiating complaint is being made;
- (c) Contain the date;
- (d) Identify the individual or entity making the initiating complaint; and
- (e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) An initiating complaint may be submitted to the board in any manner.

(4) Upon receipt of an initiating complaint, a copy of the initiating complaint shall be mailed to the respondent along with a request for a response to the complaint within twenty (20) days of the date on which the initiating complaint was received, unless an extension is granted by the board **upon written request from the respondent and for good cause.**

(5) Upon receipt of the written response of the respondent, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from receipt to submit a written reply to the response to the board, unless an extension is granted by the board **upon written request from the complainant and for good cause.**

(6) Complaint Committee.

(a) The complaint committee shall consist of two (2) board members appointed by the chair of the board.

**(b) The complaint committee shall[to]:**

- 1. Review initiating complaints, responses, replies, investigative reports, and any other relevant material;
- 2. Participate in informal proceedings to resolve formal complaints; and
- 3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.

**(b) The complaint committee may be assisted by the board staff and counsel to the board.]**

Section 3. Initial Review. (1) At the next regularly scheduled meeting of the board or as soon thereafter as practicable, the board, upon recommendation of the complaint committee, shall determine the proper disposition of the complaint.

(2) If the board determines before formal investigation that the facts alleged in the initiating complaint do not constitute a prima facie violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall dismiss the complaint and notify the complainant and respondent that no further action shall be taken.

(3) If the board determines that more investigation is warranted, the board shall appoint an agent or representative of the board to investigate the initiating complaint.

(4) If the board determines that there is a prima facie violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall issue a formal complaint against the respondent.

(5) In the case of a prima facie violation of KRS 309.422 and the respondent is not a licensee, the board may take **one (1) or more of** the following actions:

- (a) Issue a cease and desist;
- (b) File an injunction; and
- (c) Seek criminal prosecution pursuant to KRS 309.422.

Section 4. Final Review. (1) Upon the completion of the investigation, the person or persons making that investigation shall

submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(2) Based on consideration of the complaint **and, if any, the response, reply, investigative report, and other relevant evidence, [response, reply, the investigative report, if any, and any other relevant evidence,]** the board shall determine if there has been a prima facie violation of KRS 309.400 through 309.422.

(3) If the board determines that the facts alleged in the initiating complaint do not constitute a violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall dismiss the complaint and notify the complainant and the respondent that no further action shall be taken.

(4) If the board determines that there is a violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall issue a formal complaint against the respondent.

(5) In the case of a violation of KRS 309.422 and the respondent is not a licensee, the board may take **one (1) or more of** the following actions:

- (i) Issue a cease and desist;
- (ii) File an injunction; and
- (iii) Seek criminal prosecution pursuant to KRS 309.422.

Section 5. Settlement by Informal Proceedings. (1) The board, at any time during this process, may enter into informal proceedings with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the chair and the respondent.

(3) The board may employ mediation as a method of resolving the matter informally.

(4) The board may, at any time during this process, issue a letter of admonishment to the respondent as a means of resolving the complaint.

**1.** Within thirty (30) day of the date of the letter, the respondent shall have the right to file a written response to the letter and have it attached to the letter of admonishment and placed in the file.

**2.a.** The respondent shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of admonishment and be granted a full hearing on the complaint.

**b.** If this appeal is requested, the board shall immediately file a formal complaint in regard to this matter and set a date for hearing.

Section 6. Formal Complaint. (1) If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

(2) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations **established[set forth]** in the notice of administrative hearing.

(3) Allegations not **timely[properly]** responded to shall be deemed admitted.

(4) The board **shall upon written request and for[may, if there is]** good cause, **allow[permit]** the late filing of a response.

Section 7. Composition of the Hearing Panel. Disciplinary actions shall be heard by:

- (1) The full board or a quorum of the board;
- (2) A hearing panel consisting of at least one (1) board member appointed by the board; or
- (3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 8. Notification. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the complainant and the respondent of the outcome of the action in writing, **including any appeal rights pursuant to KRS Chapter 13B.**

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Durable Medical Equipment Suppliers, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40601, phone +1 (502) 782-0714, fax +1 (502) 564-4818, email august.pozgay@ky.gov.

**LABOR CABINET**  
**Office of Unemployment Insurance**  
**(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:010. Application for employer account; reports.**

RELATES TO: KRS 341.070, 341.190, 341.243, 341.250, 341.262

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B-020], 341.115, 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations for the proper administration of KRS Chapter 341. KRS 341.190(2) requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the office[division].

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 shall use the Unemployment Insurance Self-Service Web Portal located at <https://wky.kewes.ky.gov> to complete and electronically file with the Office[Division] of Unemployment Insurance an Application for Unemployment Insurance Employer Reserve Account UI-1 no later than the last day of the calendar quarter in which the coverage requirements are first met.

Section 2. Each employing unit shall use the Unemployment Insurance Self-Service Web Portal located at <https://wky.kewes.ky.gov> to complete and electronically file with the Office[Division] of Unemployment Insurance the following electronic reports as required in accordance with the instructions contained on Unemployment Insurance Self-Service Web Portal [the forms]:

- (1) UI-1S, Supplemental Application for Unemployment Insurance Employer Reserve Account;[
- (2) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;]
- (2)[(3)] UI-3.2, Account Status Information; and
- (3)[(4)] UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or Part;]
- (5) UI-35, Termination of Coverage;
- (6) UI-74, Application for Partial Payment Agreement;
- (7) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits; and
- (8) UI-203, Overpayment and Fraud Detection.]

Section 3. Each employing unit shall complete and file with the Office of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

- (1) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;
- (2) UI-74, Application for Partial Payment Agreement[Application];
- (3) UI-203, Overpayment and Fraud Detection; and
- (4) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits.

Section (4)[3]. If an employing unit elects to submit the information required in any report listed in Section 3[4 or 2] of this administrative regulation through the Web site at <https://wky.kewes.ky.gov> provided by the Office[Division] of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

Section 5[4]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 2021;
- (b) UI-1S, "Supplemental Application for Unemployment

**Insurance Employer Reserve Account", Rev. 2021]**

(a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 3/05;

(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 5/11;

(c)[(a)](e) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", Rev. 11/20[7/18];

(d) UI-3.2, "Account Status Information", Rev. 2021;

(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 2021;

(f)[(d)] UI-3.2, "Account Status Information", Rev. 7/18;

(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 3/05;

(f) UI-35, "Termination of Coverage", Rev. 5/11;]

(b)[(g)] UI-74, "Application for Partial Payment Agreement", Rev. 5/11;

(g)[(e)](h) UI-203, "Overpayment and Fraud Detection", Rev. 01/2021[9/11]; and

(h)[(d)](i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits", Rev. 09/18[9/11].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street[275 E. Main Street, 2E], Frankfort, Kentucky 40601[40621], Monday through Friday, 8 a.m. to 4:30 p.m. and is also available on the office's Web site at <https://kcc.ky.gov/Pages/Reports-and-forms.aspx>.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

**LABOR CABINET**  
**Office of Unemployment Insurance**  
**(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:020. Change of status; discontinuance of business.**

RELATES TO: KRS 341.070, 341.115, 341.190(2)

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B-020], 341.115, 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.190(2) requires each employing unit to keep specified working records and authorizes the secretary to require additional reports. This administrative regulation establishes the requirement for subject employers to notify the office[division] of any change of ownership or control of their business.

Section 1. A subject employer shall notify the Office[Division] of Unemployment Insurance within fifteen (15) days of any change in ownership or control of his or her business, whether in whole or in part, or of the discontinuance of the business by submitting an electronic UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or in Part as incorporated by reference in 787 KAR 1:010, and submitted via the Unemployment Insurance Self Service Web Portal located at <https://wky.kewes.ky.gov>.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

**LABOR CABINET**  
**Office of Unemployment Insurance**  
**(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:060. Separation for cause; reports.**

RELATES TO: KRS 341.190, 341.360, 341.370, 341.530  
 STATUTORY AUTHORITY: KRS 336.015, 336.050[454B.020],  
 341.115(1), 2021 Ky Acts ch. 169 Part 1(l)(7)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS  
 341.115(1) authorizes the secretary to promulgate administrative  
 regulations necessary or suitable for the proper administration of  
 KRS Chapter 341. This administrative regulation establishes  
 requirements for employer notification of a claim for benefits, and  
 information the employer shall provide to the Office[Division] of  
 Unemployment Insurance.

Section 1. Notice to Employers. (1) If an initial claim for  
 benefits is filed by a claimant or if a reopened claim for benefits is  
 filed by a claimant who has been employed since last claiming  
 benefits, the Office[Division] of Unemployment Insurance shall  
 immediately notify the claimant's most recent employer in writing of  
 the filing.

(2) If the claimant has worked for his or her most recent  
 employer for[in] less than ten (10) weeks, the office[division] shall  
 also notify his or her next most recent employer in writing of the  
 claim filing.

(3) If the claimant did not work for either[worked for neither]  
 his or her most recent or[her] next most recent employer for at  
least[in each of] ten (10) weeks each, the most recent employer  
 for whom the claimant worked for at least[in each of] ten (10)  
 weeks each shall be notified in writing of the filing.

Section 2. If the claimant was separated from any notified  
 employer's employ for a reason other than lack of work, the  
 employer shall notify the office[division] at its central office in  
 writing of the reason for separation, within the time frame specified  
 in the notice provided pursuant to Section 1 of this administrative  
 regulation. The employer may use the UI-412A, incorporated by  
 reference in 787 KAR 1:010, to provide this notification to the  
office[division] or by providing notice at  
<https://uidataexchange.org/sew-s/views/login>.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-  
 Underwood Building, 500 Mero Street, 4th Floor, Frankfort,  
 Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email  
 buddy.hoskinson@ky.gov.

**LABOR CABINET**  
**Office of Unemployment Insurance**  
**(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:090. Unemployed worker's reporting requirements.**

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380  
 STATUTORY AUTHORITY: KRS 336.015, 336.050[454B.020],  
 341.115(1), 2021 Ky Acts ch. 169 Part 1(l)(7)[341.425(1)]  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS  
 341.115(1) authorizes the secretary to promulgate administrative  
 regulations [deemed] necessary or suitable for the proper  
 administration of KRS Chapter 341. This administrative regulation  
 establishes the registration and reporting requirements that an  
 unemployed worker is required toshall meet to draw benefits,  
 the date when a claim shall be valid, the length of time a claim may  
 be backdated, the procedures for electronic, telephone, and mail  
 claims, and the requirement for random audits.

Section 1. Registration for Work. (1) An unemployed worker  
 shall be registered for work with a state employment service before  
 he or she is eligible to receive benefits. A registration shall be  
 considered filed if the unemployed worker completes the

registration process.

(2) When an unemployed worker completes an initial  
 application for benefits or reopens a claim, he or she shall be  
 assigned a group classification code A or B based upon his or her  
 reemployment prospects.

(a) Group A shall consist of any worker who is unemployed  
 and is not subject to definite recall within a period of twelve (12)  
 weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his or  
her last employer within a period of twelve (12) weeks from the  
 date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment  
 where he or she has been employed; or

3. A member of a union which shall be responsible for securing  
 future employment.

(3) During any benefit year, an unemployed worker shall be  
 assigned a different group classification code if review of his or her  
 reemployment prospects reveals that a different classification is  
 appropriate.

(4) The completion of an initial application for benefits shall  
 serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order  
 for an unemployed worker to file an initial or reopened claim for  
 benefits, he or she shall complete the Initial Claim  
process[Application], Form 404, by using:

(a) An internet claim registration through the Web site provided  
 by the agency for that purpose at  
[uiclaimsportal.ky.gov](https://uiclaimsportal.ky.gov)[<https://uiclaims.des.ky.gov/ebenefit>];

(b) A telephone claim registration through the call center  
 provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state  
 employment service office that provides unemployment insurance  
 assistance.

(2) If any issues regarding the unemployed worker's eligibility  
 as provided by KRS 341.350 or a potentially disqualifying  
 circumstance as provided by KRS 341.360 or 341.370 are  
 detected, a fact finding investigation shall be conducted during  
 which the unemployed worker shall:

(a) Provide picture identification and valid proof of the worker's  
 Social Security number from the Social Security Administration;  
 and

(b) Present all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first  
 day of the week in which the unemployed worker completes the  
 procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of  
 reasons found to constitute good cause for failure to file at an  
 earlier date, the secretary shall backdate the initial or reopened  
 claim to the first day of the week in which the worker became  
 unemployed, or the second calendar week preceding the date the  
 worker filed, whichever is later. Examples of good cause may  
include illness, availability issues beyond the claimant's  
control, or lack of access to internet or phone necessary for  
claim filing.

(5) An unemployed worker whose unemployment insurance  
 benefit check has been lost or stolen shall notify the office in  
writing[file a UI-480, Lost or Stolen Check Statement, to initiate the  
 process to issue a new check].

Section 3. Claiming Weeks of Benefits. (1) Once an  
 unemployed worker has filed an initial claim and established a  
 benefit year, the unemployed workerhe shall claim his or her  
 benefits on a biweekly basis by one (1) of the methods and within  
 the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of  
 the weeks of benefits.

(b) Except as provided in paragraph (c) of this subsection, for  
 every two (2) week period of benefits being claimed following the  
 effective date of the initial or reopened claim, the unemployed  
 worker shall claim his or her benefits during the calendar week  
 following the second week of the period.

(c) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his or her benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his or her benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late. Examples of good cause may include illness, availability issues beyond the claimant's control, lack of access to internet or phone necessary for claim filing, or unemployment insurance system outages.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that purpose at [uicclaimsportal.ky.gov/https://uicclaims.des.ky.gov/ebenefit/](https://uicclaimsportal.ky.gov/https://uicclaims.des.ky.gov/ebenefit/), with the claim completed before 7 p.m. Eastern Time on the Friday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of 10 a.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Directions for Submitting an Employer Mass Electronic Claim (E-claim) File and the E-claim – Template ~~Mass Electronic Filing Cell Data and Formatting Guide~~; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the Office of Unemployment Insurance ~~[Division]~~ that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history;

and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the Office of Unemployment Insurance ~~[Division's]~~ personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. The secretary shall conduct random audits of claims. Each random audit shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Directions for Submitting an Employer Mass Electronic Claim (E-claim) File, 03/20 ~~[Initial claim application, "Form 401", 8/40];~~ and

(b) E-Claim – Template, 03/20; and

(c) "Continued Claim Form", Rev. 2021 ~~[UI-480, "Lost or Stolen Check Statement", 06/13;~~

(e) "Continued Claim Form", 10/95; and

(d) "Mass Electronic Filing Cell Data and Formatting Guide", 03/07.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Office ~~[Division]~~ of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street ~~[275 East Main Street, 2-CD]~~, Frankfort, Kentucky 40601 ~~[40624]~~, Monday through Friday, 8 a.m. to 4:30 p.m. and is available on the office's Web site at <https://kcc.ky.gov/Pages/Reports-and-forms.aspx>.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

**LABOR CABINET  
Office of Unemployment Insurance  
(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:110. Appeals.**

RELATES TO: KRS 131.570(1), 341.420(2), (4), 341.430(2), 341.440, 341.450

STATUTORY AUTHORITY: KRS 336.015, 336.050 ~~[451B.020(3)(e)1]~~, 341.115(1), 2021 Ky Acts ch. 169 Part 1(I)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 13B.020(3)(e)1 exempts unemployment insurance hearings from the provisions of KRS Chapter 13B. This administrative regulation establishes the appeals process and general rules for the conduct of hearings.

Section 1.1: Definition. "Interested party" means a claimant or employer identified in a notice of determination.

Section 2. ~~[Section 4.]~~ Appeals to Referee. (1) The presentation of an appeal to a referee.

(a) Any interested party wishing to appeal to a referee from a determination issued pursuant to KRS 131.570(1) or 341.420(2) shall file with the Office[Division] of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal to a referee shall be considered filed as of the date it is received by the department as established in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraph (b) or (c) of this subsection, the Office[Division] of Unemployment Insurance shall schedule all hearings promptly and shall mail notices to the parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The referee may conduct a hearing without ten (10) days' notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The office[division] shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;

2. Medical emergency;

3. Death of a family member; or

4. Acts of God.

(3) Disqualification of referees.

(a) A referee shall not participate in the hearing of an appeal in which the referee has an interest.

(b) Challenges to the interest of any referee shall be heard and decided by the commission.

(4)(a) Hearing of appeals.

1. The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and witnesses.

2. The referee shall, if necessary to secure full information on the issues, examine each party who appears and witnesses.

3. The referee may take any additional evidence that is necessary.

4. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

(b)1. The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing.

2. The referee shall:

a. Decide the appeal on the basis of the stipulation; or

b. Schedule a hearing and take further evidence.

(c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:

1. Create undue expense for any party;

2. Require any party to travel more than fifty (50) miles;

3. Put either party or the referee at personal risk; or

4. Create a security risk for the public or office[division] staff.

(e) The referee may grant a continuance of a hearing in order to secure necessary evidence.

(f)1. Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing shall provide copies of the documents to the referee and the opposing party prior to the hearing.

2. Failure to provide both the referee and the opposing party with copies of the evidence shall result in its being excluded from the record.

(5) Decisions.

(a)1. After the hearing is concluded, the referee shall set forth in writing the referee's finding of facts on the issues involved, the decision, and the reasons for the decision.

2. If the appellant fails to appear and prosecute an appeal, the referee shall summarily affirm the determination.

(b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the

office's[division's] files.

(c)1. The recording of the hearing shall be retained in the office's[division's] files pending further appeal.

2. If an appeal is not initiated, the recording may be deleted ninety (90) days from the date the final administrative decision is mailed.

(d)1. Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions.

2. The corrected decision shall have the same appeal rights as the decision that it amends or corrects.

(e) If the decision is to deny previously awarded benefits either retroactively or forthwith, a stop payment directive shall be issued to the office[division] by the referee on the date the decision is mailed to the claimant.

Section 3.[Section 2.] Appeals to the Commission From a Referee Decision. (1) Presentation of an appeal to the commission.

(a)1. Any interested party wishing to appeal to the commission from a decision of a referee shall give notice in writing to the commission, the office[division], or the office's[division's] authorized representative in any form that clearly indicates the party's intention to appeal.

2. The appeal shall be mailed by the office[division] to other interested parties.

(b) An appeal, based on the conformity of the appeal with the requirements of KRS 341.420(4), shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(c) The commission shall:

1. Grant or deny the application for leave to appeal without a hearing; or

2. Notify the parties to appear at a specified place and time for appeal on the application.

(2) Hearing of appeals.

(a)1. Except if the commission orders cases removed to it from a referee, all appeals to the commission shall be heard upon the records of the office[division] and the evidence and exhibits introduced before the referee.

2. In the hearing of an appeal on the record, the parties may present written arguments and present oral arguments.

3.a. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the commission's notification of appeal receipt within which to file a written argument.

b. The appellee shall have seven (7) days thereafter within which to file response.

4. Written argument shall be considered filed as of the date it is received by the department as established in 787 KAR 1:230.

5. The commission may extend the time for filing written argument upon a showing of good cause, in accordance with the examples listed in Section 4[3](2)(c)1<sub>1</sub> through 4<sub>2</sub> of this administrative regulation, by either party to the appeal.

(b)1. The commission may direct the taking of additional evidence before it, if needed, in order to determine the appeal.

2. If additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place the evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c)1. The commission may return any case or issue to a referee for the taking of additional evidence.

2. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall return the record to the commission for its decision.

(3) Any case ordered by the commission to be removed to it from a referee shall be heard and decided by the commission in the manner prescribed in Section 4[3] of this administrative regulation.

(4) The determination of appeals before the commission.

(a)1. Following the conclusion of a hearing, the commission shall issue a written decision, which shall affirm the decision of the referee or present a separate finding of facts, decision, and reasons.



2. The decision shall be signed by members of the commission who heard the appeal.

3.a. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

- (i) Is a matter of first impression;
- (ii) Clarifies or defines the application of statutory language;
- (iii) Reverses a previous precedential commission decision; or
- (iv) Adopts a court decision.

b. A decision designated a precedent shall be binding on all lower levels of determination.

(b)1. If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within ten (10) days of the mailing date of the decision, request in writing a reconsideration of the commission's decision.

1. The commission shall grant or deny the request for reconsideration based on the conformity of the request to this paragraph.

2. A request for reconsideration shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(b) A request for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

(6) Precedent decision process and digest.

(a) The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid.

(b) Individual decisions shall be available on request without charge.

Section 4.[Section 3.] Appeals to the Commission From an Employing Unit.

(1) Presentation of an appeal to the commission.

(a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 131.570(1) or 341.430(2) shall do so by filing with the commission, the office[division], or the office's[division's] authorized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraph (b) or (c) of this subsection, upon receipt of an appeal under this section, the commission shall:

1. Deny the appeal as untimely; or

2. Promptly schedule a hearing and mail notices to all interested parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The commission or its representative may conduct a hearing without ten (10) days' notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The commission shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

- 1. A claimant's inability to attend the hearing due to current employment;
- 2. Medical emergency;

3. Death of a family member; or

4. Acts of God.

(3) Appointment of commission representative.

(a) The commission may direct that any hearing be conducted on its behalf by an authorized representative.

(b) A representative shall not participate in the hearing of an appeal in which the representative has an interest.

(c) Challenges to the interest of any representative shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) Any party to the appeal may present pertinent evidence and may question the opposite party and witnesses.

1. The commission shall, if it finds[deems] it necessary to secure full information on the issues, examine each party who appears and witnesses.

2.a. The commission may take any additional evidence which is necessary.

b. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

(b)1. The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing.

2. The commission shall:

a. Decide the appeal on the basis of the stipulation; or

b. Schedule a hearing and take further evidence.

(c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:

1. Create undue expense for any party;

2. Require any party to travel more than fifty (50) miles;

3. Put either party or the referee at personal risk; or

4. Create a security risk for the public or office[division] staff.

(e) The commission may grant a continuance of a hearing in order to secure necessary evidence.

(f)1. Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing shall provide copies of the documents to the commission and to the opposing party prior to the hearing.

2. Failure to provide both the commission and the opposing party with copies of this evidence shall result in its being excluded from the record.

(5) Decisions.

(a)1. Following the conclusion of a hearing, the commission shall set forth in writing its finding of the facts, its decision, and its reasons for the decision.

2. If the appellant fails to appear and prosecute an appeal, the commission shall summarily affirm the administrative determination from which the appeal was made.

3. The decision shall be signed by the members of the commission who considered the appeal.

4. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

a. Is a matter of first impression;

b. Clarifies or defines the application of statutory language;

c. Reverses a previous precedential commission decision; or

d. Adopts a court decision.

5. A decision designated a precedent shall be binding on all lower levels of determination.

(b)1. If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(e)1. Any commission decision may be superseded and amended after being released in order to correct obvious technical

errors or omissions.

2. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(6) Reconsideration.

(a) Any party adversely affected by a decision of the commission may, within ten (10) days of the mailing date of the decision, file a request in writing for reconsideration of the commission's decision.

1. The commission shall grant or deny the reconsideration based on the conformity of the request to this paragraph.

2. A reconsideration shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(b) A request for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

Section 5.~~[Section 4.]~~ General Rules for Referee and Commission Appeals. (1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance setting forth the substance of the anticipated proof to be obtained and the need for the proof.

(2) Appeal record.

(a) All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the office~~[division]~~ that have been written, sent, or made in connection with an appeal shall constitute the record with respect to the appeal.

(b) Pursuant to KRS 341.440, a digital recording shall be made of any hearing conducted by the office~~[division]~~ or commission.

(3) Supplying information from the records of the Office~~[Division]~~ of Unemployment Insurance.

(a) Information from the records of the office~~[division]~~ shall be furnished to an interested party or representative to the extent necessary for the proper presentation of the party's case, only upon written request.

(b) All requests for information shall state, as clearly as possible, the nature of the information desired.

(c) An interested party or representative may examine a record in the possession of a referee, the commission, or its authorized representative at a hearing.

(4) Conduct of hearings.

(a) All hearings shall be conducted informally without regard to common law, statutory or technical rules, or procedure and in a manner as to determine the substantial rights of the parties.

(b) The parties and their witnesses shall testify under oath or affirmation.

(c) All issues relevant to the appeal shall be considered and passed upon.

(5) Reopening hearings.

(a) Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the hearing date, request a rehearing.

(b) The request shall:

1. Be granted if the party has shown good cause, in accordance with the examples listed in Section ~~4(3)~~(2)(c)1, through 4, of this administrative regulation, for failure to appear;

2. Be in writing;

3. Set forth the reasons for the failure to attend the scheduled hearing; and

4. Be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Office~~[Division]~~ of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky.

(c) Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing a digital recording of testimony to interested parties.

(a) Parties or their authorized representatives may secure a

duplicate of the recording of testimony made at a hearing. To request a duplicate, the party or authorized representative shall:

1. Contact the Kentucky Unemployment Insurance Commission at the address listed on the decision; and

2. Include with the request a CD-R, CD-RW, or USB flash drive, with the appropriately stamped return envelope.

(b) There shall not be a charge for this service, if the party included with the request a CD-R, CD-RW, or USB flash drive and appropriately stamped return envelope.

(7) Retention and destruction of recordings. Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

Section 6.~~[Section 5.]~~ Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601~~[Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40624]~~, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the provisions of KRS 341.450(2).

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

**LABOR CABINET**

**Office of Unemployment Insurance**

**(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:150. Interstate claimants.**

RELATES TO: KRS 341.145, 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 336.015, 336.050~~[454B.020]~~, 341.115, 2021 Ky Acts ch. 169 Part~~[§]~~ 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.145(1) authorizes~~[provides that]~~ the secretary to~~[may]~~ enter into arrangements with other states for the provision of services to unemployed workers. KRS 341.380(1) requires benefits to be~~[provides that benefits shall]~~ be paid in accordance with administrative regulations promulgated by the secretary. This administrative regulation establishes requirements for~~[governs]~~ the office~~[division]~~ in its administrative cooperation with other states for the payment of benefits to interstate claimants.

Section 1. Definitions. (1) "Agent state" means a state from which an individual files a claim for benefits payable by another state.

(2) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of a state.

(3) "Interstate benefit payment plan" means the plan approved by the National Association of State Workforce Agencies under which benefits are~~[shall]~~ be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(4) "Interstate claimant":

(a) Means an individual, including an interstate combined wage claimant, who claims benefits under the unemployment insurance law of one (1) or more liable states from an agent state; and

(b) Does not mean~~[shall not include]~~ an individual who customarily commutes from a residence in an agent state to work in a liable state unless the secretary finds that:

(a) Kentucky is the liable state; and

(b) The individual is not seeking employment in Kentucky.

**VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

(5) "Liable state" means a state against which an individual files a claim for benefits if filed from another state.

(6) "State" means one (1) of the fifty (50) states in the United States of America~~[,]~~ or Canada, the Virgin Islands, Puerto Rico, or the District of Columbia.

Section 2. The secretary shall apply the terms of the interstate benefit payment plan in ~~[his]~~ administrative cooperation with other states that have similar administrative provisions in effect for the payment of benefits to interstate claimants.

Section 3. Kentucky as Liable State. An interstate claimant filing against Kentucky as the liable state shall follow the procedures for filing a claim and for claiming benefits as established in 787 KAR 1:090, Sections 2 and 3.

Section 4. Registration for Work. Each interstate claimant filing against Kentucky as the liable state shall be registered for work~~[,]~~ through any Kentucky Career Center~~[public employment office]~~ in the agent state ~~[when and]~~ as required by the law, regulations, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of KRS 341.350(2) if proof of registration in the agent state is provided by the interstate claimant.

Section 5. Benefit Rights of Interstate Claimants. (1) If a claimant files a claim against a state~~[,]~~ and the claimant has available benefit credits in that state, the claim~~[claims]~~ shall be filed only against that state ~~if [as long as]~~ benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) Benefit credits shall be deemed to be unavailable if benefits have been exhausted, terminated, or postponed for an indefinite period, ~~for~~ for the entire period in which benefits would otherwise be payable, or if benefits are affected by the application of a seasonal restriction.

(3) The benefit rights of an interstate claimant established by this administrative regulation shall apply only with respect to a new claim (notice of unemployment).

Section 6. Appellate Procedure. (1) If Kentucky is the agent state, it shall afford all reasonable cooperation in taking of evidence in connection with appealed interstate benefit claims on behalf of the liable state.

(2) With respect to the time limits imposed by KRS 341.420(2) upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to Kentucky on the date it is received by the agent state.

Section 7. Failure to Comply with Administrative Regulations. The provisions of 787 KAR 1:090, Section 6, shall apply to interstate claimants.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [Buddy.Hoskinson@ky.gov](mailto:Buddy.Hoskinson@ky.gov).

**LABOR CABINET  
Office of Unemployment Insurance  
(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:210. Employer contribution rates.**

RELATES TO: KRS 341.270, 341.272

STATUTORY AUTHORITY: KRS 336.015~~[336.115]~~, 336.050~~[454B.020]~~, 341.115, 341.270(3), ~~[to]~~ 2021 Ky Acts ch. 169 Part 1(I)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS

341.270(3) requires the ~~secretary~~~~[Secretary of the Education and Workforce Development Cabinet]~~ to determine the rate schedule for employer contributions. This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year.

Section 1. Annual Employer Rate Notice. (1) On or before December 15 of each year, the ~~Office~~~~[Division]~~ of Unemployment Insurance, on behalf of the secretary, shall issue to each active employer liable to pay unemployment contributions for the next calendar year a ~~[ " ]~~ Notice of Contribution Rate~~[ " ]~~.

(2) The notice shall:

(a) ~~State~~~~[Set forth]~~ the rate schedule determined by the secretary pursuant to KRS 341.270(3) to be in effect for the next calendar year;

(b) Inform each employer of ~~the~~:

1. ~~[The]~~ Rate applicable to the employer's account for the next calendar year;

2. ~~[The]~~ Tax, wage, and benefit charge information regarding the employer's account; and

3. ~~[The]~~ Statutory provisions used to calculate and assign the rate in accordance with KRS 341.270 and 341.272; and

(c) Be issued in either paper or electronic format.

Section 2. Incorporation by Reference. (1) The "Notice of Contribution Rate", UI-29, September 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the ~~Office~~~~[Division]~~ of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street~~[275 E. Main Street, 2E]~~, Frankfort, Kentucky 40601~~[40624]~~, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: [Buddy.Hoskinson@ky.gov](mailto:Buddy.Hoskinson@ky.gov).

**LABOR CABINET  
Office of Unemployment Insurance  
(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:220. Required reports and due dates.**

RELATES TO: KRS 341.070, 341.190, 341.250(2), 341.190, 341.262

STATUTORY AUTHORITY: KRS 336.015, 336.050~~[454B.020]~~, 341.115(1), 341.190(2), 2021 Ky Acts ch. 169 Part 1(I)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.190(2) authorizes the ~~secretary~~~~[Secretary of the Education Cabinet]~~ to require an employing unit to furnish information and records concerning wages paid, employment, and other related matters. This administrative regulation establishes the required filing options, information, and reporting due dates.

Section 1. Definition. "Required report" means the Employer's Quarterly Unemployment Wage and Tax Report (UI-3), which is incorporated by reference in 787 KAR 1:010 and may be filed electronically.

Section 2. (1) Except as ~~established~~~~[provided]~~ in subsection (2) of this section, an employer shall file the report required in Section 1 of this administrative regulation by submitting an electronic report via the Internet at <https://kewes.ky.gov>:

(a) Submitting a paper form UI-3; or

(b) ~~Submitting an electronic report via the Internet at <https://kewes.ky.gov>~~.

(2) An employer with fewer than ten (10) ~~[or more]~~ workers

performing service in covered employment during any month within a quarter being reported and who is unable to file the report electronically, may submit a paper form UI-3[shall submit an electronic report via the Internet at <https://kewes.ky.gov>].

Section 3. Due Dates. (1) Except as established[provided] in subsection (2) of this section, the due date for the filing of a required report shall be the last day of the month following the close of the calendar quarter in which wages are paid in covered employment.

(2)(a) The initial due date for the filing of a required report by an employing unit newly subject under the provisions of KRS 341.070 shall be the last day of the month following the quarter in which the employing unit is first given notice by the department of its liability as a subject employer.

(b) An employing unit shall not be considered newly subject if:

1. Prior to beginning employment in Kentucky, it has previously been determined subject under the unemployment compensation law of any other state;~~;~~ however, It shall be considered newly subject if all wages paid in covered employment in Kentucky were reported to another state unemployment compensation program by the due date established[specified] by that state; or

2. It has previously been determined subject under the provisions of KRS 341.070 but subsequently terminated subjectivity under the provisions of KRS 341.250(2),

(c) If an employing unit has failed to file a required report due to willful intent to evade filing, the provisions of subsection (1) of this section shall apply.

Section 4. Reports shall be considered received by the department as established in 787 KAR 1:230.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

**LABOR CABINET  
Office of Unemployment  
(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:260. Voluntary election of coverage.**

RELATES TO: KRS 341.070(9), 341.250(3)

STATUTORY AUTHORITY: KRS 336.015, 336.050[~~454B.020~~], 341.115, 2021 Ky Acts ch. 169 Part[~~§~~] 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.250(3) authorizes employees to~~provides that an employer may~~ voluntarily elect to cover employment not otherwise covered by the chapter, subject to approval by the secretary. This administrative regulation establishes the process for approval of voluntary election of coverage.

Section 1. An employing unit seeking election of coverage under KRS 341.250(3) shall include in its written election [the following information]:

(1) For the two (2) calendar years preceding the date of election, or for the total length of existence of the organization, whichever is less:

(a) A list of all funding sources, the revenues received from each, and duration of funding provided from each, accompanied by supporting documentation including grant applications, funding approval letters, and any other relevant material; and

(b) A list of all employees along with gross salaries paid; and

(2) Projections for the two (2) calendar years following the date of election, including:

(a) A list of all anticipated funding sources, the revenues expected from each, and expected duration of funding from each, accompanied by any available documentation supporting these projections; and

(b) The number of workers anticipated~~[,]~~ and projected salaries for each position.

Section 2. Except as established[provided] in Section 3 of this administrative regulation, a voluntary election of coverage shall be approved if the information submitted in accordance with Section 1 of this administrative regulation indicates that the number of employees and the total amount of funding are projected to remain the same or increase over the time period covered by the information.

Section 3. An employing unit shall not be granted for voluntary election in any calendar year if, in the preceding calendar year, the employer contributions deposited to the Unemployment Trust Fund were less than the total benefits paid.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: [Buddy.Hoskinson@ky.gov](mailto:Buddy.Hoskinson@ky.gov).

**LABOR CABINET  
Office of Unemployment Insurance  
(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:300. Successorship.**

RELATES TO: KRS 341.070, 341.540

STATUTORY AUTHORITY: KRS 336.015, 36.050[~~454B.020~~], 341.115, 341.540(2), 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.540(2) requires[provides] that the basis for successorship, other than transfers between employing units with common ownership, shall be determined in accordance with administrative regulations promulgated by the secretary. This administrative regulation establishes the conditions under which an employing unit shall be found to be successor to another.

Section 1. Definitions. (1) "Domestic employing unit" means an employing unit for which service is provided as established[described] in KRS 341.050(1)(g).

(2) "Going concern" means an employing unit that is providing goods or services, maintaining a staff, or meeting payroll.

(3) "Negotiation" means dealings conducted between two (2) or more parties for the purpose of reaching an understanding.

Section 2. Except as established[provided] in Section 3 of this administrative regulation, successorship shall be deemed to have occurred between two (2) employing units if:

(1) Negotiation occurs to bring about the transfer, either directly between the parties to the transfer, or indirectly through a third party intermediary; and

(2) At least two (2) of the conditions established in this[the] subsection are met, except this requirement shall not be satisfied if only paragraphs (c) and (d) of this subsection are met:

(a) The employing unit was a going concern at the time negotiations for the transfer began;

(b) The subsequent owner or operator continued or resumed basically the same type of employing unit in the same location;

(c) The subsequent owner employed fifty (50) percent or more of the previous owner's workers in covered employment;

(d) The previous owner employed fifty (50) percent or more of the subsequent owner's workers in covered employment; or

(e) The subsequent owner acquired work contracts or commitments from the previous owner.

Section 3. Successorship for a domestic employing unit shall be deemed to have occurred if two (2) of the conditions established under Section 2(2)(a) through (e) of this administrative regulation exist.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: Buddy.Hoskinson@ky.gov.

**LABOR CABINET**  
**Office of Unemployment Insurance**  
**(As Amended at ARRS, October 12, 2021)**

**787 KAR 1:310. Claimant profiling.**

RELATES TO: KRS 194.030(9), 341.350(2), 42 U.S.C. 503(a)(10), (j)

STATUTORY AUTHORITY: KRS 336.015, 336.050~~[451B.020]~~, 341.115, 341.350(2)(b), 2021 Ky Acts ch. 169 Part 1(l)(7), 42 U.S.C. 503(a)(10), (j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulation necessary to administer KRS Chapter 341. 42 U.S.C. 503(a)(10) and ~~[503](j)~~ require states to establish profiling systems to identify unemployment claimants who are likely to exhaust regular benefits for referral to reemployment services, and to hold claimants ineligible to receive unemployment benefits if they fail to participate in reemployment services after having been so identified. KRS 341.350(2)(b) requires~~[provides—that]~~ the ~~secretary~~~~[Secretary of the Education Cabinet]~~ to~~[shall]~~ establish a profiling system. This administrative regulation establishes conditions, consistent with the provisions of 42 U.S.C. 503(a)(10) and (j), under which a claimant shall participate in reemployment services as a condition of receiving benefits.

Section 1. Definition. "Profiling" means a method by which the secretary shall determine if an unemployment claimant is likely to exhaust benefits.

Section 2. Profiling System. (1) Except as established~~[provided]~~ in subsection (2) of this section, all unemployment claimants shall be subject to profiling as a condition of receiving benefits.

(2) A claimant shall be exempted from profiling if the claimant:

(a) Is applying for extended benefits or special federal program benefits including Trade Adjustment Assistance and Disaster Unemployment Assistance;

(b) Is classified as a "Group B" claimant as established in 787 KAR 1:090, Section 1(2)(b);

(c) Is in approved training as established~~[provided]~~ in KRS 341.350(6);

(d) Has weekly pension deductions in excess of the benefit amount; or

(e) Is receiving reemployment services through a union hiring hall.

(3) The secretary shall utilize a statistical model of worker profiling as the basis for the identification of claimants for referral for reemployment services. The profiling system shall identify a claimant as unlikely to return to his previous industry or occupation through the consideration of employment related variables. These variables shall not include the claimant's age, gender, race, ethnicity, or national origin.

(4) A claimant shall be profiled if~~[when]~~ issued a first benefit payment, including a zero amount due to excessive earnings or other reason.

(5) A claimant identified by the profiling system as likely to exhaust benefits shall be referred for reemployment services from the Office of Unemployment Insurance~~[Office of Employment and Training]~~ based on the availability of services. A claimant who is not referred for services within four (4) weeks after identification by the profiling system shall not be referred and shall be considered to have satisfied the requirements of KRS 341.350(2)(b) for the receipt of benefits.

Section 3. Eligible dislocated worker. A claimant determined to

be an "eligible dislocated worker" under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3102 et seq.~~[Workforce Investment Act, 29 U.S.C. 2801 et seq.]~~, may participate in the profiling system.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: Buddy.Hoskinson@ky.gov.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, October 12, 2021)**

**803 KAR 2:325. General industry standards.**

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.333, 49 C.F.R. Part 571

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~[and 338.061 authorize]~~ the Kentucky Occupational Safety and Health Standards Board to ~~[adopt and]~~ promulgate occupational safety and health ~~[rules, administrative]~~ regulations ~~[and standards]~~ and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards in general industry ~~[Consistent with this authority the following administrative regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following administrative regulations applicable to general industry. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.014)].~~

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 339.015(2).

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

Section 2. Batteries. Changing and charging storage batteries ~~[(for automotive-type battery charging installations, in-vehicle charging of batteries, and battery jump starting of vehicles)].~~

(1)(a) Facilities shall be provided for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries.

(b) An adequate water supply shall be within twenty-five (25) feet of the work area.

(2)(a) A~~[No]~~ battery shall not be charged or discharged within a closed or unvented container.

(b) The batteries shall be charged:

1. ~~[(a)]~~ In the open; or

2. ~~[(b)]~~ In a mechanically-ventilated space; or

3. ~~[(c)]~~ In a space providing at least twenty (20) cubic feet per ampere of charging capacity.

(3)(a) A face shield or goggles shall be provided and available at each charging unit.

(b) The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the addition or pouring of electrolyte.

(4) Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, or ~~[and]~~ while handling electrolyte.

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

(5) Employees shall be instructed to:

- (a) Turn off the battery charger to connect or disconnect the battery;
- (b) Wash acid spills immediately; and
- (c) Flush electrolyte from eyes and skin with water for ten (10) minutes.

Section 3 [2]. [Safety and Testing of Supply Lines in Excess of 600 Volts. (1) Definitions.

(a) ~~Disconnected means disconnected from any electrical source of supply;~~

(b) ~~Guarded: protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: Wires, which are insulated but not otherwise protected, are not considered as guarded);~~

(c) ~~Hold cards (also called "hold tags"): a card or tag-type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.;~~

(d) ~~Near: a distance no closer than that shown in the table in subsection (3)(c) of this section;~~

(e) ~~Qualified person: a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.~~

(2) Purpose.

(a) ~~The intent and purpose of this administrative regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage;~~

(b) ~~This administrative regulation shall apply to nonutility electrical workers who are engaged in electrical construction or maintenance of electrical conductors and equipment rated at 600 volts and above.~~

(3) Energized conductors and equipment.

(a) ~~Only qualified employees shall work on or near high voltage conductors or equipment;~~

(b) ~~Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors or equipment;~~

Minimum Clear Distance From Live Parts	
Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2 1/2'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

(c) ~~No employee shall approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the live parts. Rubber gloves (sleeves if necessary) rated for the voltage involved shall be considered effective insulation of the employee from the energized part.~~

(4) Deenergized conductor or equipment.

(a) ~~Existing conditions shall be determined before starting work on electrical conductor and/or equipment;~~

(b) ~~Before any work is performed, all electrical switches, breakers and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge. Employees shall be trained and thoroughly instructed in the tagging procedure. One (1) qualified person, for example: foreman, general foreman or first class electrician, of each crew shall be responsible for attaching hold tags and/or hold cards to the disconnecting means. When more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the~~

~~handle of the disconnecting equipment. The use of such tags must be respected. Equipment or items so tagged must not be activated or used without full and proper authority of a responsible person whose signature appears on the tag;~~

(c) ~~Conductors shall be short circuited and grounded wherever possible;~~

(d) ~~Capacitors may be components of apparatus of the disconnected electrical system. Before employees are allowed to work, the capacitors shall be discharged, short circuited and grounded;~~

(e) ~~When deenergizing conductors and equipment and the means of disconnecting from the energy source is not visibly open, a voltage test shall be made before starting work. An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device. The test device must be handled and used while wearing or using approved protective equipment during the test;~~

(f) ~~All conductors and equipment shall be treated as energized until tested, short circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed;~~

(g) ~~The voltage condition of deenergized conductors and/or equipment shall be determined with testing equipment designed for the applicable voltage;~~

(h) ~~Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under his jurisdiction are clear and that all protective short circuit and grounding lines are removed. The qualified person(s) shall then remove his hold tag(s). Only at this time shall conductors and equipment be reenergized.~~

Section 3. Safety Belts, Lanyards and Life Lines. (1) Employees working from open-sided unguarded floors, pipe racks, and ledges, platforms, walkways, machinery, stock shelves, or similar unguarded working surfaces which are elevated ten (10) feet or more above a lower level shall be secured by safety belts and lanyards, life lines where necessary, or shall be protected by safety nets.

(2) Lanyards shall have a nominal breaking strength of 5,400 lbs. The combination of safety belts and lanyards, life lines where necessary, shall be designed to permit a fall of not more than five (5) feet.

(3) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4,000 lbs. without cracking, breaking or taking a permanent deformation.

(4) Life lines, where necessary, shall be secured above the point of operation to an anchorage of structural member capable of supporting a minimum dead weight of 5,400 lbs.

(5) This standard shall not preempt any applicable standard now in effect.

Section 4.] Off-highway Motor Vehicles and Equipment. (1) General requirements.

(a) Heavy machinery, equipment, or parts [thereof, which are] suspended or held aloft by use of slings, hoists, or jacks shall be substantially blocked or cribbed to prevent falling or shifting before employees are permitted to work under or between them.

(b) 1. Bulldozers and scraper blades, end-loader buckets, dump bodies, and similar equipment, shall be either fully lowered or blocked when being repaired or when not in use.

2. All controls shall be in a neutral position, with the motors stopped and brakes set, unless work being performed requires otherwise.

(c) [(b)] Whenever the equipment is parked, the parking brake shall be set.

(d) Equipment parked on inclines shall have the wheels chocked and the parking brake set.

(e) [(e)] All cab glass shall be safety glass, or equivalent, that introduces no visible distortion affecting the safe operation of any machine covered by this section [subpart].

(f) [(d)] All equipment covered by this section [subpart] shall comply with the requirements of 29 C.F.R. 1910.333

[1910.180(j)(1)] when working or being moved in the vicinity of power lines or energized transmitters.

(2) Motor vehicles.

(a) Coverage. Motor vehicles [as] covered by this section [part] are those vehicles that operate within an off-highway job site not open to public traffic. The requirements of this section do not apply to equipment [for which rules are prescribed] in subsection (3) of this section.

(b) General requirements.

1. All vehicles shall have a service brake system, an emergency brake system, and a parking brake system.

2. These systems may use common components, and shall be maintained in operable condition.

(c) Whenever visibility conditions warrant additional light, all vehicles, or combinations of vehicles, in use shall be equipped with at least two (2) headlights and two (2) taillights in operable condition.

(d) All vehicles, or combination of vehicles, shall have brake lights in operable condition regardless of light conditions.

(e) All vehicles shall be equipped with an adequate audible warning device at the operator's station and in an operable condition.

(f) Motor vehicle equipment [No employer] shall not be used [use any motor vehicle equipment] having an obstructed view to the rear unless:

1. The vehicle has a reverse signal alarm audible above the surrounding noise level; or

2. The vehicle is backed [up] only when an observer signals that it is safe to do so.

(g) 1. All vehicles with cabs shall be equipped with windshields and powered wipers.

2. Cracked and broken glass shall be replaced.

3. Vehicles operating in areas or under conditions that cause fogging or frosting of the windshields shall be equipped with operable defogging or defrosting devices.

(h) All haulage vehicles [whose pay load is] loaded by means of cranes, power shovels, loaders, or similar equipment, shall have a cab shield or [and/or] canopy adequate to protect the operator from shifting or falling materials.

(i) Tools and material shall be secured to prevent movement when transported in the same compartment with employees.

(j) Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees [to be] carried.

(k) The employer shall [will] provide and insure the use of seat belts and anchorages meeting the requirements of 49 C.F.R. Part 571, [(Department of Transportation, Federal Motor Vehicle Safety Standards)].

(l) Trucks with dump bodies shall be equipped with positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done.

(m) Operating levers controlling hoisting or dumping devices on haulage bodies shall be equipped with a latch or other device that prevents [which will prevent] accidental starting or tripping of the mechanism.

(n) Trip handles for tailgates of dump trucks shall be so arranged that, in dumping, the operator will be in the clear.

(o) 1. Each employer shall assure [that] the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use:

a. Service [service] brakes, including trailer brake connections;

b. Parking [parking] system brake [(hand brake)];

c. Brakes [emergency stopping system (brakes)];

d. Tires [tires];

e. Horn [horn];

f. Steering [steering] mechanism;

g. Coupling [coupling] devices;

h. Seat [seat] belts;

i. Operating [operating] controls; and

j. Safety [safety] devices.

2. All defects shall be corrected before the vehicle is placed in service.

3. These requirements shall also apply to equipment such as

lights, reflectors, windshield wipers, defrosters, and fire extinguishers[, etc., where such equipment is necessary].

(3) Material handling equipment.

(a) General [Equipment; general]. The requirements of this subsection [These rules] shall apply to [the following types of equipment:] scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment[. The promulgation of specific rules for compactors and rubber-tired "skid-steer" equipment is reserved pending consideration of standards currently being developed].

(b) Seating and seat belts.

1. Each employer shall insure safe seating with seat belts on all equipment covered by this section, and shall meet the requirement of J386, Society of Automotive Engineers Handbook, 1986, Operator Restraint Systems for Off-road Work Machines [Seat Belts for Construction Equipment].

2. Seat belts for agricultural and light industrial tractors shall meet the seat belt requirements of Society of Automotive Engineers J1194, Society of Automotive Engineers Handbook, 1986, Rollover Protective Structures (ROPS) for Wheeled Agricultural Tractors [Operator Protection for Agricultural and Light Industrial Tractors].

(c) Seat belts need not be provided for equipment [which is] designed only for stand-up operation.

(d) Seat belts need not be provided for equipment that [which] does not have rollover protective structure [(ROPS)] or adequate canopy protection.

(e) Brakes.

1. All equipment mentioned in subsection (a) of this section shall have a service braking system capable of stopping and holding the equipment fully loaded, as specified in Society of Automotive Engineers SAE J237, Loader Dozer, Society of Automotive Engineers Handbook, 1986, J236, Graders, Society of Automotive Engineers Handbook, 1986, and J319b, Scrapers, Society of Automotive Engineers Handbook, 1986.

2. Brake systems for self-propelled rubber-tired off-highway equipment manufactured after January 1, 1987 shall meet the applicable minimum performance criteria set forth in the following Society of Automotive Engineers Recommended Practices, [ ]:

<u>Self-propelled Scrapers</u>	<u>SAE J319B, Society of Automotive Engineers Handbook, 1986.</u>
<u>Self-propelled Graders</u>	<u>SAE J236, Society of Automotive Engineers Handbook, 1986.</u>
<u>Trucks and Wagons</u>	<u>SAE J166, Society of Automotive Engineers Handbook, 1986.</u>
<u>Front-end Loaders and Dozers</u>	<u>SAE J237, Society of Automotive Engineers Handbook, 1986.</u>

(f) [Rollover protective structures for off-highway trucks. The promulgation of standards for rollover protective structures for off-highway trucks is reserved pending further study and development.

(g) Audible alarms.

1. a. All bidirectional machines, such as rollers, compactors, front-end loaders, bulldozers, and similar equipment, shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction.

b. The horn shall be maintained in an operative condition.

2. Material [No employer shall permit material] handling equipment or compacting equipment that [which] has an obstructed view to the rear shall not be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.

(f) (g) (h) Scissor points. Scissor points on all front-end loaders[, that/which] constitute a hazard to the operator during normal operation[, ] shall be guarded.

Section 4 [5]. Rollover Protective Structures; Overhead Protection. (1) Rollover protective structure (ROPS) for material handling equipment.

(a) Coverage. This section applies to the following types of material handling equipment: To all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in general industry work. This requirement does not apply to sideboom pipe-laying tractors.

(b) The promulgation of specific standards for rollover protective structures for compactors and rubber-tired skid-steer equipment is reserved pending consideration of standards currently being developed.

(c) Equipment manufactured on or after January 1, 1987. Material handling machinery described in paragraph (a) of this subsection and manufactured on or after January 1, 1987, shall be equipped with rollover protective structures which meet the minimum performance standards prescribed in subsections (2) and (3) of this section as applicable.

(d) Equipment manufactured before January 1, 1987. All material handling equipment described in paragraph (a) of this subsection and manufactured or placed in service (owned or operated by the employer) prior to January 1, 1987, shall be fitted with rollover protective structures no later than January 1, 1988. Machines manufactured before July 1, 1969: Reserved pending further study, development, and review.

(e) Rollover protective structures and supporting attachment shall meet the minimum performance criteria detailed in subsections (2) and (3) of this section, as applicable or shall be designed, fabricated, and installed in a manner which will support, based on the ultimate strength of the metal, at least two (2) times the weight of the prime mover applied at the point of impact.

(f) The design objective shall be to minimize the likelihood of a complete overturn and thereby minimize the possibility of the operator being crushed as a result of a rollover or upset.

(g) The design shall provide a vertical clearance of at least fifty-two (52) inches from the work deck to the ROPS at the point of ingress or egress.

(h) Remounting. ROPS removed for any reason, shall be remounted with equal quality, or better, bolts or welding as required for the original mounting.

(i) Labeling. Each ROPS shall have the following information permanently affixed to the structure:

1. Manufacturer or fabricator's name and address;
2. ROPS model number, if any;
3. Machine make, model, or series number that the structure is designed to fit.

(j) Machines meeting certain existing governmental requirements. Any machine in use, equipped with rollover protective structures, shall be deemed in compliance with this subsection if it meets the rollover protective structure requirements of the state of California, the U.S. Army Corps of Engineers, or the Bureau of Reclamation of the U.S. Department of the Interior in effect on April 5, 1972. The requirements in effect are:

1. State of California: Construction Safety Orders, issued by the Department of Industrial Relations pursuant to Division 5, Labor Code, sec. 6312, state of California.
2. U.S. Army Corps of Engineers: General Safety Requirements, EM-385-1-1 (March 1967).
3. Bureau of Reclamation, U.S. Department of the Interior: Safety and Health Regulations for Construction. Part II (September 1971).

(2) Minimum performance criteria for rollover protective structures for designated scrapers, loaders, dozers, graders, and crawler tractors.

(a) General. This section prescribes minimum performance criteria for rollover protective structures (ROPS) for rubber-tired self-propelled scrapers; rubber-tired front-end loaders and rubber-tired dozers; crawler tractors, crawler-type loaders, and motor graders. The vehicle and ROPS as a system shall have the structural characteristics prescribed in paragraph (f) of this subsection for each type of machine described in this paragraph.

(b) The static laboratory test prescribed herein will determine the adequacy of the structures used to protect the operator under the following conditions:

1. For rubber-tired self-propelled scrapers, rubber-tired front-end loaders, and rubber-tired dozers: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of thirty (30) degrees maximum.

2. For motor graders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to 360 degrees down a slope of thirty (30) degrees maximum.

3. For crawler tractors and crawler-type loaders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of forty-five (45) degrees.

(c) Facilities and apparatus.

1. The following material is necessary:

a. Material, equipment, and tie-down means adequate to insure that the ROPS and its vehicle frame absorb the applied energy.

b. Equipment necessary to measure and apply loads to the ROPS. Adequate means to measure deflections and lengths should also be provided.

c. Recommended, but not mandatory, types of test setups are illustrated in Figure W-1 for all types of equipment to which this section applies; and in Figure W-2 for rubber-tired self-propelled scrapers; Figure W-3 for rubber-tired front-end loaders, rubber-tired dozers, and motor graders; and Figure W-4 for crawler tractors and crawler-type loaders.

2. Table W-1 contains a listing of the required apparatus for all types of equipment described in paragraph (a) of this subsection.

TABLE W-1	
Means to Measure	Accuracy
Deflection of ROPS, inches	+5% of deflection measured.
Vehicle weight, pounds	+5% of the weight measured.
Force applied to frame pounds	+5% of force measured.
Dimensions of critical zone	+0.5 inches.

(d) Vehicle conditions. The ROPS to be tested must be attached to the vehicle structure in the same manner as it will be attached during vehicle use. A totally assembled vehicle is not required. However, the vehicle structure and frame which support the ROPS must represent the actual vehicle installation. All normally detachable windows, panels, or nonstructural fittings shall be removed so that they do not contribute to the strength of the ROPS.

(e) Test procedure. The test procedure shall include the following, in the sequence indicated:

1. Energy absorbing capabilities of ROPS shall be verified when loaded laterally by incrementally applying a distributed load to the longitudinal outside top member of the ROPS, as shown in Figure W-1, W-2, or W-3, as applicable. The distributed load must be applied so as to result in approximately uniform deflection of the ROPS. The load increments should correspond with approximately five-tenths (0.5) inches ROPS deflection increment in the direction of the load application, measured at the ROPS top edge. Should the operator's seat be off-center, the load shall be applied on the off-center side. For each applied load increment, the total load (lb.) versus corresponding deflection (in.) shall be plotted, and the area under the load-deflection curve shall be calculated. This area is equal to the energy (in.-lb.) absorbed by the ROPS. For a typical load-deflection curve and calculation method, see Figure W-5. In Figure W-1, incremental loading shall be continued until the ROPS has absorbed the amount of energy and the minimum applied load specified under paragraph (f) of this subsection has been reached or surpassed. (See Figures for this section following the administrative regulation.)

2. To cover the possibility of the vehicle coming to rest on its top, the support capability shall be verified by applying a distributed vertical load to the top of the ROPS so as to result in approximately uniform deflection (see Figure W-1). The load magnitude is specified in paragraph (f)2a of this subsection.

3. The low temperature impact strength of the material used in the ROPS shall be verified by suitable material tests or material



certification (see paragraph (f)2d of this subsection).

(f) Performance requirements.

1. General performance requirements.

a. No repairs or straightening of any member shall be carried out between each prescribed test.

b. During each test, no part of the ROPS shall enter the critical zone as detailed in SAE J397b, Society of Automotive Engineers Handbook, 1986. Deformation of the ROPS shall not allow the plane of the ground to enter this zone.

2. Specific performance requirements.

a. The energy requirement for purposes of meeting the requirements of paragraph (e)1 of this subsection is to be determined by referring to the plot of the energy versus weight of vehicle (see Figure W-6 for rubber-tired self-propelled scrapers; Figure W-7 for rubber-tired front-end loaders and rubber-tired dozers; Figure W-8 for crawler tractors and crawler-type loaders; and Figure W-9 for motor graders). For purposes of this subsection, force and weight are measured as pounds (lb.); energy (U) is measured as inch-pounds.

b. The applied load must attain at least a value which is determined by multiplying the vehicle weight by the corresponding factor shown in Figure W-10 for rubber-tired self-propelled scrapers; in Figure W-11 for rubber-tired front-end loaders and rubber-tired dozers; in Figure W-12 for crawler tractors and crawler-type loaders; and in Figure W-13 for motor graders.

c. The load magnitude for purposes of compliance with paragraph (e)2 of this subsection is equal to the vehicle weight. The test of load magnitude shall only be made after the requirements of subparagraph 2a of this paragraph are met.

d. Material used in the ROPS must have the capability of performing at zero degrees Fahrenheit, or exhibit Charpy V notch impact strength of eight (8) foot-pounds at minus twenty (20) degrees Fahrenheit. This is a standard Charpy specimen as described in American Society of Testing and Materials A 370, Methods and Definitions for Mechanical Testing of Steel Products (available at the Central Office of the Kentucky Occupational Safety and Health Program). The purpose of this requirement is to reduce the tendency of brittle fracture associated with dynamic loading, low temperature operation, and stress raisers which cannot be entirely avoided on welded structures.

(g) Definitions. For purposes of this subsection, "vehicle weight" means the manufacturer's maximum weight of the prime mover for rubber-tired self-propelled scrapers. For other types of equipment to which this subsection applies, "vehicle weight" means the manufacturer's maximum recommended weight of the vehicle plus the heaviest attachment.

(h) Source of standard. This standard is derived from, and restates, the following Society of Automotive Engineers Recommended Practices: SAE J1349, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired, Self-propelled Scrapers; SAE J394, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired Front-end Loaders and Rubber-tired Dozers; SAE J395, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Crawler Tractors and Crawler-type Loaders; and SAE J396, Society of Automotive Engineers handbook, 1986, Minimum Performance Criteria for Rollover Protective Structures for Motor Graders. These recommended practices shall be resorted to in the event that questions of interpretation arise. The recommended practices appear in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(3) Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction.

(a) General.

1. The purpose of this section is to set forth requirements for frames for the protection of operators of wheel-type agricultural and industrial tractors to minimize the possibility of operator injury resulting from accidental upsets during normal operation. With respect to agricultural and industrial tractors, the provisions of

subsections (2) and (4) of this section for rubber-tired dozers and rubber-tired loaders may be utilized in lieu of the requirements of this section.

2. The protective frame which is the subject of this standard is a structure mounted to the tractor that extends above the operator's seat and conforms generally to Figure W-14.

3. If an overhead weather shield is attached to the protective frame, it may be in place during tests; provided, that it does not contribute to the strength of the protective frame. If such an overhead weather shield is attached, it must meet the requirements of paragraph (i) of this subsection.

4. For overhead protection requirements, see subsection (4) of this section.

5. If protective enclosures are used on wheel-type agricultural and industrial tractors, they shall meet the requirements of Society of Automotive Engineers Standard J1249, Society of Automotive Engineers Handbook, 1986, Protective Enclosures, Test Procedures, and Performance Requirements. This standard appears in the 1986 SAE Handbook and may be examined in the Central office of the Kentucky Occupational Safety and Health Program.

(b) Applicability. The requirements of this subsection apply to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work. See paragraph (j) of this subsection for definitions of agricultural tractors and industrial tractors.

(c) Performance requirements.

1. Either a laboratory test or a field test is required in order to determine the performance requirements set forth in this paragraph.

2. A laboratory test may be either static or dynamic. The laboratory test must be under conditions of repeatable and controlled loading in order to permit analysis of the protective frame.

3. A field upset test, if used, shall be conducted under reasonably controlled conditions, both rearward and sideways to verify the effectiveness of the protective frame under actual dynamic conditions.

(d) Test procedures - general.

1. The tractor used shall be the tractor with the greatest weight on which the protective frame is to be used.

2. A new protective frame and mounting connections of the same design shall be used for each test procedure.

3. Instantaneous and permanent frame deformation shall be measured and recorded for each segment of the test.

4. Dimensions relative to the seat shall be determined with the seat unloaded and adjusted to its highest and most rearward latched position provided for a seated operator.

5. If the seat is offset, the frame loading shall be on the side with the least space between the centerline of the seat and the upright.

6. The low temperature impact strength of the material used in the protective structure shall be verified by suitable material tests or material certifications in accordance with subsection (2)(f)2d of this section.

(e) Test procedure for vehicle overturn.

1. Vehicle weight. The weight of the tractor, for purposes of this subsection, includes the protective frame, all fuels, and other components required for normal use of the tractor. Ballast must be added if necessary to achieve a minimum total weight of 130 lbs. (59 kg.) per maximum power takeoff horsepower at rated engine speed. The weight of the front end must be at least thirty-three (33) lb. (15 kg.) per maximum power takeoff horsepower. In case power takeoff horsepower is unavailable, ninety-five (95) percent of net engine flywheel horsepower shall be used.

2. Agricultural tractors shall be tested at the weight set forth in subparagraph 1 of this paragraph.

3. Industrial tractors shall be tested with items of integral or mounted equipment and ballast that are sold as standard equipment or approved by the vehicle manufacturer for use with the vehicle where the protective frame is expected to provide protection for the operator with such equipment installed. The total vehicle weight and front end weight as tested shall not be less than

the weights established in subparagraph 1 of this paragraph.

4. The test shall be conducted on a dry, firm soil bank as illustrated in Figure W-15. The soil in the impact area shall have an average cone index in the 0-6 inch (153 mm.) layer not less than 150 according to American Society of Agricultural Engineers Recommendation ASAE R313, Soil Cone Penetrometer (available in the Central Office of the Kentucky Occupational Safety and Health Program). The path of travel of the vehicle shall be  $12^\circ \pm 2^\circ$  to the top edge of the bank.

5. The upper edge of the bank shall be equipped with an eighteen (18) inch (457 mm.) high ramp as described in Figure W-15 to assist in tipping the vehicle.

6. The front and rear wheel tread settings, where adjustable, shall be at the position nearest to halfway between the minimum and maximum settings obtainable on the vehicle. Where only two (2) settings are obtainable, the minimum setting shall be used.

7. Vehicle overturn test—sideways and rearward:

a. The tractor shall be driven under its own power along the specified path of travel at a minimum speed of ten (10) mph (16 km./hr.) or maximum vehicle speed if under ten (10) mph (16 km./hr.) up the ramp as described in subparagraph 5 of this paragraph to induce sideways overturn.

b. Rear upset shall be induced by engine power with the tractor operating in gear to obtain 3-5 mph (4.8-8 km./hr.) at maximum governed engine r.p.m. preferably by driving forward directly up a minimum slope of two (2) vertical to one (1) horizontal. The engine clutch may be used to aid in inducing the upset.

(f) Other test procedures. When the field upset test is not used to determine ROPS performance, either the static test or the dynamic test, contained in paragraph (g) or (h) of this subsection, shall be made.

(g) Static test.

1. Test conditions:

a. The laboratory mounting base shall include that part of the tractor chassis to which the protective frame is attached including the mounting parts.

b. The protective frame shall be instrumented with the necessary equipment to obtain the required load deflection data at the location and directions specified in Figures W-16, W-17, and W-18.

c. The protective frame and mounting connections shall be instrumented with the necessary recording equipment to obtain the required load deflection data to be used in calculating FSB (see paragraph (j)3 of this subsection). The gauges shall be placed on mounting connections before the installation load is applied.

2. Test procedure:

a. The side load application shall be at the upper extremity of the frame upright at a ninety (90) degree angle to the centerline of the vehicle. This side load "L" shall be applied according to Figure W-16. "L" and "D" shall be recorded simultaneously. The test shall be stopped when:

(i) The strain energy absorbed by the frame is equal to the required input energy ( $E_{is}$ ); or

(ii) Deflection of the frame exceeds the allowable deflection; or

(iii) The frame load limit occurs before the allowable deflection is reached in the side load.

b. The L-D diagram, as shown by means of a typical example in Figure W-19, shall be constructed, using the data obtained in accordance with clause a of this subparagraph.

c. The modified  $L_m$ - $D_m$  diagram shall be constructed according to clause (ii) of this subparagraph and according to figure W-20. The strain energy absorbed by the frame ( $E_u$ ) shall then be determined.

d.  $E_{is}$ , FER, and FSB shall be calculated.

e. The test procedure shall be repeated on the same frame utilizing L (rear input; see Figure W-18) and  $E_r$ . Rear load application shall be uniformly distributed along a maximum projected dimension of twenty-seven (27) inches (686 mm.) and a maximum area of 160 square inches (1,032 sq. cm.) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

(h) Dynamic test.

1. Test conditions:

a. The protective frame and tractor shall meet the requirements of paragraph (e)2 or 3 of this subsection, as appropriate.

b. The dynamic loading shall be produced by use of a 4,410 lb. (2,000 kg.) weight acting as a pendulum. The impact face of the weight shall be twenty-seven (27) plus, or minus one (1) inch by twenty-seven (27) plus or minus one (1) inch (686 + or - 25 mm.) and shall be constructed so that its center of gravity is within one (1) inch (25.4 mm.) of its geometric center. The weight shall be suspended from a pivot point 18-22 feet (5.5-6.7 m.) above the point of impact on the frame and shall be conveniently and safely adjustable for height. (See Figure W-21).

c. For each phase of testing, the tractor shall be restrained from moving when the dynamic load is applied. The restraining members shall be of 0.5-0.63 inch (12.5-16 mm.) steel cable and points of attaching restraining members shall be located an appropriate distance behind the rear axle and in front of the front axle to provide a  $15^\circ$ - $30^\circ$  angle between a restraining cable and the horizontal. The restraining member shall either be in the plane in which the center gravity of the pendulum will swing or more than one (1) restraining cable shall give a resultant force in this plane. (See Figure W-22).

d. The wheel tread setting shall comply with the requirements of paragraph (e)6 of this subsection. The tires shall have no liquid ballast and shall be inflated to the maximum operating pressure recommended by the tire manufacturer. With specified tire inflation, the restraining cables shall be tightened to provide tire deflection of 6-8 percent of nominal tire section width. After the vehicle is properly restrained, a wooden beam 6 x 6 in. (15 x 15 cm.) shall be driven tightly against the appropriate wheels and clamped. For the test to the side, an additional wooden beam shall be placed as a prop against the wheel nearest the operator's station and shall be secured to the floor so that it is held tightly against the wheel rim during impact. The length of this beam shall be chosen so that when it is positioned against the wheel rim, it is at an angle of  $25^\circ$ - $40^\circ$  to the horizontal. It shall have a length 20-25 times its depth and a width two (2) to three (3) times its depth. (See Figures W-22 and W-23.)

e. Means shall be provided indicating the maximum instantaneous deflection along the line of impact. A simple friction device is illustrated in Figure W-23.

f. No repair or adjustments may be carried out during the test.

g. If any cables, props, or blocking shift or break during the test, the test shall be repeated.

2. Test procedure:

a. General. The frame shall be evaluated by imposing dynamic loading to rear followed by a load to the side on the same frame. The pendulum dropped from the height (see definition "H" in paragraph (j)3 of this subsection) imposes the dynamic load. The position of the pendulum shall be so selected that the initial point of impact on the frame shall be in line with the arc of travel of the center of gravity of the pendulum. A quick release mechanism should be used but, if used, shall not influence the attitude of the block.

b. Impact at rear. The tractor shall be properly restrained according to subparagraphs 1c and d of this paragraph. The tractor shall be positioned with respect to the pivot point of the pendulum such that the pendulum is twenty (20) degrees from the vertical prior to impact, as shown in Figure W-22. The impact shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright of a new frame.

c. Impact at side. The block and restraining shall conform to subparagraphs 1c and d of this paragraph. The point of impact shall be that structural member of the protective frame likely to hit the ground first in a sideways accidental upset. The side impact shall be applied to the side opposite that used for rear impact.

(i) Performance requirements.

1. General:

a. The frame, overhead weather shield, fenders, or other parts in the operator area may be deformed but shall not shatter or leave sharp edges exposed to the operator, or violate dimensions as shown in Figures W-16 and W-17 as follows:

D = 2 in. (51 mm.) inside of frame upright to vertical centerline of seat.

E = 30 in. (762 mm.).

F = Not less than 0 in. and not more than 12 in. (305 mm.), measured at centerline front of seat backrest to crossbar along the line of load application as shown in Figure W-17.

G = 24 in. (610 mm.).

b. The material and design combination used in the protective structure must be such that the structure can meet all prescribed performance tests at zero degrees Fahrenheit in accordance with subsection (2)(f)2d.

2. Vehicle overturn performance requirements. The requirements of this paragraph must be met in both side and rear overturns.

3. Static test performance requirements. Design factors shall be incorporated in each design to withstand an overturn test as prescribed in this paragraph. The structural requirements will be generally met if FER is greater than one (1) and FSB is greater than K-1 in both side and rear loadings.

4. Dynamic test performance requirements. Design factors shall be incorporated in each design to withstand the overturn test prescribed in this paragraph. The structural requirements will be generally met if the dimensions in this paragraph are adhered to in both side and rear loads.

(j) Definitions applicable to this section.

1. SAE J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Wheel-type Agricultural and Industrial Tractors (1983) defines "agricultural tractor" as a "wheel-type vehicle of more than 20 engine horsepower designed to furnish the power to pull, carry, propel, or drive implements that are designed for agricultural usage." Since this subsection applies only to general industry work, the following definition of "agricultural tractor" is adopted for purposes of this administrative regulation: "agricultural tractor" means a wheel-type vehicle of more than twenty (20) engine horsepower, used in general industry work, which is designed to furnish the power to pull, propel, or drive implements.

2. "Industrial tractor" means that class of wheeled-type tractor of more than twenty (20) engine horsepower (other than rubber-tired loaders and dozers described in subsection (2) of this section) used in operations such as landscaping, loading, digging, grounds keeping, and highway maintenance.

3. The following symbols, terms, and explanations apply to this section:

$E_{is}$  = Energy input to be absorbed during side loading.

$E_{is} = 723 + 0.4 W$  ft.-lb. ( $E'_{is} = 100 + 0.12W'$ , m.-kg.).

$E_{ir}$  = Energy input to be absorbed during rear loading.

$E_{ir} = 0.47 W$  ft.-lb. ( $E'_{ir} = 0.14 W'$ , m.-kg.).

W = Tractor weight as prescribed in subsection (3)(e)1 and (e)3, in lb. (W', kg.). L = Static load, lb. (kg.).

D = Deflection under L, in. (mm.).

L-D = Static load-deflection diagram.

$L_m D_m$  = Modified static load-deflection diagram (Figure W-20).

To account for increase in strength due to increase in strain rate, raise L in plastic range to  $L \times K$ .

K = Increase in yield strength induced by higher rate of loading (1.3 for hot rolled low carbon steel 1010-1030). Low carbon is preferable; however, if higher carbon or other material is used, K must be determined in the laboratory. Refer to Charles H. Norris, et al., Structural Design for Dynamic Loads (1959), p. 3.

$L_{max}$  = Maximum observed static load.

Load = Point on L-D curve where observed static load is Limit 0.8  $L_{max}$  (refer to Figure W-19).

$E_u$  = Strain energy absorbed by the frame, ft.-lb. (m.-kg.) area under  $L_m D_m$  curve.

FER = Factor of energy ratio,  $FER = E_u/E_{is}$  also =  $E_u/E_{ir}$

$P_b$  = Maximum observed force in mounting connection under static load, L, lb. (kg.).

FSB = Design margin for mounting connection  $FSB = (P_u/P_b) - 1$ .

H = Vertical height of lift of 4.410 lb. (2,000 kg.) weight, in. (H', mm.). The weight shall be pulled back so that the height of its center of gravity above the point of impact is defined as follows:  $H = 4.92 + 0.00190 W$  or ( $H' = 125 + 0.107 W'$ ) (Figure W-24).

(k) Source of standard. The standard in this section is derived from, and restates, Society of Automotive Engineers Standard J1194, Society of Automotive Engineers Handbook, 1986, Protective Frame Test Procedures and Performance Requirements. This standard shall be resorted to in the event that questions of interpretation arise. The standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(4) Overhead protection for operators of agricultural and industrial tractors.

(a) General.

1. Purpose. When overhead protection is provided on wheel-type agricultural and industrial tractors, the overhead protection shall be designed and installed according to the requirements contained in this subsection. The provisions of subsection (2) of this section for rubber-tired dozers and rubber-tired loaders may be used in lieu of the standards contained in this subsection. The purpose of the standard is to minimize the possibility of operator injury resulting from overhead hazards such as flying and falling objects, and at the same time to minimize the possibility of operator injury from the cover itself in the event of accidental upset.

2. Applicability. This standard applies to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work.

(b) Overhead protection. When overhead protection is installed on wheel-type agricultural or industrial tractors used in general industry work, it shall meet the requirements of this paragraph. The overhead protection may be constructed of a solid material. If grid or mesh is used, the largest permissible opening shall be such that the maximum circle which can be inscribed between the elements of the grid or mesh is 1.5 in. (38 mm.) in diameter. The overhead protection shall not be installed in such a way as to become a hazard in the case of upset.

(c) Test procedures - general.

1. The requirements of subsection (3)(d), (e), and (f) of this section shall be met.

2. Static and dynamic rear load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch<sup>2</sup> (1,032 cm.<sup>2</sup>) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

3. The static and dynamic side load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch<sup>2</sup> (1,032 cm.<sup>2</sup>) normal to the direction of load application. The direction of load application is the same as in subsection (3)(g) and (h) of this section. To simulate the characteristics of the structure during an upset, the center of load application may be located from a point 24 in. (610 mm.) (K) forward to 12 in. (305 mm.) (L) rearward of the front of the seat backrest to best utilize the structural strength. See Figure W-25.

(d) Drop test procedures.

1. The same frame shall be subjected to the drop test following either the static or dynamic test.

2. A solid steel sphere or material of equivalent spherical dimension weighing 100 lb. (45.4 kg.) shall be dropped once from a height 10 ft. (3,048 mm.) above the overhead cover.

3. The point of impact shall be on the overhead cover at a point within the zone of protection as shown in Figure W-26, which is furthest removed from major structural members.

(e) Crush test procedures.

1. The same frame shall be subjected to the crush test following the drop test and static or dynamic test.

2. The test load shall be applied as shown in Figure W-27 with the seat positioned as specified in subsection (3)(d)4 of this section. Loading cylinders shall be pivotally mounted at both ends. Loads applied by each cylinder shall be equal within two (2) percent, and the sum of the loads of the two (2) cylinders shall be two (2) times the tractor weight as set forth in subsection (3)(e)1 of this section. The maximum width of the beam illustrated in Figure W-27 shall be 6 in. (152 mm.).

(f) Performance requirements.

1. General. The performance requirements set forth in subsection (3)(i)2, 3, and 4 of this section shall be met.

2. Drop test performance requirements.

a. Instantaneous deformation due to impact of the sphere shall not enter the protected zone as illustrated in Figure W-25, W-26, and W-28.

b. In addition to the dimensions set forth in subsection (3)(i)1a of this section, the following dimensions apply to Figure W-28:

H = 17.5 in. (444 mm.).

J = 2 in. (50.8 mm.) measured from the outer periphery of the steering wheel.

3. Crush test performance requirements. The protected zone as described in Figure W-28 must not be violated.

(g) Source of standard. This standard is derived from, and restates, the portions of Society of Automotive Engineers Standard J167, Society of Automotive Engineers Handbook, 1986, which pertain to overhead protection requirements. The full title of the SAE standard is: Protective Frame with Overhead Protection test Procedures and Performance Requirements. The SAE standard shall be resorted to in the event that questions of interpretation arise. The SAE standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

Section 6.] Fire Apparatus and Fire Department Facilities. (1) Scope. This section shall apply to industrial fire departments and private, public or contractual type fire departments. This section shall not apply to volunteer fire departments.

(2) Persons riding on fire apparatus. A [Beginning September 1, 1991, a] person riding on fire apparatus shall be secured to the vehicle by seat belts or safety harnesses when the vehicle is in motion.

(3) Inspection, maintenance, and repair of vehicles. [Beginning January 1, 1992:]

(a) All fire department vehicles shall be inspected at least weekly and within twenty-four (24) hours after any use or repair to identify and correct unsafe conditions.

(b) A fire department vehicle found to be unsafe shall be placed out of service until repaired.

(c) After being repaired, the vehicle shall be inspected prior to being placed back in service.

(d) [(e)] The inspection shall include:

1. Tires, brakes, warning lights and devices, headlights and clearance lights, windshield wipers and mirrors;

2. Starting the apparatus, and verification of the operation of pumps and other equipment; and

3. Inspection of the safety equipment carried on fire department vehicles.

(e) [(d)] A fire department shall maintain inspection, maintenance, repair, and service records for all vehicles and equipment used for emergency operations.

(4) Facility safety. [Beginning July 1, 1993:]

(a) Sleeping areas in fire stations shall:

1. Be separated from vehicle storage areas by at least one (1) hour fire resistive assemblies; or

2. Have operable fire suppression or operable smoke detection systems.

(b) A fire station shall have a system capable of ventilating.

**Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:**

**(a) J386, Society of Automotive Engineers Handbook, "Operator Restraint Systems for Off-road Work Machines", 1986; and**

**(b) J1194, Society of Automotive Engineers Handbook, "Rollover Protective Structures (ROPS) for Wheeled Agricultural Tractors", 1986.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Mayo-Underwood Building, 3<sup>rd</sup> Floor, Frankfort, KY 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. EST. The Labor Cabinet Web site is [www.labor.ky.gov](http://www.labor.ky.gov).**

**(3) The Society of Automotive Engineers Web site is**

**SAE.org.** [

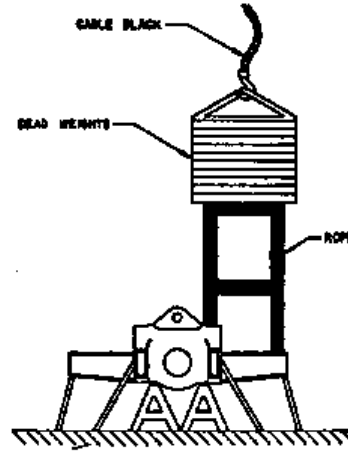
(5) Effective dates.

(a) Subsection (2) of this section shall become effective September 1, 1991.

(b) Subsection (3) of this section shall become effective January 1, 1992.

(c) Subsection (4) of this section shall become effective July 1, 1993.

COMPILER'S NOTE: The following diagrams have been deleted; however, due to formatting issues, they may not appear struck through.



**Figure W-1-Vertical loading setup for all types of equipment described in Subsection (2)(a).**

**Incremental loading shall be continued until the ROPS has absorbed the amount of energy and the minimum applied load specified under paragraph (f) of this Subsection has been reached or surpassed.**

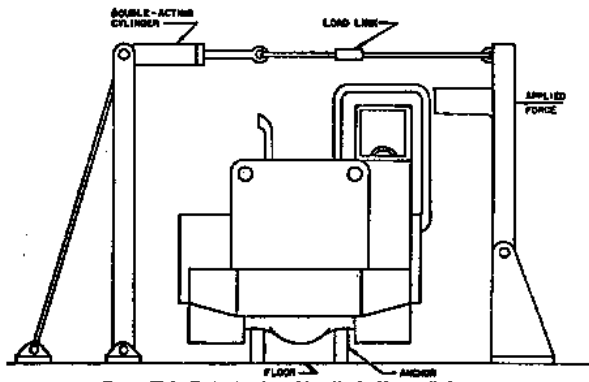


FIGURE W-2—Test setup for rubber-tired self-propelled scrapers.

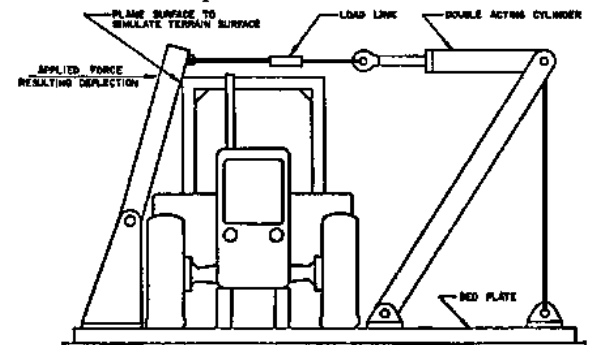


FIGURE W-3—Test setup for rubber-tired front-end loaders, rubber-tired dozers, and motor graders.

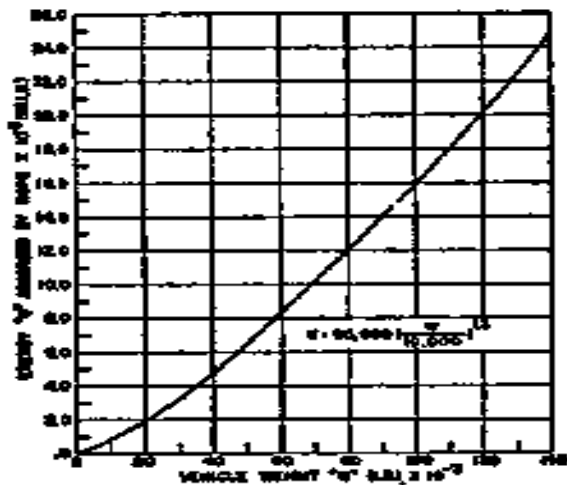


FIGURE W-5—Energy absorbed versus vehicle weight.

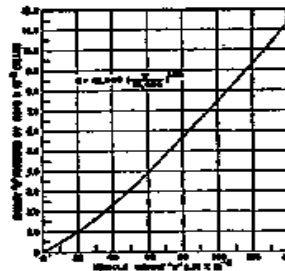


FIGURE W-7—Energy absorbed versus vehicle weight.

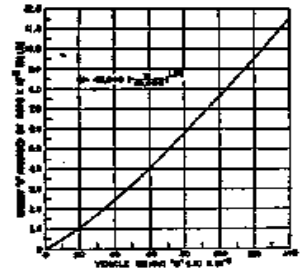


FIGURE W-9—Energy absorbed versus vehicle weight.

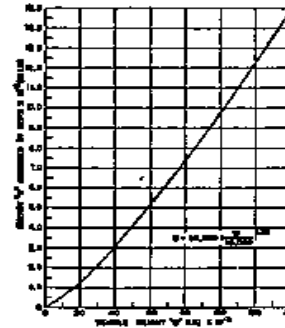


FIGURE W-8—Energy absorbed versus vehicle weight.

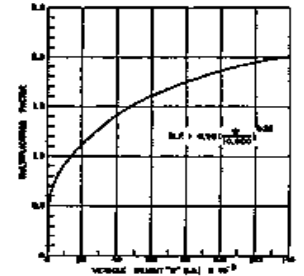


FIGURE W-10—Minimum horizontal load factor for self-propelled scrapers.

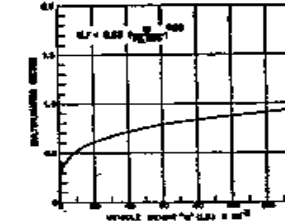


FIGURE W-11—Minimum horizontal load factor for rubber-tired loaders and dozers.

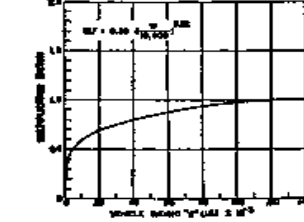


FIGURE W-12—Minimum horizontal load factor for crawler tractors and crawler-type loaders.

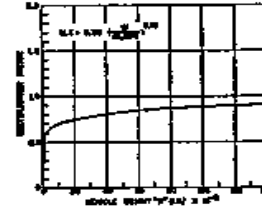
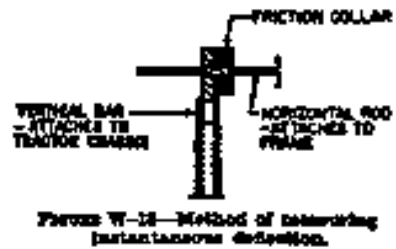
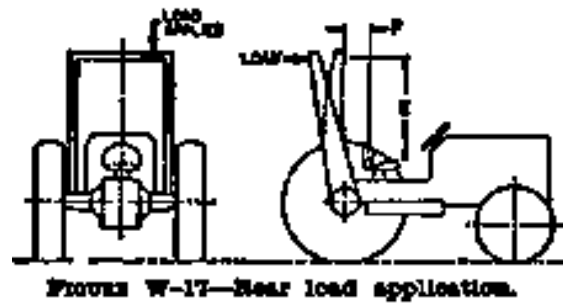
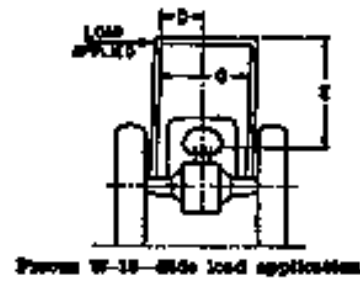
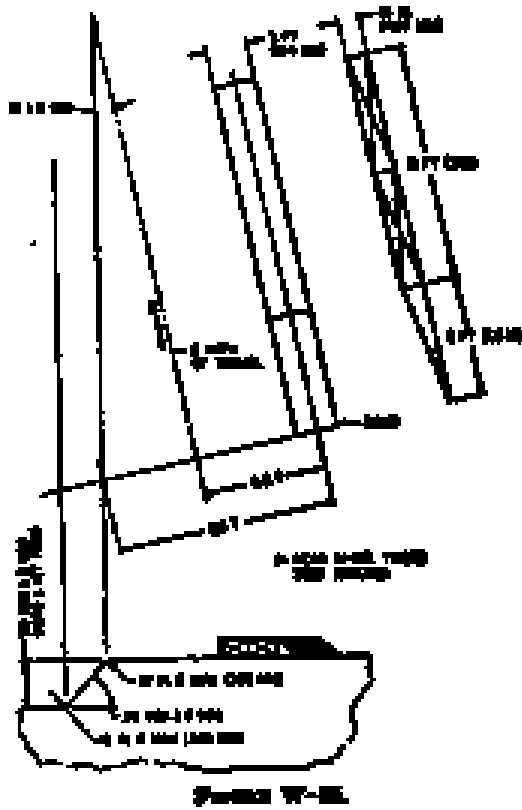
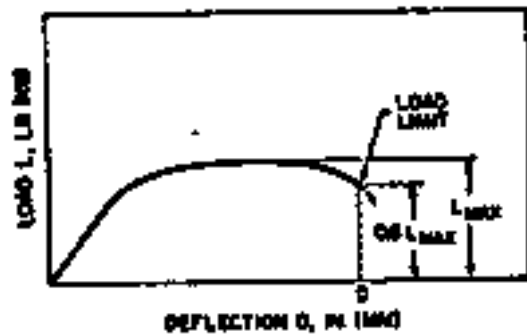


FIGURE W-13—Minimum horizontal load factor for motor graders.

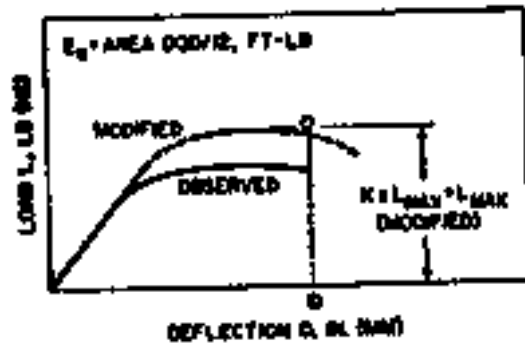


FIGURE W-14—Typical frame configuration.

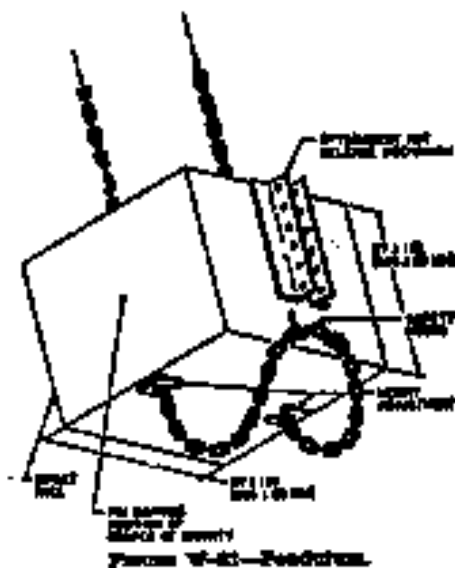




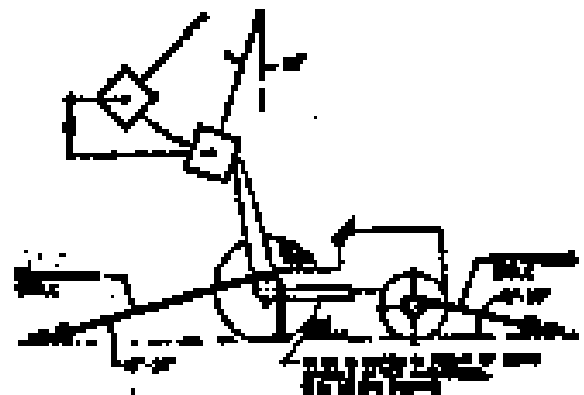
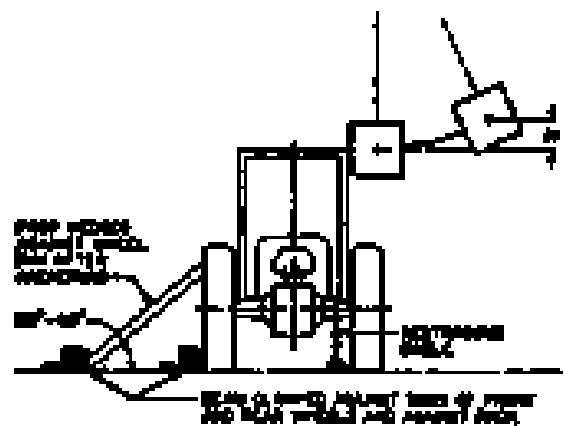
**FIGURE W-10—Typical L-D diagram.**



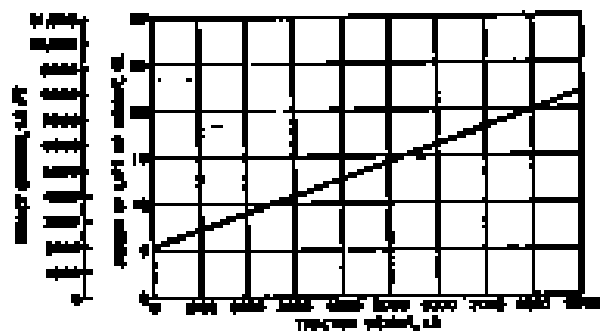
**FIGURE W-30—Typical modified L-D diagram.**



**James W. McElwain**

[illegible]

**Figure W-44—Method of impact from side.**



$\alpha = 1 - \beta = 1 - 0.05 = 0.95$  (power)  
 $\alpha = 0.05$  (significance level)  
 $\beta = 0.05$  (type II error)

**Figure W-24—Impact energy and corresponding lift height of 4,410 lb. (2,000 kg.) weight.**

PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Health and Life Insurance and Managed Care  
(As Amended at ARRS, October 12, 2021)

806 KAR 17:240. Data reporting requirements.

RELATES TO: KRS 304.17A-005, 304.17A-320, 304.17A-330, 304.17A-750

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-330  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner [executive—director] to promulgate reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-330 authorizes the commissioner [executive—director] to prescribe the format for reporting the information required by KRS 304.17A-330. This administrative regulation establishes the data elements and the format for submitting annual reports to the Department [Office] of Insurance.

Section 1. Definitions. (1) "Association" is defined by [in] KRS 304.17A-005(1).

(2) ~~["Covered person" is defined by]~~[in] ~~[KRS 304.17A-500(3)].~~

~~(3)]~~ "Electronic format" means an electronic copy of a Microsoft Excel Spreadsheet. [the use of any of the following mechanisms for the submission of data to the Office of Insurance:

- (a) A three and one-half (3.5) inch diskette; or
- (b) CD-ROM in a Microsoft Excel spreadsheet.]

~~(3)]~~(4) "Health benefit plan" means a health benefit plan as defined by[in] KRS 304.17A-005(22) and issued within Kentucky to a Kentucky resident.

~~(4)]~~(5) "Insurance purchasing outlet" is defined by [in] KRS 304.17A-750(4).

~~(5)]~~(6) "Insurer" is defined by [in] KRS 304.17A-005(29) [304.17A-005(27)].

~~(6)]~~(7) "Market segment" means the portion of the market covering one (1) of the following:

- (a) Individual;
- (b) Small group;
- (c) Large group;
- (d) Group association;
- (e) Individual association;
- (f) Self-insured employer-organized association; or
- (g) Insurance purchasing outlet.

~~(7)]~~(8) "Medical service" means the service that was provided by a health care provider to a member of a health benefit plan.

~~(8)]~~(9) "Member" means a covered person, as defined by KRS 304.17A-500(3).

~~(9)]~~(10) "Member month" means a period of time that represents each month that a member or subscriber, depending upon the data request, is enrolled in a health benefit plan.

~~(10)]~~(11) "Self-insured employer-organized association" means an association that holds a certificate of filing pursuant to KRS 304.17A-320.

~~(11)]~~(12) "Subscriber" means the following:

- (a) In the individual market, the number of health benefit plan policyholders; or
- (b) In the small group, large group, individual association, group association, self-insured employer-organized association, or insurance purchasing outlet market, the number of health benefit plan certificate holders.

~~(12)]~~(13) "Total unduplicated covered persons" means the total number of subscribers and their dependents covered by a health benefit plan at any time during the reporting year.

Section 2. Data Reporting Requirements. (1) Beginning with the report due by July 31, 2004, and within the time frame prescribed by KRS 304.17A-330, an insurer authorized to write health insurance in this state, a self-insured employer-organized association, and an insurance purchasing outlet shall submit the following reports regarding health benefit plans to the Department

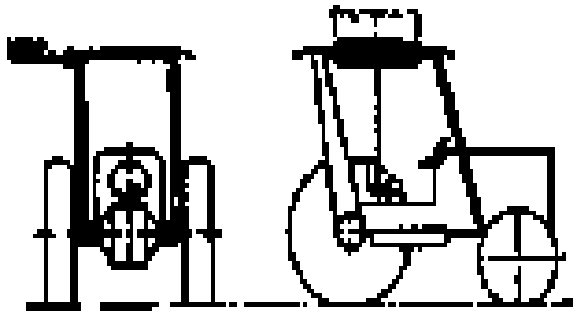


FIGURE W-26—Location for side head.

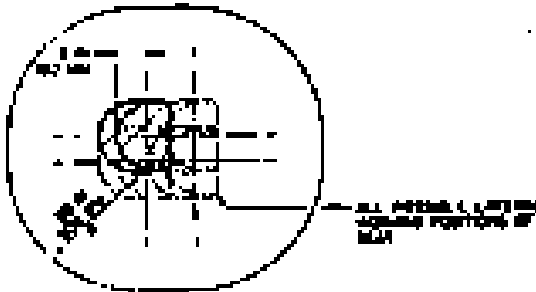


FIGURE W-27—Some of protection for drop test.

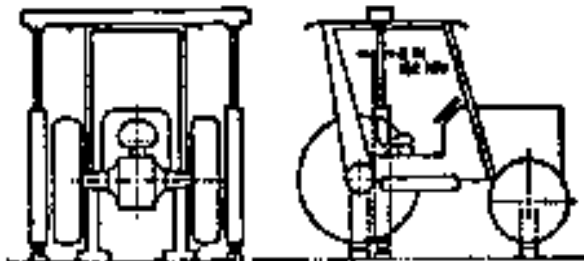


FIGURE W-28—Method of load application for crush test.

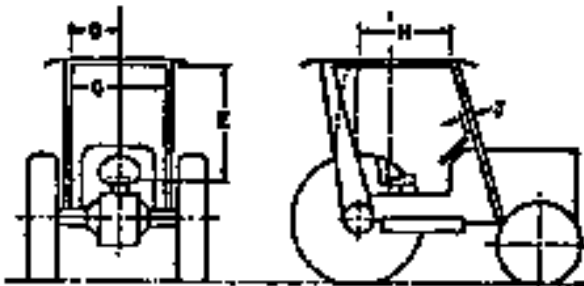


FIGURE W-29—Protected zone during crush and drop tests.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.



VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

[Office] of Insurance:

- (a) Annual Report 1 - Insurer Information Report;
- (b) Annual Report 2 - Premium and Enrollment Report as Member Months;
- (c) Annual Report 3 - Demographic Report as Member Months;
- (d) Annual Report 4 - Billed Charge and Paid Claim Report;
- (e) Annual Report 5 - Medical Service Cost Report by Market Segment;
- (f) Annual Report 6 - Medical Service Cost Report by Product Type; [and]
- (g) Annual Report 7 - Policy Discontinuance Reason Report;[.]
- (h) Annual Report 8 - Mental Health Parity Report by Market Segment; and
- (i) Annual Report 9 – Mental Health Parity Report by Product Type.

(2) An entity described in subsection (1) of this section with more than 500 total unduplicated covered persons shall submit all of the reports listed in subsection (1)(a) through (i)(g) of this section.

(3) An entity described in subsection (1) of this section with 500 or less total unduplicated covered persons shall submit only the report listed in subsection (1)(a) of this section.

(4) An insurer, a self-insured employer-organized association, or an insurance purchasing outlet, who ceases operations in Kentucky shall submit the reports required by subsection (1) of this section to the Department [Office] of Insurance within 120 days after cessation.

(5) The reports required pursuant to subsection (1) of this section are contained in the ["Data Reporting Manual, HIPMC-DR-1 [(9/20)] [HIPMC-DR-1 (06/03)]"], and the reports shall:

- (a) Be submitted in an electronic format; and
- (b) Contain the prescribed data elements and information in the order prescribed by the Data Reporting Manual.

Section 3. Incorporated by Reference. (1) "Data Reporting Manual", HIPMC-DR-1, 09/21/09/20 [HIPMC-DR-1 (06/03)][""] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [Office] of Insurance, 500 Mero Street [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 [office's] internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov/ppc/>] [<http://doi.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, Life Insurance and Managed Care  
(As Amended at ARRS, October 12, 2021)**

**806 KAR 17:270. Telehealth claim forms and records.**

RELATES TO: KRS 304.17A-005, 304.17A-138, 304.17A-700  
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-138~~[(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes [provides that] the commissioner to [executive director may] promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-138~~[(4)]~~ requires that the department [office] promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims. **This administrative regulation establishes requirements for telehealth claim forms and records.**

Section 1. Definitions. (1) "ADA" means American Dental

Association.

(2) "Electronic" or "electronically" is defined by KRS 304.17A-700(7).

(3) "HCFA" means Health Care Financing Administration.

(4) "Health benefit plan" is defined by KRS 304.17A-005(22).

(5) "Health care provider" or "provider" is defined by KRS 304.17A-005(23).

(6) ["Health insurer" or] "Insurer" is defined by KRS 304.17A-005(29) [KRS 304.17A-005(27)].

(7) ["Kentucky Uniform Billing Committee (KUBC)" is defined by KRS 304.17A-700(13).

(8)] "National Uniform Billing Committee (NUBC)" is defined by KRS 304.17A-700(14).

(8) [(9)] "Telehealth" is defined by KRS 311.550(17). [(10) "UB" means uniform billing.]

Section 2. Application. This administrative regulation shall apply to health benefit plans delivered, issued, or renewed on or after July 15, 2001.

Section 3. Claim Forms. The following claim forms shall be used for reimbursement of telehealth consultations:

(1) A claim form for dentists shall consist of the ADA Dental Claim Form - J430 [ADA Form - J588] approved by the American Dental Association effective at the time the service was billed; and

(2) A claim form for all other health care providers shall consist of the Health Insurance Claim Form, Form HCFA - 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee effective at the time the service was billed.

Section 4. Retention of Records. A provider shall, upon request, provide a copy of the following to an insurer as support for a claim for reimbursement of a telehealth consultation:

(1) Written record that [which] substantiates the request by the referring provider for the telehealth consultation by the primary care provider; and

(2) Written record of the telehealth consultation.

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "ADA Dental Claim Form - J430", 5/2019 [ADA Form - J588, "Dental Claim Form" (1999 version 2000)]; and

(b) Form HCFA - 1500, "Health Insurance Claim Form", 2/2012 [(12-90 Edition)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [Office] of Insurance, The Mayo-Underwood Building, 500 Mero Street [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/ppc/>].

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, October 12, 2021)**

**806 KAR 17:280. Registration, utilization review, and internal appeal.**

RELATES TO: KRS 217.211, 304.2-140, 304.2-310, 304.17-412, 304.17A-005, 304.17A-167, 304.17A-600 -304.17A-619, 304.17A-623, 304.17C-010, 304.17C-030, 304.18-045, 304.32-147, 304.32-330, 304.38-225, 304.47-050

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [executive director] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-609 requires the department [office] to promulgate administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires the department [office] to promulgate administrative regulations to develop a process for the registration of insurers or private review agents. ~~[EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.]~~ This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

Section 1. Definitions. (1) "Adverse determination" is defined by [in] KRS 304.17A-600(1).

(2) "Authorized person" is defined by [in] KRS 304.17A-600(2).

(3) "Board" means one (1) of the following governing bodies:

(a) The American Board of Medical Specialties;

(b) The American Osteopathic Association; or

(c) The American Board of Podiatric Surgery.

(4) "Coverage denial" is defined by [in] KRS 304.17A-617(1).

(5) "Department" means Department of Insurance.

(6) "Enrollee" is defined by [in] KRS 304.17C-010(2).

(7) "Health benefit plan" is defined by KRS 304.17A-005(22).

(8) "Health Care Provider" or "provider" is defined in KRS 304.17A-005(23) and includes pharmacy as required under 806 KAR 17:580.

(9) "Insurer" is defined by [in] KRS KRS 304.17A-005(29)[304.17A-600(8)]. [is defined in KRS 304.17A-005(23) and includes pharmacy as permitted under KRS Chapter 315 and 806 KAR 17:580.]

(10)[(9)] [(8)] "Limited health service benefit plan" is defined by [in] KRS 304.17C-010(5).

(11)[(10)] [(9)] "Nationally recognized accreditation organization" is defined by [in] KRS 304.17A-600(10).

(12)[(11)] [(10)] "Notice of coverage denial" means a letter, a notice, or an explanation of benefits statement advising of a coverage denial [as defined by KRS 304.17A-617(1)].

(13)[(12)] [(11)] "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of a utilization review program.

(14)[(13)] [(12)] "Private review agent" is defined by [in] KRS 304.17A-600(11). [

(13) "Provider" is defined in KRS 304.17A-600(13).]

(15)[(14)] "Registration" is defined by [in] KRS 304.17A-600(14)[(15)].

(16)[(15)] "Utilization review" is defined by [in] KRS 304.17A-600(17)[(18)].

(17)[(16)] "Utilization review plan" is defined by [in] KRS 304.17A-600(18)[(19)].

Section 2. Registration Required. (1) The department shall issue a registration to an applicant that has met the requirements of KRS 304.17A-600 through 304.17A-619 and KRS 304.17A-623 [304.17A-623], if applicable, and Sections 2 through 11 of this administrative regulation.

(2) An applicant seeking registration to provide or perform utilization review shall:

(a) Submit an application to the department as required by Section 4 of this administrative regulation; and

(b) Pay an application fee as required by Section 3 of this administrative regulation.

~~(3) [An application shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.]~~

(4) If an insurer or private review agent desires a renewal of registration to perform utilization review, an application for renewal of registration shall be submitted to the department at least ninety

(90) days prior to expiration of the current registration.

Section 3. Fees. (1) An application for registration shall be accompanied by a fee of \$1,000.

(2) A submission of changes to utilization review policies or procedures to the department shall be accompanied by a fee of fifty (50) dollars.

(3) A fee as established in subsection (1) or (2) of this section shall be made payable to the Kentucky State Treasurer.

Section 4. Application Process. (1) An applicant for registration shall complete and submit to the department an application, HIPMC-UR-1 and HIPMC-MD-1 ~~[as incorporated by reference in 806 KAR 17:005],~~ and except as provided in subsection (3) of this section, documentation to support compliance with KRS 304.17A-600 through 304.17A-623, as applicable, including:

(a) A utilization review plan;

(b) The identification of criteria used for all services requiring utilization review [utilization review criteria, including criteria for review of inpatient and outpatient services];

(c) Types and qualifications of personnel, employed directly or under contract, performing utilization review in compliance with KRS 304.17A-607~~[(1)(a)],~~ including names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application;

(d) A toll-free telephone number to contact the insurer, limited health service benefit plan, or private review agent, as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);

(e) A copy of the policies and procedures required:

1. By KRS 304.17A-167 [By KRS 304.17A-609(4); and];

2. By KRS 304.17A-603 [To ensure availability to conduct utilization review, including the response time to return telephone calls if an answering machine is used, in accordance with KRS 304.17A-607(1)(f)];

3. By KRS 304.17A-607, and including the policies and procedures required by KRS 304.17A-607(1)(f) and (i); and

4. By KRS 304.17A-609(4); and

5. By KRS 304.17A-607(1)(f) and KRS 304.17A-607(1)(i);

(f) A copy of the policies and procedures by which:

1. A limited health service benefit plan provides a notice of review decision which complies with KRS 304.17A-607(1)(h) to (i), 304.17A-607(1)(i) and 304.17A-607(1)(j) and includes:

a. Date of service or preservice request date [Date of the review decision; and];

b. Date of the review decision; and [Instructions for filing an internal appeal; or]

c. Instructions for filing an internal appeal; or

2. An insurer or private review agent provides a notice of review decision, which complies with KRS 304.17A-607(1)(h) to (i), 304.17A-607(1)(i), and [304.17A-607(1)(j)] and 806 KAR 17:230, and includes:

a. Date of service or preservice request date [Date of the review decision];

b. Date of the review decision [Instructions for filing an internal appeal, including information concerning];

c. Instructions for filing an internal appeal, including information concerning;

(i) The availability of an expedited internal appeal and a concurrent expedited external review; and]

(ii) For an adverse determination, the right to request that the appeal be conducted by a board eligible or certified physician pursuant to KRS 304.17A-617(2)(c); and

(iii) The insurer's contact information for conducting appeals including a telephone number and address; and

d. [e.] Information relating to the availability of:

(i) A review of a coverage denial by the department following completion of the internal appeal process; or

(ii) A review of an adverse determination by an independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623;

(g) If a part of the utilization review process is delegated, a description of the:

1. Delegated function;
2. Entity to whom the function was delegated, including name, address, and telephone number; and
3. Monitoring mechanism used by the insurer or private review agent to assure compliance of the delegated entity with paragraph (f) of this subsection;

(h) A sample copy of an electronic or written notice of review decision, which complies[compiles] with paragraph (f) of this subsection;

(i) A copy of the policies and procedures by which a covered person, authorized person, or provider may request an appeal of an adverse determination or coverage denial in accordance with KRS 304.17A-617, including:

1. The method by which an appeal may be initiated, including:
  - a. An oral request followed by a brief written request, or a written request for an expedited internal appeal;
  - b. A written request for a nonexpedited internal appeal; and
  - c. If applicable, the completion of a specific form, including a medical records release consent form with instructions for obtaining the required release form;
2. Time frames for:
  - a. Conducting a review of an initial decision; and
  - b. Issuing an internal appeal decision;
3. Procedures for coordination of expedited and nonexpedited appeals;

4. Qualifications of the person conducting internal appeal of the initial decision in accordance with KRS 304.17A-617(2)(c);

5. Information to be included in the internal appeal determination in accordance with KRS 304.17A-617(2)(e), including the:

- a. Title and, if applicable, the license number, state of licensure, and certification of specialty or subspecialty of the person making the internal appeal determination;
- b. Clear, detailed decision; and
- c. Availability of an expedited external review of an adverse determination; and

6. A sample copy of the internal appeal determination in compliance with paragraph(i)5 of this subsection; and

(j) A copy of the policies and procedures, which:

1. Address and ensure the confidentiality of medical information in accordance with KRS 304.17A-609(5), 806 KAR 3:210, ~~806 KAR 3:220,~~ and 806 KAR 3:230;
2. Comply with requirements of KRS 304.17A-615 if the insurer or private review agent fails to:

- a. Provide a timely utilization review decision; or
- b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact the insurer or private review agent, including verification by:

- (i) Electronic transmission records; or
- (ii) Telephone company logs;

3. Comply with requirements of KRS 304.17A-619, regarding the submission of new clinical information prior to the initiation of the external review process;

4. Address and ensure consistent application of review criteria for all services requiring utilization review [inpatient and outpatient services in review decisions]; and

5. Comply with requirements of KRS 304.17A-607(1)(k), as applicable.

(2) Upon review of an application for registration, or submitted changes to utilization review policies and procedures in accordance with KRS 304.17A-607(3), the department shall:

- (a) Inform the applicant if supplemental information is needed;
- (b) Identify and request that supplemental information be submitted to the department within thirty (30) days;
- (c) If requested information is not provided to the department within the timeline established in paragraph (b) of this subsection:

1. Deny the application for registration or proposed changes to utilization review policies and procedures; and

2. Not refund the application or filing fee; and

(d) Approve or deny registration or proposed changes to utilization review policies and procedures.

(3) In order to be registered to perform utilization review in Kentucky, an applicant which holds accreditation or certification in

utilization review by a nationally recognized accreditation organization in accordance with KRS 304.17A-613(10) shall be required to submit with its completed application to the department:

(a) 1. Evidence of current accreditation or certification in utilization review, including an expiration date; and

~~2.[(b)]~~ Documentation to demonstrate compliance with requirements of KRS 304.17A-613(10) and that the standards of the accreditation organization sufficiently meet the minimum requirements in subsection (1) of this section.

(b) If the national accreditation standard does not meet all the requirements as established in subsection (1) of this Section, then the applicant shall submit the additional information required under subsection (1) of this section.

Section 5. Denial or Revocation Hearing Procedure. Upon denial of an application for registration, or suspension or revocation of an existing registration, the department shall:

- (1) Give written notice of its action; and
- (2) Advise the applicant or registration holder that if dissatisfied, a hearing may be requested and filed in accordance with KRS 304.2-310.

Section 6. Complaints Relating to Utilization Review. (1) A written complaint regarding utilization review shall be reviewed by the department in accordance with KRS 304.17A-613(8).

(2) Upon receiving a copy of the complaint, an insurer or private review agent shall provide a response in accordance with KRS 304.17A-613(8)(a), including:

- (a) Any information relating to the complaint; ~~and~~
- (b) All correspondence or communication related to the denial between any of the parties, including the insurer, the member, provider, and private review agent [Corrective actions to address the complaint, if applicable, including a timeframe for each action]; and
- (c) Corrective actions to address the complaint, if applicable, including a timeframe for each action.

(3) Within thirty (30) days of implementation of a corrective action, as identified in subsection (2) of this section, an insurer or private review agent shall notify the department in writing of the implementation of the corrective action.

(4) If an insurer or private review agent[entity] fails to comply with this section, the department may impose a penalty in accordance with KRS 304.2-140.

(5) The number, recurrence, and type of complaints, as identified in subsection (1) of this section, shall be considered by the department in reviewing an application for registration pursuant to KRS 304.17A-613(9).

Section 7. Internal Appeals for a Health Benefit Plan. In addition to the requirements of KRS 304.17A-617, and as part of an internal appeals process, an insurer or private review agent shall:

(1) Allow a covered person, authorized person, or provider acting on behalf of a covered person to request an internal appeal at least sixty (60) days following receipt of a denial letter;

(2) Provide written notification of an internal appeal determination decision as required by KRS 304.17A-617(2)(a), (b), and (e), which shall include the:

(a) Title and, if applicable, the license number, state of licensure and specialty or subspecialty certifications of the person performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230, Sections 4 and 5, if applicable;

(c) Position and telephone number of a contact person who may provide information relating to the internal appeal; ~~and~~

(d) Date of service or preservice request date; and [Date on which the decision was rendered]

(e) Date ~~offon~~ which the internal appeal decision[~~was rendered~~];

(3) Maintain written records of an internal appeal, including the:

- (a) Reason for the internal appeal;
- (b) Date that the internal appeal was received by the insurer or private review agent, including the date any necessary or required

authorizations were received;

- (c) Date of the internal appeal decision;
- (d) Internal appeal decision; and
- (e) Information required by Section 4(1)(i)5 of this administrative regulation; and
- (4) Retain a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Internal Appeals for a Limited Health Service Benefit Plan. (1) An insurer offering a limited health service benefit plan shall have an internal appeals process which shall:

- (a) Be disclosed to an enrollee in accordance with KRS 304.17C-030(2)(g); and
- (b) Include provisions, which:
  - 1. Allow an enrollee, authorized person, or provider acting on behalf of the enrollee to request an internal appeal within at least sixty (60) days of receipt of a notice of adverse determination or coverage denial; and
  - 2. Require the limited health service benefit plan to provide a written internal appeal determination within thirty (30) days following receipt of a request for an internal appeal.
- (2) A notice of adverse determination or coverage denial shall include a disclosure of the availability of the internal appeals process.

Section 9. Reporting Requirements. By March 31 of each calendar year, an insurer or private review agent shall complete and submit to the department a HIPMC-UR-2, [as incorporated by reference in 806 KAR 17:005], for the previous calendar year.

Section 10. Maintenance of Records. An insurer or private review agent shall maintain documentation to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330, 304.38-225, and 304.47-050, including:

- (1) Proof of the volume of reviews conducted per the number of review staff broken down by staff answering the phone;
- (2) Information relating to the availability of physician consultation;
- (3) Information which supports that based on call volume, the insurer or private review agent has sufficient staff to return calls in a timely manner;
- (4) Proof of the volume of phone calls received on the toll-free phone number per the number of phone lines;
- (5) Telephone call abandonment rate; and
- (6) Proof of the response time of insurer or private review agent for returned phone calls to a provider if a message is taken.

Section 11. Cessation of Operations to Perform Utilization Review. (1) Upon a decision to cease utilization review operations in Kentucky, an insurer or private review agent shall submit the following to the department thirty (30) days or as soon as practicable prior to ceasing operations:

- (a) Written notification of the cessation of operations, including the proposed date of cessation and the number of pending utilization review decisions with projected completion dates; and
- (b) A written action plan for cessation of operations, which shall be subject to approval by the department prior to implementation.
- (2) Annual reports required pursuant to Section 9 of this administrative regulation shall be submitted to the department within thirty (30) calendar days of ceasing operations.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) Form HIPMC-UR-1, "Utilization Review Registration Application", 09/2020 edition;
- (b) Form HIPMC-UR-2, "Annual Utilization Review (UR) Report Form", 09/2020 edition; and
- (c) Form HIPMC-MD-1, "Medical Director Report Form", 09/2020 edition.
- (2) This material may be inspected, copied or obtained subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is

also available on the department's Web site at <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, October 12, 2021)

### 806 KAR 17:470. Data reporting to an employer-organized association health benefit plan.

RELATES TO: KRS ~~304.1-050~~, 304.2-110(1), 304.17A-005, 304.17A-700(7), 304.17A-846(1), 45 C.F.R. 160, 45 C.F.R. 164

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-846

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner [executive director] to promulgate reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-846 requires the department [office] to promulgate an administrative regulation to implement its provisions and define the extent that health benefit plan information shall be provided to an employer-organized association. This administrative regulation establishes requirements for the provision of health benefit plan information to an employer-organized association by an insurer offering a health benefit plan.

Section 1. Definitions. (1) "Aggregate claims experience" means the total dollar amount paid to health care providers of medical and pharmacy services for persons covered under an employer-organized association health benefit plan.

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Complete request" means a written request for employer-organized association health benefit plan information, including:

(a) A certification by a designated representative of the employer-organized association stating the:

1. Employer-organized association health benefit plan has adopted safeguards and standards for the treatment of health information pursuant to 45 C.F.R. 164.504(f); and

2. Information requested is the minimum amount necessary to accomplish the intended purpose of the use or disclosure pursuant to 45 C.F.R. 164.502(b) and 164.514(d); and

(b) Specific and sufficient details relating to the requested health benefit plan information.

(4) "Department" is defined by KRS 304.1-050(2).

(5) [(3)] "Electronically" is defined by [in] KRS 304.17A-700(7).

(6) [(4)] "Employer-organized association" is defined by KRS 304.17A-005(12).

(7) [(5)] "Employer-organized association health benefit plan" means a health benefit plan issued to an employer-organized association or trust established by one (1) or more employer-organized associations.

(8) [(6)] "Commissioner" is defined by 304.1-050(1). ["Executive director" means the Executive Director of the Office of Insurance.

(7)] "Health benefit plan" is defined by [in] KRS 304.17A-005(22).

(9) [(8)] "HIPAA" means Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191. [

(9) "Department" is defined by KRS 304.1-050(2). ["Office" means the Office of Insurance.]

Section 2. Requirements for Provision of Information. (1) Within five (5) business days of receipt of a written request for information relating to an employer-organized association health benefit plan, an insurer shall in writing:

- (a) Acknowledge receipt of the request; and

(b) If the request fails to be a complete request, identify the items necessary to constitute a complete request in the acknowledgment of receipt letter.

(2) Pursuant to KRS 304.17A-846(1), an insurer shall provide an employer-organized association with its health benefit plan information, as requested:

(a) Including:

1. Total aggregate claims experience by month;

2. Total premiums paid by month by the employer-organized association;

3. Total number of persons on a monthly basis covered under the employer-organized association health benefit plan, by coverage tier, as follows:

a. Family;

b. Individual;

c. Individual and spouse;

d. Individual and domestic partner; and

e. Parent plus; and

4. Information required under KRS 304.17A-846(1)(d); and

(b) Within thirty (30) calendar days of receipt of a complete request.

(3) An insurer may:

(a) Except if an employer-organized association specifies the method for the delivery of its health benefit plan information, provide the requested information in one (1) of the following formats:

1. Electronically, pursuant to the requirements for electronic transmission of information as established in 45 C.F.R. 160 and 164; or

2. Hard copy; and

(b) Request an extension of the timeframe for providing an employer-organized association with its health benefit plan information in whole or in part, if the insurer:

1. Provides evidence to the employer-organized association that a disruption in electricity and communication connections beyond its control has occurred; or

2. Establishes that an unusual circumstance exists that precludes the provision of health benefit plan information electronically or in hard copy format; and

(c)(3.) Deny a complete request if:

1.(a.) A determination is made by the United States Department of Health and Human Services Office for Civil Rights that provision of health benefit plan information as requested by the employer-organized association is prohibited under HIPAA; and

2.(b.) A copy of the determination, as established under subparagraph 1. of this paragraph~~[clause a of this subparagraph]~~, is provided to the employer-organized association which submits a complete request.

(4) The disclosure of information under this administrative regulation is subject to the HIPAA limitations established in KRS 304.17A-846(2) and any applicable administrative regulations.

Section 3. Preemption. This administrative regulation shall not:

(1) Preempt or supersede an existing Kentucky law relating to a medical record, health, or insurance information privacy; or

(2) Infringe upon the jurisdiction of the United States Department of Health and Human Services Office for Civil Rights in its:

(a) Enforcement of 45 C.F.R. 160 and 164; and

(b) Responding to a complaint relating to privacy of health information.

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.

## ENERGY AND ENVIRONMENT CABINET

### Public Service Commission

(As Amended at ARRS, October 12, 2021)

#### 807 KAR 5:015. Access and attachments to utility poles and facilities.

RELATES TO: KRS Chapter 278, 47 U.S.C.[U.S.C.A.] 224(c)

STATUTORY AUTHORITY: KRS 278.030(1), 278.040(2), 278.5464~~[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. KRS 278.5464~~[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 administrative regulations governing attachments,~~[.]~~ and addresses complaints~~[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":

(a) 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; and

(b) Does not mean. 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) "Communications~~[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 ~~that~~

(a) ~~is~~ designated for replacement based on the ~~poles~~[poles] non-compliance with an applicable safety standard;

(b) ~~is~~ 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 ~~be replaced~~[replace] at the time of replacement even if the new attachment were not made.

(11) "Telecommunications carrier";

(a) 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; ~~and~~

(b) ~~Does not mean. 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) ~~through~~[-(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 ~~if~~[where] there is insufficient capacity or for reasons of safety, reliability, ~~or~~[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) ~~Overlashing. The tariff shall not prohibit overlashing 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:

~~1. An existing attacher that overlashes its existing wires on a pole; or~~

~~2. A for third party overlashing of an existing attachment that is conducted with the permission of an existing attacher.~~

~~(b) 1. A utility shall may not prevent an attacher from overlashing because another existing attacher has not fixed a preexisting violation.~~

~~2. A utility shall may not require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher, unless failing to fix the preexisting violation would create a capacity, safety, reliability, or engineering issue.~~

~~(c) 1. A utility shall not may require no more than thirty (30) days' advance notice of planned overlashing.~~

~~2. If a utility requires advance notice for overlashing, then the utility shall must include the notice requirement in its tariff or include the notice requirement in the attachment agreement with the existing attacher.~~

~~3. If, after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it shall must provide specific documentation of the issue to the party seeking to overlash within the thirty (30) day advance notice period and the party seeking to overlash shall must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary.~~

~~(d) 1. A party that engages in overlashing shall be is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.~~

~~2. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party shall be is responsible at its expense for any necessary repairs.~~

~~(e) An overlashing party shall notify the affected utility within fifteen (15) days of completion of the overlash on a particular pole.~~

~~1. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlash.~~

~~2. The utility shall have has fourteen (14) days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash.~~

~~3. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations.~~

~~4. The utility shall may either:~~

~~a. Complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations; or~~

~~b. Require the overlashing 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 allowed[permitted] by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011, Section 13.

(7) Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than March 31, 2022, shall be filed by February 28, 2022.

Section 4. Procedure for New Attachers to Request Utility Pole Attachments. (1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).

(2) Application review and survey.

(a) Application completeness.

1. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attacher's pole attachment application if the application is incomplete.

2. A new attacher's pole attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

3. If the utility notifies a new attacher that its attachment application is not complete, then the utility shall state if it must specify all reasons for finding it incomplete.

4. If the utility does not respond within ten (10) business days after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete.

(b) Survey and application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within sixty (60) days in the case of larger orders as established in subsection (7) of this section) for the purpose of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachers in surveys conducted by a utility.

a. A utility shall allow the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. If a new attacher has conducted a survey pursuant to subsection (10)(b)(c) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (10)(b)(c), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within sixty (60) days in the case of larger orders as described in subsection (7) of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

6. Payment of survey costs and estimates.

a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness[.]

before a utility shall be obligated to conduct surveys pursuant to this section.

b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.

c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

(3) Payment of make-ready estimates.

(a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis if requested and reasonably calculable, and consistent with subsection (6)(b) of this section, of charges to perform all necessary make-ready.

(b) A utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

(4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;

2. State a date for completion of make-ready in the communications space that is no later than thirty (30) days after notification is sent (or up to seventy-five (75) days in the case of larger orders as established in subsection (7) of this section);

3. State that any entity with an existing attachment may modify the attachment, Modification shall be 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, which shall be completed as 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, Modification shall be consistent with the specified make-ready before the date established for completion;

4. State that the utility may assert the utility's right to up 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, which shall be completed as 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; ~~and~~

(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; ~~and~~

(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; ~~and~~

(e) A utility may treat multiple requests from a single new attacher as one **(1)** request if the requests are submitted within thirty (30) days of one another; and

(f) As soon as reasonably practicable, but not 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 **specified[described]** in subsection (4) of this section **as[is]** sent by the utility (or up to 105 days in the case of larger orders **specified[described]** in subsection **(6)(b)[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, **which shall be completed** 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, **which shall be completed** 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 shall/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 by the pole owner and if the attacher has provided at least 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. The new attacher shall use/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 shall/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 and the transfer shall be 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: ~~and[-]~~

(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.

CONTACT PERSON: John E.B. Pinney, executive advisor, 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.

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(As Amended at ARRS, October 12, 2021)**

**810 KAR 4:040. Running of the race.**

RELATES TO: KRS 230.215(2), 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation sets forth the standards and requirements governing the running of a horse race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. No race shall start after 11:55 p.m.

Section 2. Horses in paddock not to be touched. Only the following persons may touch a horse while in the paddock:

- (1) Licensed owner;
- (2) Licensed trainer;
- (3) Authorized stable personnel;
- (4) Paddock judge;
- (5) Horse identifier;
- (6) Assigned valet;
- (7) Steward;
- (8) Farrier; ~~or~~
- (9) Outrider; or
- (10) Jockey.

Section 3. Trainer Responsibility. The trainer shall be responsible for:

- (1) Arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered;
- (2) Supervising the saddling of each horse entered; and
- (3) Providing his or her assistant trainer or another licensed trainer to serve as a substitute if absent from a track where the

trainer's horses are participating in races.

Section 4. Withdrawal of a Horse. A horse whose starting is mandatory shall run the course, except that the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse, or horses owned by only one (1) stable, will be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post, and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time.

(1) All horses shall parade and carry their declared weight from the paddock to the starting post.

(a) The parade shall pass the stewards' stand.

(b) After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post.

(c) With the permission of the stewards, a horse may be excused from parading with the other horses.

(2) The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay.

(3) If a jockey is thrown on the way to the post:

(a) The jockey shall remount at the point at which thrown; or

(b) If the jockey is so injured as to require a substitute jockey, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. A horse may be led to the post by a lead pony. Lead ponies may be excluded from the paddock or walking ring, at the discretion of the stewards.

Section 8. Control of Horses and Jockeys by Starter. Horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started.

(1) The starter may grant a delay if an injury occurs to any jockey or if a jockey's equipment malfunctions. During the delay, the stewards may require all jockeys to dismount.

(2) The starter shall unload the horses in the gate when instructed by the stewards if:

(a) A horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate; and

(b) The horse is not immediately taken in hand by the outrider and brought back for reloading.

(3) The starter shall reload the horses in their proper order upon order of the stewards.

(4) The starter shall report all causes of delay to the stewards.

(5) A person other than the jockey, starter, or assistant starter shall not strike a horse or attempt, by shouting or other means, to assist the horse in getting a start.

Section 9. Starting Gate. Races on the flat shall use a starting gate approved by the commission unless exempted by the stewards. Exempted races shall not start until the assistant starter has dropped the flag in answer to the starter.

Section 10. Horses Left at Post.

(1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field, or if a horse has inadvertently not been loaded in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall:

(a) Immediately post the "inquiry" sign;

(b) Advise the public to hold all pari-mutuel tickets; and

(c) Determine, after consulting with the starter and viewing the race replay, whether or not the horse was precluded from obtaining a fair start.

(2) If the stewards determine that the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted

from the pari-mutuel pool and refunded to holders of pari-mutuel tickets on the horse, unless the horse ruled a nonstarter is part of a pari-mutuel entry and another horse in the entry is not left at the post, in which case there shall not be a pari-mutuel refund.

(3) Stakes fees for a ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his or her discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and is thereby left at the post, there shall not be a refund of pari-mutuel wagers on the horse nor refund of stakes fees paid for the horse.

Section 11. Horses Failing to Finish. Any horse that starts in a race but does not cross the finish line or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced and shall receive no portion of the purse money.

#### Section 12. Fouls.

(1) A leading horse if clear is entitled to any part of the track.

(2) If a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action shall be deemed a foul.

(3) If a jockey strikes another horse or jockey, it is a foul.

(4) If, in the opinion of the stewards, a foul alters the finish of a race, an offending horse may be disqualified by the stewards.

#### Section 13. Stewards to Determine Foul Riding.

(1) A jockey shall make a best effort to control and guide his or her mount in such a way as not to cause a foul.

(2) The stewards shall take cognizance of riding that results in a foul, irrespective of whether or not an objection is lodged.

(3) If, in the opinion of the stewards, a foul is committed as a result of a jockey not making a best effort to control and guide his or her mount to avoid a foul, whether or not intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

#### Section 14. Horses to be Ridden Out.

(1) Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time, while in compliance with Section 15 of this administrative regulation.

(2) A horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money.

(3) A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards.

(4) Stewards shall take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse.

(5) If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized at the discretion of the stewards.

#### Section 15. Use of Riding Crops.

(1) Although the use of a riding crop is not required, a jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

(2) In any race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.

(3) An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than a riding crop approved by the stewards pursuant to 810 KAR 4:010, Section 11 shall not be possessed by anyone, or applied by anyone to a horse at any time at a location under the jurisdiction of the racing commission.

(4) A riding crop shall not be used on a two (2) year-old horse in races before April 1 of each year.

(5) Allowable Uses of a Riding Crop, [include the following:]

(a) The riding crop may [shall only] be used at any time, without penalty, if, in the opinion of the stewards, the riding crop is used to avoid a dangerous situation or preserve the safety of other riders or horses in a race.[:]

(b) If necessary during a race, a riding crop may be used in a backhanded or underhanded fashion from the 3/8 pole to the finish line. This use shall will not be counted toward the use of the crop six (6) times in the overhand fashion, as allowed in subsection (6) of this section [15(6)]. [At no point shall] The use of the crop shall not rise above the rider's helmet at any point.[for safety, correction, and encouragement.

(6) A rider who uses a riding crop [:]

(c) A riding crop may also be used if:

1. [Tapping] shall:

(a) Show The horse is tapped on the shoulder with the crop in the down position while both hands are holding onto the reins [riding crop] and both hands are touching the neck of [give] the horse; and

2. [(d) Showing or waving] The crop is shown or waved without contact with the horse and [giving] the horse is given time to respond before [striking] the horse is struck.[:]

(6) [Use of]

(b) Having used [the] A riding crop may be used to make contact with a horse to maintain focus and concentration, to control the horse for safety of the horse and rider, or to encourage a horse [is allowed], with the following exceptions:

(a) Use of the crop in any manner, other than underhanded or backhanded as established[set forth] in subsection [Section 15](5)(b) of this section, or tapping on the shoulder as established[set forth] in subsection [Section 15](5)(c) of this section, resulting in more than six (6) times in the overhand manner;

(b) Use of the crop and making contact with the horse more than two (2) successive strikes without allowing [, give] the horse a chance to respond; [,] before using it again; and

(c) Use of the crop with the rider's wrist above helmet height;

(d) Use of the crop [

(e) Use the riding crop in rhythm with the horse's stride.:

(7) A riding crop shall not be used to strike a horse:

(a) on the head, flanks, or on any other part of its body other than the shoulders or hindquarters;

(e) Use of the crop [hind quarters except if necessary to control a horse;

(b) during the post parade or after the finish of the race except if necessary to control the horse;

(f) Excessive or brutal use of the crop causing injury to the horse [

(c) Excessively or brutally;

(g) Use of the crop [

(d) causing welts or breaks in the skin;

(h) Use of the crop [

(e) if the horse is clearly out of the race or has obtained its maximum placing; and

(i) Use of the crop [

(f) Persistently even though the horse is showing no response [under the riding crop].

(7) [(8)] A riding crop shall not be used to strike another person.

(8) [(9)] After the race, a horse shall [may] be subject to inspection by a racing official or official veterinarian looking for cuts, welts, or bruises in the skin. Any adverse findings shall be reported to the stewards.

(9) [(10)] A [Use of the] crop may be used during workouts if the [shall be permitted so long as such] use does not violate subsection (6)[section 6](c) through (i) of this section.

(10) [(11)] The giving of instructions by any licensee that, if obeyed, would lead to a violation of this section may result in disciplinary action also being taken against the licensee who gave the instructions.

(11) [(12)] Only padded/shock absorbing riding crops

that[which] have not been modified in any way may be carried in a race.

(12)/(13) During a race, if a jockey rides in a manner contrary to this rule, the stewards shall impose a minimum fine of \$500, a minimum suspension of three (3) days, or both, if in the opinion of the stewards, the violation is egregious or intentional. Factors in determining whether a violation is egregious **shall** include at least the following:

- (a) Recent history of similar violations;
- (b) Number of uses over the total and consecutive limits described in this section; and
- (c) Using the crop in the overhanded position more than six (6) times.

Section 16. Other Means of Altering Performance. An electrical or mechanical appliance, other than a riding crop, shall not be used to affect the speed of a horse in a race or workout. A sponge or other object shall not be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change of equipment shall be approved by the stewards.

Section 17. Official Order of Finish as to Pari-mutuel[Parimutuel] Payoff. Once satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and KAR Title 810[Titles 810 and 814], the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel[parimutuel] wagering purposes shall be final, and no subsequent action shall set aside or alter the official order of finish for the purposes of pari-mutuel[parimutuel] wagering.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax: +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Income Support**  
**Division of Child Support Enforcement**  
**(As Amended at ARRS, October 12, 2021)**

**921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.**

RELATES TO: KRS 205.710-205.802[~~205.800~~], 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and [necessary] to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate **[and adopt]** administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:

- (a) A court of competent jurisdiction; or
- (b) An administrative order.
- (2) The obligation shall be the amount as established administratively or judicially, as computed by the:
  - (a) CS-71, Commonwealth of Kentucky Worksheet for Monthly

Child Support Obligation; ~~or~~

(b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception; or

(c) Any other **child support obligation** form incorporated by **reference in an administrative**~~a~~ regulation promulgated by the agency.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430, and 454.220.

(5) In addition to the deductions **established****[specified]** in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as **established****[specified]** in KRS 403.212(2)(~~h~~**g**))3, shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

- 1. There is a support order; and
- 2. A copy of the child support obligation worksheet is obtained;

or

(b) 100 percent of the income of the parent with whom the prior born child resides, if:

- 1. There is no support order;
- 2. There is a support order, but no support obligation worksheet; or
- 3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

- (a) Complete service of process; or
- (b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

- (a) Establish paternity;
- (b) Establish a child support or medical support obligation; or
- (c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

- (a) Paternity is not in question;
- (b) There is no existing order of support for the child;
- (c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and

(d) The noncustodial parent's, or obligor's, address is known.

(2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

- (a) Send to the custodial parent or nonparent custodian forms:
  - 1. CS-133, Custodial Parent Information Request;
  - 2. CS-132, Child Care Expense Verification; and
  - 3. CS-136, Health Insurance Information Request;
- (b) Send to the custodial parent the CS-65, Statement of Income and Resources;

(c) Send to the noncustodial parent forms:

- 1. CS-64, Noncustodial Parent Appointment Letter;
- 2. CS-65, Statement of Income and Resources;
- 3. CS-132, Child Care Expense Verification; and
- 4. CS-136, Health Insurance Information Request;

(d) Send a CS-130, Income Information Request, to the employer of the:

- 1. Custodial parent; or
- 2. Noncustodial parent, or obligor; and
- (e) Issue a CS-84 Administrative subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate.

(3) The cabinet shall determine the monthly support obligation

in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall establish[set] the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

- (a) Administratively upon notice to the obligor or obligee; or
- (b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to re-quest a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

- (a) Either parent;
- (b) The state agency with assignment; or
- (c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

- (a) Conduct the review;
- (b) Modify the order; or
- (c) Determine that[the] circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m).

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as established[defined] in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CS-64, Noncustodial Parent Appointment Letter", 3/10;
- (b) "CS-65, Statement of Income and Resources", 6/2021 [12/15];
- (c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", 3/10;
- (d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", 6/2021 [3/40];
- (e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", 6/2021 [3/40];
- (f) "CS-79, Notification of Review Determination", 3/10;
- (g) "CS-84, Administrative Subpoena", 8/18;
- (h) "CS-130, Income Information Request", 3/10;
- (i) "CS-132, Child Care Expense Verification", 3/10;
- (j) "CS-133, Custodial Parent Information Request", 3/10; and
- (k) "CS-136, Health Insurance Information Request", 12/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dis/Pages/regs.aspx> [<https://chfs.ky.gov/agencies/dcb/Pages/default.aspx>].

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(As Amended at ARRS, October 12, 2021)**

**921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.**

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), 216.530, 216.557(1), [216.750(2),] 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 415(i), 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health[welfare], personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(5) "Department" means the Department for Community Based Services or its designee.

(6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(7) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9) "Qualified immigrant [alien]" means an immigrant [alien] who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(10) "Qualified mental health professional" is defined by KRS 202A.011(12).

(11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(12) "Supplemental security income" or "SSI" means a monthly

cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;

(c) 907 KAR 20:020, Section 2(4)(a);

(d) 907 KAR 20:025; or

(e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and

(c)1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);

3. Receives caretaker services and is at least eighteen (18) years of age; or

4.a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of the Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2. of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

- (c) Payment is made for the service.
- (4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:
  - (a) Client is taken daily or periodically to the home of the caretaker; or
  - (b) Caretaker service is provided by the following persons living with the applicant:
    - 1. The spouse;
    - 2. Parent of an adult or minor child who has a disability; or
    - 3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

- (a) Not include a primary diagnosis of Alzheimer's disease or dementia;
- (b) Be described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);
- (c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and
- (d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

- (a) Often services, including those that address subsection (1)(c) of this section, are provided;
- (b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and
- (c) Payment is made for the services.
- (3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:
  - (a) Licensed or registered in accordance with KRS Chapter 216B; or
  - (b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as provided in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.
- (2) An individual or couple shall not be eligible if countable resources exceed the limit of:
  - (a) \$2,000 for an individual; or
  - (b) \$3,000 for a couple.

Section 8. Income Considerations. (1) Except as provided in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.
- (2) The optional supplementation payment shall be determined by:
  - (a) Adding:
    - 1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
    - 2. A payment made to a third party on behalf of an applicant or recipient; and
  - (b) Subtracting the total of paragraph (a)1. and 2. of this subsection from the standard of need in Section 9 of this administrative regulation.

- (3) Income of an ineligible spouse shall be:
  - (a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
  - (b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:
    - 1. The applicant or recipient; and
    - 2. Each minor dependent child.
- (4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.
- (5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.
- (6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.
- (7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.
- (8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need. (1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2021 [2019] pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>:

- (a) For a resident of a personal care home, \$1,409 [\$1,294];
- (b) For a resident of a family care home, \$965 [\$943];
- (c) For an individual who receives caretaker services:
  - 1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability, \$855 [\$833];
  - 2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care, \$1,251 [\$1,248]; or
  - 3. An eligible couple, both aged, blind, or having a disability and both requiring care, \$1,305 [\$1,272]; or
- (d) For an individual who resides in a private residence and has SMI, \$1,313 [\$1,294].
- (2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.
- (b) One-half (1/2) of the deficit shall be payable to each.
- (3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.
- (4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

- (a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;
- (b) Social Security Administration notifies the department that the admission shall be temporary; and
- (c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.
- (2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:
  - (a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;
  - (b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and
  - (c) A guardian or other payee, personal care home, or family



care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and
2. The physician statement specified in paragraph (b) of this subsection.
- (3) A temporary admission shall be limited to the following health care facilities:
  - (a) Hospital;
  - (b) Psychiatric hospital; or
  - (c) Nursing facility.
- (4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

- (1) Citizen of the United States; or
- (2) Qualified immigrant [alien].

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program. (1) A personal care home:

- (a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;
- (b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;
2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:
  - a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;
  - b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or
  - c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;
3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;
4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;
5. Be verified by the Office of the Inspector General in accordance with Section 15(2) through (4) of this administrative regulation; and
6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.
  - a. Quarters shall begin in January, April, July, and October.
  - b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

- (a) Receipt of verification from the Office of the Inspector General as specified in Section 15(6) of this administrative

regulation; and

- (b) Approval or denial of an application.
- (4) A personal care home shall:
  - (a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:
    1. Lists every resident of the personal care home who was a resident on the first day of the month;
    2. Lists the last four (4) digits only of the resident's Social Security Number;
    3. Lists the resident's date of birth; and
    4. Is marked appropriately for each resident to indicate the resident:
      - a. Has a mental illness diagnosis;
      - b. Has an intellectual disability diagnosis; or
      - c. Receives state supplementation; and
  - (b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:
    1. Mail;
    2. Fax; or
    3. Electronically.
- (5) The monthly report shall be used by the department for:
  - (a) Verification as specified in subsection (4)(a) of this section;
  - (b) Payment; and
  - (c) Audit purposes.
- (6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.
- (b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training. (1)(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.

(b) Other staff may complete the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

- (a) Importance of proper medication administration;
- (b) Side effects and adverse medication reactions with special attention to psychotropics;
- (c) Signs and symptoms of an acute onset of a psychiatric episode;
- (d) SMI;
- (e) SMI recovery;
- (f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;
- (g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability;
- (h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;
- (i) Activities of daily living and instrumental activities of daily living;
- (j) Adult learning principles; and
- (k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.

(3) Initial training shall:

- (a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and
- (b) Be in the quarter during which the STS-1 is filed with the department.

(4)(a) A personal care home shall have at least one (1) direct care staff member who has received training.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician or Kentucky medication aide training; and

2.a. Has received mental illness or intellectual disability training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID Supplement Program; and

(b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. MI/ID Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2. of this subsection.

(c) The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of the Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and

b. Maintains documentation of completion at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training:

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 13(1)(c)3. of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2. of this administrative regulation, on the day of the visit, a

personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6. of this administrative regulation, for the next following quarter.

Section 16. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 01/15;

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

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

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Protection and Permanency  
(As Amended at ARRS, October 12, 2021)**

**922 KAR 1:300. Standards for child-caring facilities.**

RELATES TO: KRS 2.015, 13B.050, 17.165(6), 17.500(8), 189.125(3), 198B.050-198B.090, 199.011(2), (3), (4), (6), (7), (10), (11), 199.640, 199.650, 199.660, 199.670, 211.350-211.380, 214.034(5), Chapter 271B Subtitle 8, 273.161(7), **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)[(14)].

(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 unless the agency has an agreement with a college or university to employ students 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~~ 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~~ 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 **professional[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, **or other licensed qualified health professional,** 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 **or other licensed qualified health professional.**

(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 stored in a manner that is 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 to 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).

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(As Amended at ARRS, October 12, 2021)**

**922 KAR 1:380. Standards for emergency shelter child-caring facilities.**

RELATES TO: KRS 2.015, 199.011, 199.640, 199.645-199.670, 214.034 ~~(5)~~ **(4)**, 600.020, 610.110, 620.140 [645.040, 645.030, 645.040]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5); 199.645, 645.050]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640 [–](5) requires the Cabinet for Health and Family Services to promulgate administrative regulations relating to standards of care and service for child-caring facilities. This administrative regulation establishes standards of care and service for emergency shelter ~~service~~ child-caring facilities.

Section 1. Definitions. (1) "Child" is defined by [at] KRS 199.011(4) and[, 600.020(9)] ~~(8)~~, and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A person who meets the exceptions to the age of majority in accordance with KRS 2.015 [640.140(6)].

(2) "Crisis intervention unit" means a unit operated to serve a child in need of short-term intensive treatment and to avoid risk of placement to a higher level of care.

(3) "Emergency shelter" means a group home or similar homelike facility that provides temporary or emergency care for children and has adequate staff and services to meet the needs of each resident child.

(4) "Treatment" means individualized management and care of a child utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving [his] emotional conflict or a behavioral disorder.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for an emergency shelter child-caring facility shall be administered as established in 922 KAR 1:305.

(2) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:300, except for the following:

- (a) Section 5(1)(d)2;
- (b) Section 5(1)(i)1, 3, and 4;
- (c) Section 5(1)(k);
- (d) Section 5(1)(n);
- (e) Section 5(1)(o);
- (f) Section 7(1)(e);
- (g) Section 7(2)(a);
- (h) Section 7(2)(b)3 and 4;
- (i) Section 7(2)(c);
- (j) Section 7(3);
- (k) Section 7(4)(a);
- (l) Section 7(5); and
- (m) Section 7(6)(c), (d), (e), and (g).

Section 3. Emergency Shelter Child-caring Facility Services.

(1) An emergency shelter child-caring facility that is part of a program offering a treatment service shall maintain ~~be in~~ compliance with 922 KAR 1:390, Section 4.

(2) If an emergency shelter care program is part of a larger organization providing other child-caring or child-placing services in accordance with 922 KAR 1:310, there shall be a person designated to serve as coordinator of the emergency shelter child-caring facility.

(3)(a) Except as provided by paragraph (b) of this

**VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

subsection, the facility shall obtain the following information from a child's custodian during intake:

1.[(a)] Commitment order, temporary custody order, or signed voluntary admission form; and

2.[(b)] Basic identifying information on the child including:

a.1.] Name and birthdate;

b.2.] Address, and name and address of parent or guardian;

c.3.] Last school attended and grade level; and

d.4.] Medical information, if known. f.]

(b)1(c)] If a child is a walk-in to the program and no custodian is available, a facility shall obtain a placement agreement with the custodian within seventy-two (72) hours.

(4) Discharge.

(a) The facility shall have written policy and procedure describing conditions under which a child may be discharged.

(b) Discharge planning shall begin immediately upon admission of a child.

(c) The facility shall prepare a written discharge summary within five (5) days following the date of discharge. A copy shall be provided to the legal custodian.

Section 4. Crisis Intervention Unit. An emergency service in a crisis intervention unit shall be provided as established in 922 KAR 1:390, Section 5.

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amended After Comments)

16 KAR 6:010. Assessment prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) require the EPSB [Education Professional Standards Board] to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the applicable assessments identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The EPSB [Education Professional Standards Board] shall require the assessment or assessments and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate. (1) An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Interdisciplinary Early Childhood Education (5023)" – 166. [Education of Young Children (5024) – 160]. [Interdisciplinary Early Childhood Education (5023) – 166.]

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Multi-Subjects Test (5001)" with the following passing scores on the corresponding assessment sections:

- (a) "Elementary Education: Reading and Language Arts (5002)" - 157;
- (b) "Elementary Education: Mathematics (5003)" - 157;
- (c) "Elementary Education: Social Studies (5004)" - 155; and
- (d) "Elementary Education: Science (5005)" - 159.

(3) An applicant for certification at the middle school level (grades 5 through 9) shall take the content assessment or assessments based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

- (a) Middle School English and Communications: "Middle School English Language Arts (5047)" - 164;
- (b) Middle School Mathematics: "Middle School Mathematics (5164)" – 157. [Middle School Mathematics (5169) – 165.];
- (c) Middle School Science: "Middle School Science (5442)" – 152. [Middle School Science (5440) – 150.]; or
- (d) Middle School Social Studies: "Middle School Social Studies (5089)" - 149.

(4) An applicant for certification at the secondary level (grades 8 through 12) shall take the content assessment or assessments corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

- (a) Biology: "Biology: Content Knowledge (5235)" - 146;
- (b) Chemistry: "Chemistry: Content Knowledge (5245)" - 147;
- (c) Earth Science: "Earth and Space Sciences: Content Knowledge (5571)" - 147;
- (d) English: "English Language Arts: Content and Analysis (5039)" - 168;
- (e) Mathematics: "Mathematics (5165)" – 159. [Mathematics: Content Knowledge (5164) – 160.];
- (f) Physics: "Physics: Content Knowledge (5265)" - 133; or
- (g) Social Studies: "Social Studies: Content and Interpretation (5086)" - 153.

(5) An applicant for certification in all grades shall take the content assessment or assessments corresponding to the applicant's area or areas of specialization identified in this

subsection, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:

- (a) Art: "Art: Content and Analysis (5135)" - 161;
  - (b) Chinese: "Chinese (Mandarin): World Language (5665)" - 164;
  - (c) French: "French: World Language (5174)" - 162;
  - (d) German: "German: World Language (5183)" - 163;
  - (e) Japanese: "Japanese: World Language (5661)" - 156.
  - (f) Health: "Health Education (5551)" - 155;
  - (g) Health and Physical Education:
    - 1. "Health and Physical Education: Content Knowledge (5857)" - 160; and
    - 2. "Physical Education: "Physical Education: Content and Design (5095)" – 169;
  - (h) Integrated Music: "Music: Content and Instruction (5114)" - 162;
  - (i) Instrumental Music: "Music: Instrumental and General Knowledge (5115)" – 150. [Music: Content and Analysis (5114) – 162.];
  - (j) Vocal Music: "Music: Vocal and General Knowledge (5116)" – 153. [Music: Content and Analysis (5114) – 162.];
  - (k) Latin: "Latin (5601)" - 166;
  - (l) Physical Education: "Physical Education: Content and Design (5095)" - 169;
  - (m) School Media Librarian: "Library Media Specialist (5311)" - 156;
  - (n) School Psychologist: "School Psychologist (5402)" - 147; or
  - (o) Spanish: "Spanish: World Language (5195)" - 168.
- (6) Except as provided in subsection (7) of this section, an applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content assessment or assessments based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:
- (a) Communication Disorders:
    - 1. "Special Education: Core Content Knowledge and Applications (5354)" - 151; and
    - 2. "Speech-Language Pathology (5331)" – 162;
  - (b) Hearing Impaired:
    - 1. "Special Education: Core Knowledge and Applications (5354)" - 151; and
    - 2. "Special Education: Education of Deaf and Hard of Hearing Students (5272)" – 160;
  - (c) Hearing Impaired With Sign Proficiency:
    - 1. "Special Education: Core Knowledge and Applications (5354)" – 151;
    - 2. "Special Education: Education of Deaf and Hard of Hearing Students (5272)" - 160; and
    - 3. "American Sign Language Proficiency Interview (ASLPI)" – 3+;
  - (d) Learning and Behavior Disorders: "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;
  - (e) Moderate and Severe Disabilities: "Special Education: Core Knowledge and Severe to Profound Applications (5545)" - 158; or
  - (f) Visually Impaired:
    - 1. "Special Education: Core Knowledge and Applications (5354)" - 151; and
    - 2. "Special Education: Teaching Students with Visual Impairments (5282)" – 163.
- (7) A holder of an exceptional child certificate in Learning and Behavior Disorders or Moderate and Severe Disabilities who is seeking additional certification for any exceptional children teaching certificate listed in subsection (6) of this section shall not be required to take "Special Education: Core Knowledge and Applications (5354)".
- (8)(a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

teach in grades 5 - 12 shall take the content assessment or assessments corresponding to the applicant's area or areas of specialization identified in this paragraph, and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:

1. Agriculture: "Agriculture (5701)" – 147;
2. Business and Marketing Education: "Business Education (5101)" – 154;
3. Family and Consumer Science: "Family and Consumer Sciences (5122)" – 153; or
4. Engineering and Technology Education: "Technology Education (5051)" – 159.

(b) An applicant for Industrial Education shall take the content assessment or assessments corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(9) An applicant for a restricted base certificate in the following area or areas shall take the content assessment or assessments based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) English as a Second Language:

1. Until August 31, 2017: "English to Speakers of Other Languages (5361)" – 157; or

2. Beginning September 1, 2017: "English to Speakers of Other Languages (5362)" – 155;

(b) Speech/Media Communications: "Speech Communication (5221)" – 146; or

(c) Theater: "Theatre (5641)" – 162.

(10) An applicant for an endorsement in the following content area or areas shall take the content assessment or assessments based on the applicant's area or areas of specialization with the passing scores identified in this subsection:

(a) American Sign Language: "American Sign Language Proficiency Interview (ASLPI)" – 3+;

(b) English as a Second Language:

1. Until August 31, 2017: "English to Speakers of Other Languages (5361)" – 157; or

2. Beginning September 1, 2017: "English to Speakers of Other Languages (5362)" – 155;

(c) Learning and Behavior Disorders, grades 8 - 12: "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" – 158;

(d) Literacy Specialist: "Reading Specialist (5302)" – 165["Reading Specialist (5301)" – 164];

(e) Gifted Education, grades primary - 12: "Gifted Education (5358)" – 157; or

(f) Reading Primary through Grade 12: "Teaching Reading: K-12 (5206)" – 156["Teaching Reading (5204)" – 153].

Section 3. In addition to the content area assessment or assessments established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy assessment and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy assessment.

(1) An applicant for Elementary certification (grades primary – 5) shall take "Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" – 160.

(2) An applicant for certification at the middle school level (grades 5 through 9) shall take "Principles of Learning and Teaching: Grades 5 - 9 (5623)" – 160.

(3) An applicant for certification at the secondary level (grades 8 through 12) shall take "Principles of Learning and Teaching: Grades 7 - 12 (5624)" – 160.

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take one (1) of the following assessments and achieve the corresponding passing score or higher:

(a) "Principles of Learning and Teaching: Grades kindergarten – 6 (5622)" – 160;

(b) "Principles of Learning and Teaching: Grades 5 – 9 (5623)" – 160; or

(c) "Principles of Learning and Teaching: Grades 7 - 12 (5624)" – 160.

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy assessment established in this section. The content area assessment or assessments established in Section 2 of this administrative regulation shall fulfill the pedagogy assessment requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades 5 through 12 shall take one (1) of the following assessments and receive the identified passing score:

(a) "Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" – 160;

(b) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" – 160; or

(c) "Principles of Learning and Teaching: Grades 7 - 12 (5624)" – 160.

Section 4. Assessment Recency. (1) A passing score on an assessment established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the assessment administration date.

(2) A teacher who fails to complete application for certification to the EP~~PSB~~[E~~ducation Professional Standards Board~~] within the applicable recency period of the assessment and with the passing score established at the time of administration shall retake the applicable assessment or assessments and achieve the passing score or scores required for certification at the time of application.

(3) The assessment administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

(a) The Educational Testing Service; or

(b) The agency established by the EP~~PSB~~[E~~ducation Professional Standards Board~~] as the authorized test administrator.

(2) An applicant shall authorize assessment results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the EP~~PSB~~[E~~ducation Professional Standards Board~~] and to the teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of assessment dates and locations shall be issued sufficiently in advance of assessment dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the assessments and make application for the appropriate assessment prior to the deadline established and sufficiently in advance of anticipated employment to permit assessment results to be received by the EP~~PSB~~[E~~ducation Professional Standards Board~~] and processed in the normal certification cycle.

Section 6. An applicant shall pay the assessment fee established by the Educational Testing Service or other authorized test administrator for each relevant assessment required to be taken.

Section 7. An applicant who fails to achieve at least the minimum passing score on any of the applicable assessments may retake the assessment.

Section 8. The EP~~PSB~~[E~~ducation Professional Standards Board~~] in conjunction with the Kentucky Center for Statistics[Kentucky Center for Education and Workforce Statistics] shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these assessments.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: October 12, 2021

FILED WITH LRC: October 15, 2021 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public



hearing on this proposed administrative regulation shall be held on September 23, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the examination prerequisites for teacher certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify the assessments and qualifying scores that are required for teacher certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) require the Education Professional Standards Board to select the appropriate assessments required for issuance of teacher certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies the requisite assessments and qualifying scores.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates certain Praxis II assessments to the new version and includes new assessments for certification areas that previously did not have one. The amendment also allows for adoption of the recommended cut-scores set by the Educational Testing Service. After comments, the EPSB revised the amendment to return to the previous test for certification for Interdisciplinary Early Childhood Education (IECE).

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update required assessments to new versions for those that are being discontinued. It is also necessary to adopt the assessment for certification areas that previously did not have an assessment. The after comments amendment is also necessary to return to the IECE exam that better aligns with the certificate and preparation program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.030(3) and (4) require the Education Professional Standards Board to select the appropriate assessments required for issuance of teacher certification. The amendment identifies those assessments and qualifying scores for certain certification areas.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the required assessments to new versions for those assessments that are being discontinued. It is also identifies the assessment for certification areas that previously did not have an assessment. The after comments amendment returns to the IECE exam that better aligns with the certificate and preparation program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts, 30 educator preparation program providers, and applicants for teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The approved educator preparation programs, and any programs seeking future approval, will have to ensure that their students have knowledge of and are prepared for the required assessments. Applicants for certification will have to successfully complete the assessments required for the certification area they are pursuing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to bear the cost of the assessment unless it is provided by another entity. The fee is established by the test provider. There is no fee established or received by the Education Professional Standards Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit from having clearly identified assessments that align to the area of certification sought. Districts will have a pool of certified candidates that demonstrated competency on content assessments for the corresponding area of certification.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

# VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

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 examination prerequisites for teacher certification.

## FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amended After Comments)

### 103 KAR 8:090. Classification of property; public service corporations.

RELATES TO: KRS 136.010, 136.120, 136.130

STATUTORY AUTHORITY: KRS 131.130[Chapter 43A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 136.130 requires all public service corporations performing any public service in Kentucky to report certain facts prescribed by the department annually for purposes of the ad valorem tax on public service corporations imposed by KRS 136.120. KRS 136.120(2) states that the property of all taxpayers shall be classified as operating property, nonoperating tangible property, and nonoperating intangible property. This administrative regulation specifies the classification of certain operating property commonly held by public service corporations[classifies certain property] as real estate, personalty, and manufacturing machinery.[The property involved has been the subject of some confusion in the past. This information is helpful to public service companies in classifying new property.]

Section 1. Definitions. (1) "Base Gas" means the volume of gas, including native gas, needed as a permanent inventory in a storage reservoir to maintain adequate pressure and deliverability rates throughout the withdrawal season.

(2) "Gathering line" means:

(a) Any pipeline that is installed or used for the purpose of transporting crude oil or natural gas from a well or production facility to the point of interconnection with another gathering line, an existing storage facility, or a transmission or main line, including all lines between interconnections, except those lines or portions subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195;

(b) For hazardous liquids, a pipeline 219.1 mm (8 5/8 in) or less in nominal outside diameter that transports petroleum products from a production facility; and

(c) For natural gas, a pipeline that transports gas from a current production facility to a transmission pipeline or main as determined using an industry standard determined pursuant to 49 C.F.R. 192.8, including a pipeline 219.1 mm (8 5/8 in) or less in nominal outside diameter and less than fifty (50) miles in length that transports natural gas or natural gas liquids acted upon by a manufacturing process between two (2) manufacturing facilities;

(3) "Transmission pipeline" means any pipeline that is subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195, including all crude oil trunk lines subject to the reporting requirements of the Interstate Commerce Act, Sections 20 and 18 C.F.R. Parts 357.2 and 357.4;

(4) "Working Gas" means the volume of gas in the reservoir above the designated level of base gas.

**Section 2.] Classification of Public Service Company Property.** The department [The Revenue Cabinet] prescribes the following classification of property to be used by public service corporations

in reporting under KRS 136.120 et seq. This list is not intended to be complete and comprehends only those items of property whose proper classification has been subject to some confusion in the past.

Type of Property	Classification
<u>[Unmined Coal]</u>	<u>Real Estate</u>
<u>Undeveloped Oil &amp; Gas Reserves</u>	<u>Real Estate]</u>
<u>Leasehold</u>	<u>Real Estate</u>
<u>Oil &amp; Gas Wells</u>	<u>Real Estate</u>
<u>Transmission Pipelines (Oil, Gas &amp; Water)</u>	<u>Real Estate</u>
<u>Conduits</u>	<u>Real Estate</u>
<u>[Base &amp; Nonrecoverable Gas Stored]</u>	<u>Real Estate</u>
<u>Working Gas Stored</u>	<u>Tangible Personal</u>
<u>Other Gas Stored</u>	<u>Tangible Personal</u>
<u>Gas Compressors</u>	<u>Tangible Personal</u>
<u>Oil Lifting Units</u>	<u>Tangible Personal</u>
<u>Oil Storage Tanks (over 30,000 Gallons)</u>	<u>Real Estate</u>
<u>Oil Storage Tanks (under 30,000 Gallons)</u>	<u>Tangible Personal</u>
<u>Oil Inventory</u>	<u>Tangible Personal</u>
<u>Television Cable</u>	<u>Tangible Personal]</u>
<u>Oil &amp; Gas Gathering Lines</u>	<u>Tangible Personal</u>
<u>Electric Transmission Lines</u>	<u>Tangible Personal</u>
<u>Electric Distribution Lines</u>	<u>Tangible Personal</u>
<u>[Meters &amp; Regulators</u>	<u>Tangible Personal]</u>
<u>Underground Cables</u>	<u>Tangible Personal</u>
<u>Telephone Lines</u>	<u>Tangible Personal</u>
<u>Wire in Underground Conduits</u>	<u>Tangible Personal</u>
<u>[Towers, Structures &amp; Supports</u>	<u>Tangible Personal]</u>
<u>Electric Substations/ Transformers</u>	<u>Manufacturing Machinery</u>
<u>Machinery &amp; Equipment used in the Manufacture of Gas</u>	<u>Manufacturing Machinery</u>
<u>[Solar Energy Panels</u>	<u>Manufacturing Machinery</u>
<u>Wind Energy Turbines</u>	<u>Manufacturing Machinery</u>
<u>Inverters; Converters; Transformers; Substations; Mounting Systems; Trackers; and Direct Current (DC) Meters, Regulators, Batteries, Cables, Conduits, Connectors, Junction Boxes, Combiner Boxes, Fuses, Circuit Breakers, and Switches for Solar &amp; Wind Energy Systems</u>	<u>Manufacturing Machinery</u>
<u>Water Treatment Equipment</u>	<u>Manufacturing Machinery</u>
<u>Personal Property Certified Under KRS 224.1-300</u>	<u>Pollution Control]</u>

Class of Property	Classification by Revenue Cabinet
Leasehold	Real Estate
Oil wells	Real Estate
Gas wells	Real Estate
Gathering lines	Personalty
Pipe lines (transmission)	Real Estate
Electric transmission lines	Personalty
Electric distribution lines	Personalty
Telephone lines	Personalty
Underground cables	Personalty
Electric substations and transformers	Manufacturing Machinery
Machinery & equipment used in manufacture of gas	Manufacturing Machinery
Conduits	Real Estate
Wire contained in under-ground conduits	Personalty

THOMAS MILLER, COMMISSIONER

**VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

APPROVED BY AGENCY: October 15, 2021

FILED WITH LRC: October 15, 2021 at 11:44 a.m.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 8:090 to provide updated classifications of certain commonly held properties of public service corporations (PSC's) pursuant to KRS 136.130(1).

(b) The necessity of this administrative regulation: To comply with statutory requirements; add new utility technology; and remove outdated guidance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 13A, KRS 131.130, KRS 132.020, KRS 132.200, KRS 136.010, and KRS 136.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the administrative process for the classification of property owned by PSC's and provides them with a list of assets and classifications as guidance, creating uniformity in how they classify their property for tax purposes.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the regulation to be in compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: see 1(b)

(c) How the amendment conforms to the content of the authorizing statutes: see 1(c)

(d) How the amendment will assist in the effective administration of the statutes: see 1(d)

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 251 public service corporations across the Commonwealth will be able to utilize the guidance contained herein.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None that the Department of Revenue is aware of other than updating their reporting pursuant to KRS 136.120.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have a greater understanding of the requirements for filing, and experience more efficient and timely tax filings with the Department of Revenue.

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

(a) Initially: Current department staff and resources will be used to absorb the implementation costs of this administrative regulation.

(b) On a continuing basis: None, until amendments are made in the future.

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

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

increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established or increased in this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied because all PSC's using the classification and guidance contained in this administrative regulation will be treated equally.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies as a result of amending this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET**

**Department of Revenue**

**(Amended After Comments)**

**103 KAR 16:270. Apportionment; receipts factor.**

RELATES TO: KRS 141.010, 141.040, 141.0401, 141.120, 141.121, 141.205, 141.206, 141.901

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.120, 141.121

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.120(9) requires that all apportionable income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction. KRS 141.120(11)(d) authorizes the department to promulgate administrative regulations providing how to determine the receipts factor used in the multi-state apportionable income apportionment formula. KRS 141.120(12)(b) authorizes the department to promulgate administrative regulations for determining alternative allocation and apportionment methods for taxpayers engaged in particular industries. KRS 141.121 requires[authorizes] the department to promulgate [an] administrative regulations[regulation] for sourcing receipts of public service corporations and financial organizations, and [requires the department to promulgate a regulation] to detail the sourcing of receipts related to financial institutions. This

administrative regulation provides guidance[guidelines] for determining the receipts factor of a multi-state [multistate] corporation.

Section 1. Definitions. (1) "Advertising services" means an agreement to include the broadcast customer's advertising content in the broadcaster's film programming.

(2) "Affiliated airline" is defined by KRS 141.121(1)(a).

(3) "Apportionable income" is defined by KRS 141.120(1)(a).

(4)[(3)] "Barrel mile" means the transportation of one (1) barrel of liquid or gas one (1) mile.

(5)[(4)] "Billing address" means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account that at the time of the transaction is kept in good faith in the normal course of business, and not for tax avoidance purposes.

(6) "Borrower or credit card holder located in this state" means:

(a) A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(b) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(7)[(5)] "Broadcast customer" means a person, corporation, partnership, limited liability company, or other entity, such as an advertiser or a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by a broadcaster.

(8)[(6)] "Broadcaster" means a taxpayer that is a television broadcast network, a cable program network, or a television distribution company. The term "broadcaster" does not include a platform distribution company.

(9)[(7)] "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state, or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and are assigned consistent with the rules for those sales.

(10) "Card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one (1) of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(11)[(8)] "Code" means the Internal Revenue Code as defined by KRS 141.010(21)[(15)].[(14).]

(12) "Commercial domicile" is defined by KRS 141.120(1)(b).

(13) "Credit card" means a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(14) "Debit card" means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

(15)[(9)] "Delivered to a location" means to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property.

(16)[(10)] "Film programming" means one (1) or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including items such as news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(17)[(11)] "Financial institution" is defined by KRS 141.010(17)[(14)].[KRS 436.500.]

(18)[(12)] "Financial organization" is defined by KRS 141.120(1)(c), and includes:

(a) Any corporation or other business entity registered under state law as a bank holding company or registered under the 12 U.S.C. 1841, et. seq., Federal Bank Holding Company Act of 1956, as amended; or

(b) Registered as a savings and loan holding company under the 12 U.S.C. 1701 to 1750, Federal National Housing Act, as amended; and

(c) Any entity more than fifty (50) percent owned, directly or

indirectly, by ~~these[such]~~ holding companies.

(19)[(13)] "Individual customer" means a customer that is not a business customer.

(20) "In-person services" means services that are physically provided in person by the taxpayer, if the customer or customer's real or tangible property upon which the services are performed is in the same location as the service provider when the services are performed. In-person services ~~includes[shall include]~~ situations when a third-party contractor provides the services on behalf of the taxpayer.

(21)[(14)] "Intangible property" means property that is not physical or whose representation by physical means is merely incidental. Examples of intangible property ~~include[shall include]~~:

(a) ~~Agreements not to compete;~~

(b) ~~Brand names;~~

(c) ~~Computer software;~~

(d) ~~Contract rights, including broadcasting rights;~~

(e) ~~Copyrights;~~

(f) ~~Designs;~~

(g) ~~Formulae;~~

(h) ~~Goodwill and going concern value;~~

(i) ~~Ideas;~~

(j) ~~Information;~~

(k) ~~Know-how;~~

(l) ~~Licenses;~~

(m) ~~Literary, musical, or artistic composition;~~

(n) ~~Methods;~~

(o) ~~Patents;~~

(p) ~~Procedures;~~

(q) ~~Processes;~~

(r) ~~Programs;~~

(s) ~~Securities;~~

(t) ~~Systems;~~

(u) ~~Technical data;~~

(v) ~~Trade dress;~~

(w) ~~Trademarks;~~

(x) ~~Trade names; and~~

(y) ~~Trade secrets. [and includes items such as copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and computer software.]~~

(22) "Internal Revenue Code" is defined by KRS 141.010(21).

(23)[(15)] "Kentucky revenue passenger miles[mile]" is defined by KRS 141.121(1)(c).

(24) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of ~~this[such]~~ extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans ~~do[shall]~~ not include:

(a) ~~Assets held in a trading account;~~

(b) ~~Cash items in the process of collection;~~

(c) ~~Credit card receivables, including purchased credit card relationships;~~

(d) ~~Federal funds sold;~~

(e) ~~Futures or forwards contracts;~~

(f) ~~Non-interest bearing balances due from depository institutions;~~

(g) ~~Notional principal contracts such as swaps;~~

(h) ~~Options;~~

(i) ~~Securities, interests in a REMIC, or other mortgage-backed or asset-backed security;~~

(j) ~~Securities purchased under agreements to resell; and~~

(k) ~~Other similar items.~~

(25) "Loan secured by real property" means that fifty (50) percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(26) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program when[whereby] a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any cardholder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made its cardholder.

(27) "Miles [(16)–Mile] operated" means the movement of a barge, tug, or other watercraft one (1) mile.

(28) "Non-apportionable income" is defined by KRS 141.120(1)(d).

(29) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(30)[(47)] "Passenger airline" is defined by KRS 141.121(1)(d).

(31)[(48)] "Place of order" means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.

(32)[(49)] "Platform distribution company" means a cable service provider, a direct broadcast satellite system, an Internet content distributor, or any distributor that directly charges viewers for access to any film programming.

(33)[(20)] "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.

(34)[(24)] "Provider" is defined by KRS 141.121(1)(e).

(35)[(22)] "Public service company" is defined by KRS 141.0401(6)(a)9.[(i)–]

(36)[(23)–] "Qualified air freight forwarder" is defined by KRS 141.121(1)(f).

(37)[(24)] "Receipts" is defined by KRS 141.120(1)(e).

**(38) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.**

(39)[(38)][(25)] "Related member" is defined by KRS 141.205(1)(g).

(40)[(39)][(26)] "Revenue car mile" means the movement of a loaded railroad car one (1) mile.

(41)[(40)][(27)] "Revenue passenger miles[mile]" is defined by KRS 141.121(1)(g).

(42)[(41)] "State" is defined by KRS 141.010(34).

(43)[(42)][(28)] "State where a contract of sale is principally managed by the customer" means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

**(44)[(43)] "Syndication" means an extension of credit in which two (2) or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.**

## Section 2. Additional Principles.

(1) Year to year consistency. If the taxpayer departs from or modifies the basis for excluding or including gross receipts in the receipts factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) State to state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its Kentucky return the nature and extent of the variance.

(3) Denominator. The denominator of the receipts factor shall include the gross receipts that are received[derived by the taxpayer] from transactions and activity in the regular course of the taxpayer's [its] trade or business, except gross receipts excluded under this administrative regulation.

(4) Numerator. The numerator of the receipts factor shall include gross receipts attributable to this state that are received by [and derived by] the taxpayer from transactions and activity in the regular course of the taxpayer's trade [its trade] or business, except gross receipts excluded under this administrative regulation.

## Section 3. Sales of Tangible Personal Property in This State.

(1) Gross receipts from sales of tangible personal property (except sales to the United States Government) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.

(2) Property shall be determined as delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example. The taxpayer, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states, including Kentucky. The order for the purchase was placed by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order was shipped directly to purchaser's branch store in Kentucky. The branch store in Kentucky is the purchaser with respect to \$25,000 of the taxpayer's sales.

(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example. The taxpayer makes a sale to a purchaser who maintains a central warehouse in Kentucky at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Kentucky constitute property delivered or shipped to a purchaser within Kentucky.

(4) A purchaser within this state shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

Example. A taxpayer in Kentucky sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Kentucky pursuant to purchaser's instructions. The sale by the taxpayer is in Kentucky.

(5) If property [being] shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

Example. The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route, the produce is diverted to the purchaser's place of business in Kentucky where [in which state] the taxpayer is subject to tax. The sale by the taxpayer is attributed to Kentucky.

Section 4. Sales of Tangible Personal Property to the United States Government. Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this administrative regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

(1) Example. A taxpayer contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.

(2) Example. The taxpayer, as a subcontractor to a prime contractor with the National Aeronautics and Space Administration, contracts to build a component of a rocket for \$1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

Section 5. Sales Other Than Sales of Tangible Personal Property: General Rules. ~~[KRS 141.120(11) provides for the inclusion in the numerator of the receipts factor of gross receipts arising from transactions other than sales of tangible personal property.]~~

(1) ~~Market-Based Sourcing. Receipts from sales other than sales of tangible personal property shall be in this state iff, other than receipts described in KRS 141.120(10) (from sales of tangible personal property), are in this state within the meaning of KRS 141.120(11) if and to the extent that [the taxpayer's market for the sales is in this state. The provisions in this section establish [uniform] rules for:~~

(a) Determining whether and to the extent the market for a sale other than the sale of tangible personal property is in this state;

(b) Reasonably approximating the state or states of assignment if the state or states cannot be determined; and

(c) 1. Excluding receipts from the sale of intangible property from the numerator and denominator of the receipts factor pursuant to KRS 141.120(11)(a)4.b.iii.; ~~[141.120(11)(a)(4)(b)iii.];~~

2. Excluding receipts from the denominator of the receipts factor, pursuant to KRS 141.120(11)(c) if the state or states of assignment cannot be determined or reasonably approximated; or

3. Excluding receipts from the denominator of the receipts factor, pursuant to KRS 141.120(11)(c) if the taxpayer is not taxable in the state to which the receipts are assigned as determined under KRS 141.120(3).

(2) General Principles of Application; Contemporaneous Records. ~~A [In order to satisfy the requirements of this administrative regulation, a] taxpayer's assignment of receipts from sales [of] other than sales of tangible personal property shall be consistent with the following principles:~~

(a) 1. A taxpayer shall apply the rules set forth in this administrative regulation based on objective criteria and shall consider all sources of information reasonably available to the taxpayer upon its tax filing, including items such as the taxpayer's books and records kept in the normal course of business;

2. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions year to year; and

3. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the department upon request.

(b) This administrative regulation provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer shall make an effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and shall continue to do so with each succeeding rule in the hierarchy, if applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer shall attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

(c) A taxpayer's method of assigning its receipts, including the use of a method of approximation, if applicable, shall reflect an attempt to obtain the most accurate assignment of receipts consistent with this administrative regulation, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one (1) taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(3) Rules of Reasonable Approximation. (a) This administrative regulation establishes ~~[uniform]~~ rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in this state. The administrative regulation sets forth rules of reasonable approximation, which shall apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation shall be made in

accordance with specific rules of approximation prescribed in this administrative regulation. In other cases, the applicable rule in this administrative regulation permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that may be obtained under the applicable rules or standards set forth in this administrative regulation.

(b) Approximation Based Upon Known Sales.

1. If applying the applicable rules set forth in subsections (7), (8), (9), and (10) of this section, a taxpayer may ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales; and

2. ~~If the [The]~~ taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This rule applies in the context of licenses and sales of intangible property if the substance of the transaction resembles a sale of goods or services.

(c) ~~Related Member [Related Member]~~ Transactions – Information Imputed from Customer to Taxpayer. If a taxpayer has receipts subject to this administrative regulation from transactions with a related member ~~[related member]~~ customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

(4) Rules with Respect to Exclusion of Receipts from the Receipts Factor.

(a) The receipts factor only includes those amounts defined as receipts.

(b) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to KRS 141.120(11)(a)4.b.iii.; ~~[141.120(11)(a)(4)(b)iii.];~~

(c) ~~If [In a case in which] a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to the applicable rules set forth in this administrative regulation, [(including through the use of a method of reasonable approximation, if relevant)], using a reasonable amount of effort undertaken in good faith, the receipts shall be excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).~~

(d) If a taxpayer assigns receipts to a state or states in which they are not taxable, those receipts [In a case in which a taxpayer may ascertain the state or states to which receipts from a sale are to be assigned pursuant to the applicable rules set forth in this administrative regulation, but the taxpayer is not taxable in one (1) or more of those states, the receipts that may be assigned to those states where the taxpayer is not taxable] shall be excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

(e) Receipts of a taxpayer from hedging transactions, or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded pursuant to KRS 141.120(1)(e).

(f) Nothing in the provisions adopted here pursuant to KRS 141.120 is intended to limit the application of KRS 141.120(12) or the authority granted to the department under KRS 141.120(12).

(5) Sale, Rental, Lease, or License of Real Property. In the case of a sale, rental, lease, or license of real property, the receipts from the sale shall be [are] in this state if and to the extent that the property is in this state.

(6) Rental, Lease, or License of Tangible Personal Property. In the case of a rental, lease, or license of tangible personal property, the receipts from the sale shall be [are] in this state if and to the extent that the property is in this state. If property is mobile property that is located both within and without this state during the period of the lease or other contract, the receipts assigned to this state are the receipts from the contract period multiplied by the fraction computed under 103 KAR 16:290[.] (as adjusted, if necessary, to reflect differences between usage during the contract period and usage during the taxable year).

(7) Sale of a Service.

(a) General Rule. The receipts from a sale of a service shall be [are-]in this state if and to the extent that the service is delivered to a location in this state. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions shall be [are-]set forth in this subsection and in subsections (8), (9), and (10) of this section.

(b) In-Person Services. 1. Examples of in-person services include services such as:

1. Except as provided in this paragraph, in-person services are services that are physically provided in person by the taxpayer, if the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider when the services are performed. This rule includes situations when the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services may include:]

- a. Warranty and repair services;
- b. Cleaning services;
- c. Plumbing services;
- d. Carpentry;
- e. Construction contractor services;
- f. Pest control;
- g. Landscape services;
- h. Medical and dental services, including medical testing, x-rays and mental health care and treatment;
- i. Child care;
- j. Hair cutting and salon services;
- k. Live entertainment and athletic performances; and
- l. In-person training or lessons.

2. In-person services shall include services as described in subparagraph 1., clauses a. through l. of this paragraph that are performed:

- a. At a location that is owned or operated by the service provider; or
- b. A location of the customer, including the location of the customer's real or tangible personal property.

3. Various professional services, including services such as accounting, financial and consulting services, and other similar services are not treated as in-person services within the meaning of this paragraph, although they may involve some amount of in-person contact.

4. Assignment of Receipts. Rule of Determination. Except as provided in this subparagraph, if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale shall be [are-]in this state if and to the extent the customer receives the in-person service in this state. In assigning its receipts from sales of in-person services, a taxpayer shall first attempt to determine the location where a service is received, as follows:

a. If the service is performed with respect to the body of an individual customer in this state (e.g., hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g., live entertainment or athletic performances), the service is received in this state.

b. If the service is performed with respect to the customer's real estate in this state or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in this state, the service is received in this state.

c. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside this state, the service is received in this state if the property is shipped or delivered to the customer in this state.

5. Rule of Reasonable Approximation. If the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it may reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate the state or states. If the state to which the receipts are to be assigned may be determined or reasonably

approximated, but the taxpayer is not taxable in that state, the receipts that may be assigned to the state shall be [are-]excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

6. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts may be assigned, so that there is no requirement that the receipts from the sale or sales be eliminated from the denominator of the taxpayer's receipts factor. For purposes of the examples, it is irrelevant whether the services are performed by an employee of the taxpayer, or by an independent contractor acting on the taxpayer's behalf.

a. Example. Salon Corp has retail locations in Kentucky and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's in-state locations shall be [are-]in Kentucky. The receipts from sales of services provided at Salon Corp's locations outside Kentucky, even if provided to residents of Kentucky, are not receipts from in-state sales.

b. Example. Landscape Corp provides landscaping and gardening services in Kentucky and in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who is a resident of another state and who is located outside Kentucky when the services are performed. The receipts from sale of services provided at the in-state location shall be [are-]in Kentucky.

c. Example. Same facts as in Example b., except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in Kentucky and in other states. The receipts from the sale of services provided to Retail Corp shall be [are-]in Kentucky to the extent the services are provided in Kentucky.

d. Example. Camera Corp provides camera repair services at a Kentucky retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its in-state location at a facility that is in another state. In these cases, the repaired camera is then returned to the customer at Camera Corp's Kentucky location. The receipts from sale of these services shall be [are-]in Kentucky.

e. Example. Same facts as in Example d., except that a customer located in Kentucky mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in Kentucky by mail. The receipts from sale of the service shall be [are-]in Kentucky.

f. Example. Teaching Corp provides seminars in Kentucky to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state. The teachers who teach the seminars include teachers that are residents outside the state, and the students who attend the seminars include students that are residents outside the state. Because the seminars are taught in Kentucky, the receipts from sales of the services shall be [are-]in Kentucky.

(8) Services Delivered to the Customer, or on Behalf of the Customer, or Delivered Electronically Through the Customer.

(a) If the service provided by the taxpayer is not an in-person service within the meaning of subsection (7)(b) of this section, or a professional service within the meaning of subsection (10) of this section, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in this state if and to the extent that the service is delivered in this state. For the purposes of this subsection and subsection (9) of this section, a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service, but one (1) or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience. A service may be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a



customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(b) Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. [(For purposes of this subsection, a service delivered by an electronic transmission is not a delivery by a physical means).] If a rule of assignment set forth in this administrative regulation[.] depends on whether the customer is an individual or a business customer[.] and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. If the state to which the receipts from a sale are to be assigned may be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that may be assigned to that state shall be [are] excluded from the denominator of the taxpayer's receipts factor.

1. Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer. Examples of services [Services] delivered to a customer or on behalf of a customer through a physical means include services such as:[- for example:]

a. Product delivery services if property is delivered to the customer or to a third party on behalf of the customer;

b. The delivery of brochures, fliers, or other direct mail services;

c. The delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and

d. The sale of custom software if the taxpayer installs the custom software at the customer's site (e.g., if software is developed for a specific customer in a case when the transaction is properly treated as a service transaction for purposes of corporate taxation[.]). The rules in this administrative regulation apply whether the taxpayer's customer is an individual customer or a business customer.

2. Rule of Determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer shall first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.

3. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it may reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

4. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts may be assigned, so that there is no requirement in these examples that the receipts shall be eliminated from the denominator of the taxpayer's receipts factor.

a. Example. Direct Mail Corp, a corporation based outside Kentucky, provides direct mail services to its customer, Business Corp. Business Corp contracts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in Kentucky and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from the sale of Direct Mail Corp's services to Business Corp shall be [are] assigned to Kentucky to the extent that the services are delivered on behalf of Business Corp to Kentucky customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in Kentucky).

b. Example. Ad Corp is a corporation based outside Kentucky

that provides advertising and advertising-related services in Kentucky and in neighboring states. Ad Corp enters into a contract at a location outside Kentucky with an individual customer who is not a Kentucky resident to design advertisements for billboards to be displayed in Kentucky, and to design fliers to be mailed to Kentucky residents. All of the design work is performed outside Kentucky. The receipts from the sale of the design services shall be [are] in Kentucky because the service is physically delivered on behalf of the customer to the customer's intended audience in Kentucky.

c. Example. Same facts as Example b., except that the contract is with a business customer that is based outside Kentucky. The receipts from the sale of the design services shall be [are] in Kentucky because the services are physically delivered on behalf of the customer to the customer's intended audience in Kentucky.

d. Example. Fulfillment Corp, a corporation based outside Kentucky, provides product delivery fulfillment services in Kentucky and in neighboring states to Sales Corp, a corporation located outside Kentucky that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases if a customer purchases tangible personal property from Sales Corp to be delivered in Kentucky, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside Kentucky. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp shall be [are] assigned to Kentucky to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in Kentucky.

e. Example. Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in Kentucky, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside Kentucky, and then physically installs the software on Buyer Corp's computer hardware located in Kentucky. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale shall be [are] assigned to Kentucky because the software is physically delivered to the customer in Kentucky.

f. Example. Same facts as Example e., except that Buyer Corp has offices in Kentucky and several other states, but is commercially domiciled outside Kentucky and orders the software from a location outside Kentucky. The receipts from the development and sale of the custom software service shall be [are] assigned to Kentucky because the software is physically delivered to the customer in Kentucky.

(9) Delivery to a Customer by Electronic Transmission. Services delivered by electronic transmission shall include services such as those that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules shall apply:

(a) Services Delivered By Electronic Transmission to an Individual Customer or Business Customer: [-]

1. Services Delivered By Electronic Transmission to an Individual Customer. a. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service shall be [is] delivered in this state if and to the extent the taxpayer's customer receives the service in this state. If the taxpayer may determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.

b. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it may reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the



customer's billing address.

2. Services Delivered By Electronic Transmission to a Business Customer.

a. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service shall be [is] delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer may determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of paragraph (b)2. of this subsection, [it is intended that] the state or states where the service is received shall reflect the location at which the service is directly used by the employees or designees of the customer.

b. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it may reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.

c. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission, if a taxpayer does not have sufficient information from which it may determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this administrative regulation. In these cases, unless the taxpayer may apply the safe harbor set forth in this subsection the taxpayer shall reasonably approximate the state or states in which the service is received as follows:

(i) [i.] By assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer;

(ii) [ii.] If the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and

(iii) [iii.] If the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address except if the taxpayer derives more than five (5) percent of its receipts from sales of services from any single customer, then the taxpayer shall identify the state in which the contract of sale is principally managed by that customer.

d. Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission, a taxpayer may not be able to determine [,] or reasonably approximate the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated in paragraph (a)2.c. of this subsection, apply the safe harbor stated in this clause. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer:

(i) Engages in substantially similar service transactions with more than 250 customers, whether business or individual; and

(ii) Does not derive more than five (5) percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer.

e. Related Member Transactions. In the case of a sale of a service by electronic transmission to a business customer that is a related member, the taxpayer may not use the secondary rule of reasonable approximation in subclause (iii) [iii] of clause c. within this subparagraph. The taxpayer [, but] may use the rule of reasonable approximation and the safe harbor provided by this administrative regulation only if the department may aggregate sales to related members in determining whether the sales exceed five (5) percent of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.

f. Examples. In these examples, unless otherwise stated, assume that the taxpayer is not related to the customer to which the service is delivered. Assume that the taxpayer is taxable in each state to which its receipts may be assigned, so that there is no requirement in these examples that the receipts shall be eliminated from the denominator of the taxpayer's receipts factor. Further, assume if relevant, unless otherwise stated, that the safe harbor set forth in clause d. of this subparagraph does not apply.

(i) Example. Support Corp, a corporation that is based outside Kentucky, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in Kentucky and other states. Support Corp supplies its services on a case-by-case basis if directly contacted by its customer. Support Corp generally provides these services through the Internet, but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp may determine where its services are received, and therefore shall assign its receipts to these locations. The receipts from sales made to Support Corp's individual and business customers shall be [are] in Kentucky to the extent that Support Corp's services are received in Kentucky.

(ii) Example. Online Corp, a corporation based outside Kentucky, provides Web-based services through the means of the Internet to individual customers who are residents in Kentucky and in other states. These customers access Online Corp's Web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp may either determine the state or states where the services are received, or, if it cannot determine the state or states, it has sufficient information regarding the place of receipt to reasonably approximate the state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp shall assign to Kentucky the receipts from sales for which it does not know the customers' locations in the same proportion as those receipts for which it has this information.

(iii) Example. Same facts as in Example (ii), except that Online Corp reasonably believes that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its Web-based services do not generally track the sales for which it does have this information. Online Corp shall assign the receipts from sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses.

(iv) Example. Same facts as in Example (iii), except that Online Corp is not taxable in one (1) state to which some of its receipts from sales may be assigned. The receipts that may be assigned to that state shall be [are] excluded from the denominator of Online Corp's receipts factor.

(v) Example. Net Corp, a corporation based outside Kentucky, provides Web-based services to a business customer, Business Corp, a company with offices in Kentucky and two (2) neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in Kentucky were responsible for seventy-five (75) percent of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for twenty-five (25) percent of Business Corp's use of Net Corp's services. Seventy-five (75) percent of the receipts from the sale are received in Kentucky. Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives five (5) percent or less of its receipts from sales to Business Corp, Net Corp shall assign the receipts under the secondary rule of approximation to the state where Business Corp principally managed the contract, or if that state is not determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than five (5) percent of its receipts from sales of services to Business Corp, Net Corp shall identify the state in which its contract of sale is

principally managed by Business Corp and shall assign the receipts to that state.

(vi) Example. Net Corp, a corporation based outside Kentucky, provides Web-based services through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. Assume that for each customer Net Corp cannot determine the state or states where its Web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate the state or states. Assume that Net Corp does not derive more than five (5) percent of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor, and may assign its receipts using each customer's billing address. If Net Corp is not taxable in one (1) or more states to which some of its receipts may be assigned, it shall exclude those receipts from the denominator of its receipts factor.

(b) Services Delivered Electronically Through or "on Behalf of" an Individual or Business Customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically, but one (1) or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

1. Rule of Determination. In the case of the delivery of a service by electronic transmission, if the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in this state if and to the extent that the end users or other third-party recipients are in this state. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service shall be [is] delivered in this state to the extent that the audience for the advertising is in this state. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service shall be [is] delivered in this state to the extent that the end users or other third-party recipients receive the services in this state. These rules apply if [whether] the taxpayer's customer is an individual customer or a business customer and if [whether] the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

2. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it may reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states.

### 3. Select Secondary Rules of Reasonable Approximation.

a. If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it may determine or approximate that location, the taxpayer shall approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.

b. The taxpayer shall approximate the extent to which the service is received in a state by using the percentage that reflects

the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area:

(i) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients; or

(ii) If the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it may determine or reasonably approximate that location.

c. Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in this state and shall apportion its income pursuant to KRS 141.120.

(i) Example: Web Corp, a corporation that is based outside Kentucky, provides Internet content to viewers in Kentucky and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements shall appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its Web site. Web Corp's sale of advertising space to its business customers shall be [is] assigned to Kentucky to the extent that the viewers of the Internet content are in Kentucky, as measured by viewings or clicks. If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate the location, Web Corp shall approximate the amount of its Kentucky sales by multiplying the amount of the sales by a percentage that reflects the Kentucky population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in the area.

(ii) Example. Retail Corp, a corporation that is based outside of Kentucky, sells tangible property through its retail stores located in Kentucky and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. The phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and shall assign the proceeds from this service to the state or states from which the phone calls are placed by the customers or prospective customers. If Answer Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate the locations, Answer Co shall approximate the amount of its Kentucky sales by multiplying the amount of its fee from Retail Corp by a percentage that reflects the Kentucky population in the specific geographic area from which the calls are placed relative to the total population in the area.

(iii) Example. Web Corp, a corporation that is based outside of Kentucky, sells tangible property to customers via its Internet website. [Web site.] Design Co designed and maintains Web Corp's website. [Web site.] including making changes to the site based on customer feedback received through the site. Design Co's services are delivered to Web Corp, the proceeds from which shall be [are] assigned pursuant to this subsection. The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co's services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

(iv) Example. Wholesale Corp, a corporation that is based outside Kentucky, develops an Internet-based information database outside Kentucky and enters into a contract with Retail Corp under which Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property, or may have elements of both. Assume that on the particular facts applicable in this example, Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. If an end user purchases access to Wholesale Corp's database from Retail Corp, Retail

Corp in turn compensates Wholesale Corp in connection with that transaction. Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp shall assign its sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate the location, Wholesale Corp shall approximate the extent to which its services are received by end users in Kentucky. Wholesale Corp shall approximate by using a percentage that reflects the ratio of the Kentucky population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in the area. It does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both.

(10) Professional Services.

(a) Except as provided in this subsection, professional services are services that require specialized knowledge, and in some cases, require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services shall include services such as:

1. Management services;
2. Bank and financial services;
3. Financial custodial services;
4. Investment and brokerage services;
5. Fiduciary services;
6. Tax preparation;
7. Payroll and accounting services;
8. Lending services;
9. Credit card services (including credit card processing services);
10. Data processing services;
11. Legal services;
12. Consulting services;
13. Video production services;
14. Graphic and other design services;
15. Engineering services; and
16. Architectural services.

(b) Overlap with Other Categories of Services.

1. Certain services that are under "professional services" as set forth in paragraph (a) 1. through 16. of this subsection are nevertheless treated as "in-person services", and shall be [are] assigned under the rules of subsection (7)(b) of this section. Professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services, or child care services, if the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider when the services are performed, are "in-person services". In-person services are assigned as these, but may be considered to be "professional services." However, professional services, if the service is of an intellectual or intangible nature, such as legal, accounting, financial, and consulting services shall be [are] assigned as professional services under the rules of this subsection, notwithstanding the fact that these services may involve some amount of in-person contact.

2. Professional services may ~~[in some cases]~~ include the transmission of one (1) or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, ~~[in these cases]~~ despite this transmission, the assignment rules that apply shall be [are] those set forth in this subsection and not those set forth in subsection (8) of this section pertaining to services delivered to a customer or through or on behalf of a customer.

(c) Assignment of Receipts. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the

service provided, no one (1) of which ~~shall [will]~~ consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and shall be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer shall be [is] the person that contracts for the service, irrespective of whether another person pays for or benefits from the taxpayer's services. ~~If [in any instance in which]~~ the taxpayer is not taxable in the state to which receipts from a sale is assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

1. General Rule. Receipts from sales of professional services shall be [are] assigned in accordance with this section, other than those services described in:

a. Subparagraph 2. of this paragraph on architectural and engineering services;

b. ~~Subparagraph 3. of this paragraph on services provided by a financial institution; and~~

c. ~~Subparagraph 3.[4.] of this paragraph on transactions with related members.~~

d. ~~Professional Services Delivered to Individual Customers.~~ Except as provided in this subsection, in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this subsection. The taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address. Except in any instance in which the taxpayer derives more than five (5) percent of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and shall assign the receipts from the service or services provided to that customer to that state.

e. ~~Professional Services Delivered to Business Customers.~~ Except as provided in this subsection, in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this section. Unless the taxpayer may use the safe harbor set forth in clause e. ~~[f.] of this subparagraph~~, the taxpayer shall assign the receipts from the sale as follows:

(i) By assigning the receipts to the state where the contract of sale is principally managed by the customer;

(ii) If the place of customer management is not reasonably determinable, to the customer's place of order; and

(iii) If the customer's place of order is not reasonably determinable, to the customer's billing address. Except in any instance in which the taxpayer derives more than five (5) percent of its receipts from sales of all services from a customer, the taxpayer shall identify the state in which the contract of sale is principally managed by the customer.

f. ~~Safe Harbor; Large Volume of Transactions.~~ Except as provided in ~~[the rules set forth in clauses c. and d. [and e.] of this subparagraph]~~, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, and does not derive more than five (5) percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of clause c. ~~[d.] of this subparagraph.~~

2. Architectural and Engineering Services with respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this subsection.

However, unlike in the case of the general rule that applies to professional services:

a. The receipts from a sale of an architectural service shall be [are] assigned to a state or states if ~~[and to the extent that]~~ the services are with respect to real estate improvements located, or expected to be located, in the state or states; and

b. The receipts from a sale of an engineering service shall be [are] assigned to a state or states if ~~[and to the extent that]~~ the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules shall apply if [whether or not] the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this subparagraph, the receipts from a sale of these services shall be assigned under the general rule for professional services.

3. ~~[Services Provided by Financial Organizations and Institutions. The apportionment rules that apply to financial organizations are set forth in KRS 141.121(5) and in this administrative regulation. In any instance in which a financial organization performs services that are to be assigned pursuant to KRS 141.121(5) and this administrative regulation, including, for example, financial custodial services, those services are considered professional services within the meaning of this subsection, and are assigned according to the general rule for professional service transactions as set forth in paragraph(c)1. of this subsection. Financial institutions are subject to the franchise tax imposed by KRS 136.505 and related statutes and administrative regulations under KRS Chapter 136 and are exempt from the corporation income tax per KRS 141.040(1)(a) and the limited liability entity tax per KRS 141.040(6)(a).~~

6. ~~[Related Member Transactions. In any instance in which the professional service is sold to a related member, rather than applying the rule for professional services delivered to business customers in paragraph (c)1.d.[e.] of this subsection, the state or states to which the service shall be [is] assigned is the place of receipt by the related member as reasonably approximated using the following hierarchy:~~

a. If the service primarily relates to specific operations or activities of a related member conducted in one (1) or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related member's payroll at the locations to which the service relates in the state or states; or

b. If the service does not relate primarily to operations or activities of a related member conducted in particular locations, but instead relates to the operations of the related member generally, then to the state or states in which the related member has employees, in proportion to the related member's payroll in those states. The taxpayer may use the safe harbor provided by this administrative regulation only if the department may aggregate the receipts from sales to related members in applying the five (5) percent rule if necessary or appropriate to avoid distortion.

4. ~~[5.] Broadcast Advertising Services. Notwithstanding anything contained in this administrative regulation to the contrary, receipts from a broadcaster's sale of advertising services to a broadcast customer shall be [are] assigned to this state if the commercial domicile of the broadcast customer is in this state.~~

5. ~~[6.] Examples. Unless otherwise stated, assume in each of these examples, if relevant, that the taxpayer is taxable in each state to which its receipts may be assigned, so that there is no requirement in the examples that the receipts shall be excluded from the denominator of the taxpayer's receipts factor. Assume that the customer is not a related member and that the safe harbor does not apply.~~

a. Example. Broker Corp provides securities brokerage services to individual customers who are resident in Kentucky and in other states. Assume that Broker Corp knows the state of primary residence for many of its customers, and if it does not know this state of primary residence, it knows the customer's billing address. Assume that Broker Corp does not derive more than five (5) percent of its receipts from sales of all services from any one (1) individual customer. If Broker Corp knows its customer's state

of primary residence, it shall assign the receipts to that state. If Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state.

b. Example. Same facts as in Example a., except that Broker Corp has several individual customers from whom it derives, in each instance, more than five (5) percent of its receipts from sales of all services. Receipts from sales to customers from whom Broker Corp derives five (5) percent or less of its receipts from sales of all services shall be assigned as described in Example a.. For each customer from whom it derives more than five (5) percent of its receipts from sales of all services, Broker Corp shall determine the customer's state of primary residence and shall assign the receipts from the services provided to that customer to that state. In any case in which a five (5) percent customer's state of primary residence is Kentucky, receipts from a sale made to that customer shall be assigned to Kentucky. In any case in which a five (5) percent customer's state of primary residence is not Kentucky, receipts from a sale made to that customer shall not be [are not] assigned to Kentucky. If receipts from a sale are assigned to a state other than Kentucky, if the state of assignment (i.e., the state of primary residence of the individual customer) is a state in which Broker Corp is not taxable, receipts from the sales shall be excluded from the denominator of Broker Corp's receipts factor.

c. Example. Architecture Corp provides building design services as to buildings located, or expected to be located, in Kentucky to individual customers who are resident in Kentucky and other states, and to business customers that are based in Kentucky and other states. The receipts from Architecture Corp's sales shall be [are] assigned to Kentucky because the locations of the buildings to which its design services relate are in Kentucky, or are expected to be in Kentucky. For purposes of assigning these receipts, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for the services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services, or is billed for the services. Further, these receipts shall be [are] assigned to Kentucky even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than Kentucky or are electronically delivered to its customer in a state other than Kentucky.

d. Example. Law Corp provides legal services to individual clients who are residents in Kentucky and in other states. In some cases, Law Corp may prepare one (1) or more legal documents for its client as a result of these services or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and if it does not know ~~the [this]~~ state of primary residence, it knows the client's billing address. Assume that Law Corp does not derive more than five (5) percent of its receipts from sales of all services from any one (1) individual client. If Law Corp knows its client's state of primary residence, it shall assign the receipts to that state. If Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the receipts to that state. For purposes of the analysis, it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state.

e. Example. Same facts as in Example d., except that Law Corp provides legal services to several individual clients who it knows have a primary residence in a state where Law Corp is not taxable. Receipts from these services shall be [are] excluded from the denominator of Law Corp's receipts factor even if the billing address of one (1) or more of these clients is in a state in which Law Corp is taxable, including Kentucky.

f. Example. Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one (1) case, the agreement is principally managed in Kentucky; in the

other cases, the agreement is principally managed in a state other than Kentucky. If the agreement for legal services is principally managed by the client in Kentucky the receipts from sale of the services shall be [are-]assigned to Kentucky; in the other cases, the receipts shall not be [are-not-]assigned to Kentucky. In the case of receipts that shall be [are-]assigned to Kentucky, the receipts shall be [are-so-]assigned even if:

(i) The legal documents relating to the service are mailed or otherwise delivered to a location in another state; or

(ii) ~~The[the]~~ litigation or other legal matter that is the underlying predicate for the services is in another state.

g. Example. Same facts as in Example f., except that Law Corp is not taxable in one (1) of the states other than Kentucky in which Law Corp's agreement for legal services that governs the client relationship is principally managed by the business client. Receipts from these latter services shall be [are-]excluded from the denominator of Law Corp's receipts factor.

h. Example. Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Corp is principally managed by Law Corp in Kentucky, the receipts from the sale of Consulting Corp's services shall be [are-]assigned to Kentucky. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly.

i. ~~[Example. Bank Corp provides financial custodial services, including the safekeeping of some of its customers' financial assets, to 100 individual customers who are resident in Kentucky and in other states. Assume for purposes of this example that Bank Corp knows the state of primary residence for many of its customers, and if it does not know the state of primary residence, it knows the customer's billing address. Assume that Bank Corp does not derive more than five (5) percent of its receipts from sales of all of its services from any single customer. Because Bank Corp does not have more than 250 customers, it may not apply the safe harbor for professional services stated in this subsection. If Bank Corp knows its customer's state of primary residence, it shall assign the receipts to that state. If Bank Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state. Bank Corp's receipts are assigned to Kentucky if the customer's state of primary residence (or billing address, in cases when it does not know the customer's state of primary residence) is in Kentucky, even if Bank Corp's financial custodial work, including the safekeeping of the customer's financial assets, takes place in a state other than Kentucky.~~

j. ~~Example. Same facts as Example i., except that Bank Corp has more than 250 customers, individual or business. Bank Corp may apply the safe harbor for professional services stated in paragraph (c)1.f. of this subsection, and may assign its receipts from sales to a state or states using each customer's billing address.~~

k. ~~Example. Same facts as Example j., except that Bank Corp derives more than five (5) percent of its receipts from sales from a single individual customer. As to the sales made to this customer, Bank Corp shall determine the individual customer's state of primary residence and shall assign the receipts from the service or services provided to that customer to that state. Receipts from sales to all other customers are assigned as described in Example j.-~~

l.] Example. Advisor Corp, a corporation that provides investment advisory services, provides these advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are residents in numerous states, which may or may not include Kentucky.

Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in Kentucky, receipts from the sale of Advisor Corp's services shall be [are-]assigned to Kentucky. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states.

~~l.[m.]~~ Example. Advisor Corp provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in Kentucky, receipts from the sale of Advisor Corp's services shall be [are-]assigned to Kentucky. It is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.

k.[n.] Example. Design Corp is a corporation based outside Kentucky that provides graphic design and similar services in Kentucky and in neighboring states. Design Corp enters into a contract at a location outside Kentucky with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than five (5) percent of its receipts from sales of services from the individual customer. All of the design work is performed outside Kentucky. Receipts from the sales shall be [are-]in Kentucky if the customer's billing address is in Kentucky.

(11) License, Lease or Rental ~~[or Lease]~~ of Intangible Property.

(a) 1. The receipts from the license of intangible property are in this state if ~~[and to the extent]~~ the intangible is used in this state. "Use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that shall apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions shall be [are-]set forth in paragraphs (b) through (f) [(b)-(f)] of this subsection. For purposes of the rules set forth in this subsection, a lease or rental of intangible property shall [is to-]be treated the same as a license of intangible property.

2. A license of intangible property that conveys all substantial rights in that property shall be [is-]treated as a sale of intangible property for purposes of this administrative regulation. For purposes of this subsection and subsection (12) of this section, a sale or exchange of intangible property shall be [is-]treated as a license of that property if the receipts from the sale or exchange are derived from payments that are contingent on the productivity, use, or disposition of the property.

3. Intangible property licensed as part of the sale or lease of tangible property shall be [is-] treated under this section as the sale or lease of tangible property.

4. In any instance in which the taxpayer is not taxable in the state to which the receipts from the license of intangible property shall be [are-]assigned, the receipts shall be [are-]excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

5. Nothing in this administrative regulation shall be construed to allow or require inclusion of receipts in the receipts factor that are not included in the definition of "receipts" pursuant to KRS 141.120(1)(e), or that are excluded from the numerator and the denominator of the receipts factor pursuant to KRS 141.120(11)(a) ~~4.b.(iii) [(4)(b)iii]~~. To the extent that the transfer of either a security or business "goodwill" or similar intangible value, including, "going concern value" or "workforce in place," may be characterized as a license or lease of intangible property, receipts from the transaction shall be excluded from the numerator and the denominator of the taxpayer's receipts factor.

(b) License of a Marketing Intangible. 1. If a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible shall be [are-]assigned to this state to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in this state.

a. Examples of a license of a marketing intangible shall include:

(i) The [the-]license of a service mark, trademark, or trade name;

(ii) Certain [certain-]copyrights;

(iii) The [the-]license of a film, television or multimedia production or event for commercial distribution; and

(iv) A [a-]franchise agreement.

b. In each of these instances, the license of the marketing intangible is intended to promote consumer sales.

2. In the case of the license of a marketing intangible, if a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to this state, it shall assign that amount or proportion to this state. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from consumers in this state, the portion of the licensing fee to be assigned to this state shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the population of this state in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services, or other items relative to the total population in that area.

3. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to this state shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the population of this state in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area.

4. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing those marketing intangible shall be presumed to be derived from within the United States.

(c) License of a Production Intangible. 1. If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right shall be [are-]assigned to this state to the extent that the use for which the fees are paid takes place in this state.

2. Examples of a license of a production intangible shall include items such as the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, if the value of the intangible lies predominately in its use in that process.

3. In the case of a license of a production intangible to a member other than a related member, if the location of actual use is unknown, it shall be [is-]presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile if [(where-)]the licensee is a business~~)]~~ or the licensee's state of primary residence if [(where-)]the licensee is an individual~~)]~~. If the department may reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in this state, it shall be [is-]presumed that the entire use is in this state, except to the extent that the taxpayer may demonstrate that the actual location of a portion of the use takes place outside this state. In the case of a license of a production intangible to a related member, the taxpayer shall assign the receipts to where the intangible property is actually used.

(d) License of a Broadcasting Intangible. 1. If a broadcaster grants a license to a broadcast customer for the right to use film programming, the licensing fees paid by the licensee for the right shall be [are-]assigned to this state to the extent that the broadcast customer is located in this state.

2. In the case of business customers, the broadcast customer's location shall be determined using the broadcast customer's commercial domicile.

3. In the case of individual customers, the broadcast customer's location shall be determined using the address of the broadcast customer listed in the broadcaster's records.

(e) License of a Mixed Intangible. If a license of intangible

property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the department shall accept that separate statement for purposes of this administrative regulation. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it shall be [is-]presumed that the licensing fees are paid entirely for the license of the marketing intangible, except to the extent that the taxpayer or the department may reasonably establish otherwise.

(f) License of Intangible Property if Substance of Transaction Resembles a Sale of Goods or Services.

1. In some cases, the license of intangible property will resemble the sale of an electronically delivered [electronically-delivered-]good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction shall be [are-]assigned by applying the rules set forth in subsection (9)(a) and (b) of this section, as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this subsection shall include transactions such as:

a. The [the-]license of database access;

b. The [the-]license of access to information;

c. The [the-]license of digital goods; and

d. The [the-]license of certain software (e.g., if the transaction is not the license of pre-written software that is treated as the sale of tangible personal property.)

2. Sublicenses. Pursuant to this paragraph, the rules of subsection (9)(b) of this section [subsection-]may apply if a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. The rules set forth in subsection (9)(b) of this section [subsection-]that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

3. Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable in each state to which its receipts may be assigned so that there is no requirement in these examples that the receipts shall be eliminated from the denominator of the taxpayer's receipts factor. Assume that the customer is not a related member.

a. Example. Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee may use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co shall pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co may sell the products at multiple store locations, including store locations that are both within and without Kentucky. Further, the licensing fees that are paid by Dealer Co are broken out on a per-store basis. The licensing fees paid to Crayon Corp by Dealer Co shall represent fees from the license of a marketing intangible. The portion of the fees [to be-]assigned to Kentucky shall be [are-] determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its Kentucky stores relative to Dealer Co's total receipts.

b. Example. Network Corp is a broadcaster that licenses rights

to its film programming to both platform distribution companies and individual customers. Platform distribution companies pay licensing fees to Network Corp for the rights to distribute Network Corp's film programming to the platform distribution companies' customers. Network Corp's individual customers pay access fees to Network Corp for the right to directly access and view Network Corp's film programming. Network Corp's receipts from each platform distribution company shall be assigned to Kentucky if the broadcast customer's commercial domicile is in Kentucky. Network Corp's receipts from each individual broadcast customer shall be assigned to Kentucky if the address of the broadcast customer listed in the broadcaster's records is in Kentucky.

c. Example. Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract, Wholesale Co may use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question shall be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the Kentucky receipts of Moniker Corp shall be ~~is~~ determined by multiplying the amount of the fee by a percentage that reflects the ratio of the Kentucky population in the specific geographic region relative to the total population in that region. If Moniker Corp is able to reasonably establish that the marketing intangible was materially used throughout a foreign country, then the population of that country shall be included in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially used in the foreign country in areas outside a particular major city; then none of the foreign country's population beyond the population of the major city is included in the population ratio calculation. If Moniker Corp is not taxable in any state ~~including a~~ or foreign country in which Wholesale Co's ultimate consumers are located, the receipts that may be assigned to that state shall be ~~are~~ excluded from the denominator of Moniker Corp's receipts factor.

d. Example. Formula, Inc and Appliance Co enter into a license contract under which Appliance Co may use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify other fees. The appliances are both manufactured and sold in Kentucky and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the department may reasonably establish that the actual use of the intangible property takes place in part in Kentucky, the royalty shall be ~~is~~ assigned based to the location of that use rather than to location of the licensee's commercial domicile. It shall be ~~is~~ presumed that the entire use is in Kentucky, except to the extent that the taxpayer may demonstrate that the actual location of some or all of the use takes place outside Kentucky. Assuming that Formula, Inc may demonstrate the percentage of manufacturing that takes place in Kentucky using the patent relative to the manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract shall constitute Formula, Inc's Kentucky receipts.

e. Example. Axel Corp enters into a license agreement with Biker Co in which Biker Co may produce motor scooters using patented technology owned by Axel Corp[,] and ~~to~~ sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside Kentucky. Assume that Axel Corp lacks actual information regarding the proportion of Biker Co's ~~Co's~~ receipts that are derived from

Kentucky customers. Assume that Biker Co is granted the right to sell the scooters in a U.S. geographic region in which the Kentucky population constitutes twenty-five (25) percent of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axel Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axel Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it shall be ~~is~~ presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or the department reasonably establishes otherwise. Assuming that neither member establishes otherwise, twenty-five (25) percent of the licensing fee shall constitute ~~constitutes~~ Kentucky receipts.

f. Example. Same facts as Example e., except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract shall constitute ~~constitutes~~ both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, the department shall:

- (i) Assign no part of the licensing fee paid for the production intangible to Kentucky; and
- (ii) Assign twenty-five (25) percent of the licensing fee paid for the marketing intangible to Kentucky.

g. Example. Better Burger Corp, which is based outside Kentucky, enters into franchise contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in Kentucky. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover~~[,] among other things,~~ the right to use the Better Burger name and service marks, food processes and cooking know-how, and ~~as well as~~ fees for management services. The upfront fees for the receipt of the Kentucky franchises shall constitute ~~constitute~~ fees paid for the licensing of a marketing intangible. These fees shall constitute Kentucky receipts because the franchises are for the right to make Kentucky sales. The monthly franchise fees paid by Kentucky franchisees shall constitute fees paid for:

- (i) The license of marketing intangibles (the Better Burger name and service marks);
  - (ii) The license of production intangibles (food processes and know-how); and
  - (iii) Personal services (management fees).
- (iv) The fees paid for the license of the marketing intangibles and the production intangibles constitute Kentucky receipts because in each case the use of the intangibles occurs ~~is to take place~~ in Kentucky. The fees paid for the personal services shall ~~are to be~~ assigned pursuant to this section.

h. Example. Online Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to individual customers that are resident in Kentucky and in other states. These customers access Online Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. The license is a license of intangible property that resembles a sale of goods or services and shall be ~~are~~ assigned in accordance with this paragraph. If Online Corp may determine or reasonably approximate the state or states where its database is accessed, it shall do so. Assuming that Online Corp cannot determine or reasonably approximate the location where its database is accessed, Online Corp shall assign the receipts made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. Online Corp's receipts from sales made to its individual customers shall be ~~are~~ in Kentucky if ~~in any case in which~~ the customer's billing address is in Kentucky.

i. Example. Net Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to a business customer, Business Corp, a company with offices in

Kentucky and two (2) neighboring states. The license is a license of intangible property that resembles a sale of goods or services and shall be [are-]assigned in accordance with this paragraph. Assume that Net Corp cannot determine where its database is accessed, but reasonably approximates that seventy-five (75) percent of Business Corp's database access took place in Kentucky, and twenty-five (25) percent of Business Corp's database access took place in other states. In that case, seventy-five (75) percent of the receipts from database access shall be [is] in Kentucky. Assume alternatively that Net Corp lacks sufficient information regarding the location where its database is accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives five (5) percent or less of its receipts from database access from Business Corp, Net Corp shall assign the receipts under subsection (9)(a)2.(2)(b) of this section to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable to the state of Business Corp's billing address. If Net Corp derives more than five (5) percent of its receipts from database access from Business Corp, Net Corp shall identify the state in which its contract of sale is principally managed by Business Corp and shall assign the receipts to that state.

j. Example. Net Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. The license is a license of intangible property that resembles a sale of goods or services and receipts from that license shall be [are-]assigned in accordance with this paragraph. Assume that Net Corp cannot determine or reasonably approximate the location where its information database is accessed. Assume that Net Corp does not derive more than five (5) percent of its receipts from sales of database access from any single customer. Net Corp may apply the safe harbor stated in subsection (9)(a)2.d. of this section, and may assign its receipts to a state or states using each customer's billing address. If Net Corp is not taxable in one (1) or more states to which some of its receipts may be otherwise assigned, it shall exclude those receipts from the denominator of its receipts factor.

k. Example. Web Corp, a corporation based outside of Kentucky, licenses an Internet-based information database to business customers who then sublicense the database to individual end users that are resident in Kentucky and in other states. These end users access Web Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, while the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services and shall be [are-]assigned by applying the rules set forth in subsection (9)(b) of this section. If Web Corp may determine or reasonably approximate the state or states where its database is accessed by end users, it shall do so. Assuming that Web Corp lacks sufficient information from which it may determine or reasonably approximate the location where its database is accessed by end users, Web Corp shall approximate the extent to which its database is accessed in Kentucky using a percentage that represents the ratio of the Kentucky population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in that area.

(12) Sale of Intangible Property.

(a) Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this subsection, a sale or exchange of intangible property includes a license of that property if the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use, or disposition of the property. For the rules

that apply if the consideration for the transfer of rights is contingent on the productivity, use, or disposition of the property, see KRS 141.120(11)(a)4.b.(4)(b)(iii).[.ii.]

1.[(a)] Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area. In the case of a sale or exchange of intangible property if the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale shall be [are-]assigned to a state if and to the extent that the intangible property is used or may be used within the state. If the intangible property is used or may be used only in Kentucky, the taxpayer shall assign the receipts from the sale to this state. If the intangible property is used or may be used in this state and one (1) or more other states, the taxpayer shall assign the receipts from the sale to this state to the extent that the intangible property is used in or authorized for use in this state, through the means of a reasonable approximation.

2.[(b)] Sale that Resembles a License (Receipts are Contingent on Productivity, Use, or Disposition of the Intangible Property). In the case of a sale or exchange of intangible property, if the receipts from the sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from the sale shall be [are-]assigned by applying the rules set forth in subsection (11) of this section that establishes rules [.] pertaining to the license, [or] lease, or rental of intangible property[.].

3.[(c)] Sale that Resembles a Sale of Goods and Services. In the case of a sale or exchange of intangible property, if the substance of the transaction resembles a sale of goods or services and if the receipts from the sale or exchange are not derived [do not derive-] from payments contingent on the productivity, use, or disposition of the property, the receipts from the sale shall be [are] assigned by applying the rules set forth in subsection (11)(f) of this section (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in subsection (11)(f)3. of this section.

4.[(d)] Excluded Receipts. a. Receipts from the sale of intangible property shall not be [are not] included in the receipts factor in any case in which the sale does not give rise to receipts within the meaning of KRS 141.120(1)(e). In addition, pursuant to KRS 141.120(11)(a)4.b.(4)(b)(iii),—receipts from the sale of intangible property shall be [are-]excluded from the numerator and the denominator of the taxpayer's receipts factor if the receipts are not referenced in KRS 141.120(11)(a)4.b.(4)(b)(i) or KRS 141.120(11)(a)4.b.(4)(b)(ii). Examples of sales[The sale-] of intangible property that are [is] excluded from the numerator and denominator of the taxpayer's receipts factor under KRS 141.120(11)(a)4.b.(4)(b)(iii) shall include[s]:

(i) The [141.120(11)(a)(4)(b)(iii) includes the-] sale of a partnership interest;

(ii) The [the-]sale of business "goodwill[-]";

(iii) The [the-]sale of an agreement not to compete; or

(iv) The sale of any~~[- or]~~ similar intangible value.

b. If [in any instance in which-] the state to which the receipts from a sale is to be assigned may be determined or reasonably approximated, but if the taxpayer is not taxable in the state, the receipts that may be assigned to the state shall be excluded from the denominator of the taxpayer's receipts factor.

5.[(e)] Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable in each state to which some of its receipts may be assigned, so that there is no requirement in these examples that the receipts to other states shall be excluded from the taxpayer's denominator pursuant to paragraph (a)4.b. of this subsection [(12)(a)(4)(b)] [(11)(a)]- of this section] and KRS 141.120(11)(c).

a.1. Example. Airline Corp, a corporation based outside Kentucky, sells its rights to use several gates at an airport located in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale shall be [are-] in Kentucky because the intangible property sold is a contract right that authorizes the holder to conduct a business activity solely in



Kentucky.

b.[2.] Example. Wireless Corp, a corporation based outside Kentucky, sells a license issued by the Federal Communications Commission (FCC) to operate wireless telecommunications services in a designated area in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale shall be [are-]in Kentucky because the intangible property sold is a government license that authorizes the holder to conduct business activity solely in Kentucky.

c.[3.] Example. Same facts as in Example b., except that Wireless Corp sells to Buyer Corp an FCC license to operate wireless telecommunications services in a designated area in Kentucky and an adjacent state. Wireless Corp shall attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Kentucky. For purposes of making this reasonable approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons that use wireless telecommunications in the two (2) states covered by the license.

d.[4.] Example. Same facts as in Example c., except that Wireless Corp is not taxable in the adjacent state in which the FCC license authorizes it to operate wireless telecommunications services. The receipts paid to Wireless Corp that may be assigned to the adjacent state shall be excluded from the denominator of Wireless Corp's receipts factor.

e.[5.] Example. Sports League Corp, a corporation that is based outside Kentucky, sells the rights to broadcast the sporting events played by the teams in its league in all fifty (50) U.S. states to Network Corp. Although the games played by Sports League Corp will be broadcast in all fifty (50) states, the games are of greater interest in the southeast region of the country, including Kentucky. Because the intangible property sold is a contract right that authorizes the holder to conduct a business activity in a specified geographic area, Sports League Corp shall attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Kentucky. For purposes of making this reasonable approximation, Sports League Corp may rely upon audience measurement information that identifies the percentage of the audience for its sporting events in Kentucky and the other states.

f.[6.] Example. Same facts as in Example e., except that Sports League Corp is not taxable in one (1) state. The receipts paid to Sports League Corp that may be assigned to that state shall be excluded from the denominator of Sports League Corp's receipts factor.

g.[7.] Example. Inventor Corp, a corporation that is based outside Kentucky, sells patented technology that it has developed to Buyer Corp, a business customer that is based in Kentucky. Assume that the sale is not one in which the receipts derive from payments that are contingent on the productivity, use, or disposition of the property. Inventor Corp understands that Buyer Corp is likely to use the patented technology in Kentucky, but the patented technology may be used anywhere (i.e., the rights sold are not rights that authorize the holder to conduct a business activity in a specific geographic area). The receipts from the sale of the patented technology shall be [are-]excluded from the numerator and denominator of Inventor Corp's receipts factor.

(13) Special Rules.

(a) Software Transactions. A license or sale of pre-written software for purposes other than commercial reproduction [(or other exploitation of the intellectual property rights that is)] transferred on a tangible medium shall be [is-]treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts shall be [are-]in this state as determined under the rules for the sale of tangible personal property set forth under KRS 141.120(10) and this administrative regulation.[related administrative regulations.] In all other cases, the receipts from a license or sale of software shall [are to-]be assigned to this state as determined otherwise under this administrative regulation. (e.g., depending on the facts, as the development and sale of custom software, see subsection (8) of this section, as a license of a marketing intangible, see subsection (11)(b) of this section, as a

license of a production intangible, see subsection (11)(c) of this section, as a license of intangible property if the substance of the transaction resembles a sale of goods or services, see subsection (11)(f) of this section, or as a sale of intangible property, see subsection (12) of this section.)

(b) Sales or Licenses of Digital Goods or Services.

1. In the case of a sale or license of digital goods or services, ~~[including, among other things, the sale of various video, audio, and software products, or similar transactions,]~~ the receipts from the sale or license shall be [are-]assigned by applying the same rules as are set forth in subsection (9)(a) and (b) or subsection 10(c)5. of this section, as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. Examples of sales or licenses of digital goods or services include sales of various video, audio, and software products or other similar transactions. For purposes of the analysis, it shall not be [is not-]relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service.

2. Providers of communication services, cable service, and Internet access. Providers shall apportion income to this state using a three (3) factor formula as provided in KRS 141.901 pursuant to KRS 141.121(3).

Section 6. Special Rules: Receipts Factor. The special sourcing rules established in this section shall apply to the particular industries, transactions or activities described in this section for use in computing the fraction for apportioning apportionable income. [The following special rules are established in respect to the receipts factor of the apportionment formula]

(1) ~~[Bank holding company. For any corporation or other business entity registered under state law as a bank holding company or registered under 12 U.S.C. 1841, et. seq., the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under 12 U.S.C. 1701 to 1750, the Federal National Housing Act, as amended, and any entity more than fifty (50) percent owned, directly or indirectly, by these holding companies, receipts are included in the receipts factor denominator and assigned to the receipts factor numerator in this state to the extent those receipts may be included in the denominator and assigned to this state under KRS 136.530.~~

(2) Bargeline. Bargelines shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which shall be [is-]miles operated in this state and the denominator of which shall be [is-]total miles operated for the taxable year. Miles operated in this state shall be fifty (50) percent of the miles operated on the Ohio River, the Big Sandy River, and the Mississippi River adjacent to this state's shoreline plus all miles operated on other inland waterways within this state.

(2) [(3)] Busline. Buslines shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which shall be [is-]miles operated in this state and the denominator of which shall be [is-]total miles operated for the taxable year.

(3) Financial institutions and financial organizations. (a) Except as otherwise provided, a financial institution or financial organization whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this section, including, a financial institution or financial organization organized under the laws of a foreign country whose effectively connected income as defined under the Internal Revenue Code is taxable both within this state and within another state.

(b) Non-apportionable income. All items of nonapportionable income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to KRS 141.120, [KRS] 141.121, and 103 KAR 16:060.

(c) Apportionable income. All apportionable income shall be apportioned to this state in accordance with KRS 141.121 and this administrative regulation.

(d) Sourcing of receipts, generally. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method for calculating receipts for purposes of the denominator is the same as the method for determining receipts for purposes of the numerator. The receipts factor shall include only those receipts described in this administrative regulation which constitute apportionable income and are included in the computation of the apportionable income base for the taxable year.

(e) Receipts from the lease of real property. The numerator of the receipts factor shall include receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state.

1. For this purpose, "real property owned" means real property:

a. ~~[(1)]~~ On which the taxpayer may claim depreciation for federal income tax purposes; or

b. ~~[(2)]~~ Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or ~~may~~~~could~~ claim depreciation if subject to federal income tax.

2. "Real property owned" does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(f) Receipts from the lease of tangible personal property. The numerator of the receipts factor shall include receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state or receipts from the sublease of property if the property is located within this state.

1. For this purpose, "tangible personal property owned" means tangible personal property:

a. ~~[(1)]~~ On which the taxpayer may claim depreciation for federal income tax purposes; or

b. ~~[(2)]~~ Property to which the taxpayer holds legal title, and on which no other person may claim depreciation for federal income tax purposes or ~~may~~~~could~~ claim depreciation if subject to federal income tax.

2. "Tangible personal property owned" does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(g) Interest, fees, and penalties imposed in connection with loans secured by real property.

1. The numerator of the receipts factor shall include interest, fees, and penalties imposed in connection with loans secured by real property if the property is located within this state. If the property is located both within this state and one (1) or more other states, the receipts described in this paragraph shall be included in the numerator of the receipts factor if more than fifty (50) percent of the fair market value of the real property is located within this state. If more than fifty (50) percent of the fair market value of the real property is not located within any one (1) state, then the receipts described in this paragraph shall be included in the numerator of the receipts factor if the borrower is located in this state.

2. The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and ~~[any and]~~ all subsequent substitutions of collateral shall be disregarded.

(h) Interest, fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor shall include interest, fees, and penalties imposed in connection with loans not secured by real property if the borrower is located in this state.

(i) Net gains from the sale of loans. The numerator of the receipts factor shall include net gains from the sale of loans. Net gains from the sale of loans shall include income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

1. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator shall be determined by multiplying ~~these[such]~~ net gains by a fraction. The numerator of the fraction shall be the amount included in the numerator of the receipts factor pursuant to paragraph

~~(g) [(f)]~~ of this subsection and the denominator shall be the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

2. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator shall be determined by multiplying ~~these[such]~~ net gains by a fraction. The numerator of the fraction shall be the amount included in the numerator of the receipts factor pursuant to paragraph ~~(h) [(g)]~~ of this subsection and the denominator shall be the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(j) Receipts from fees, interest, and penalties charged to card holders. The numerator of the receipts factor shall include fees, interest, and penalties charged to credit, debit, or similar card holders, including annual fees and overdraft fees, if the billing address of the card holder is in this state.

(k) Net gains from the sale of credit card receivables. The numerator of the receipts factor shall include net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction. The numerator of the fraction shall be the amount included in the numerator of the receipts factor pursuant to paragraph ~~(j) [(k)]~~ of this subsection and the denominator shall be the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(l) Card issuer's reimbursement fees. The numerator of the receipts factor shall include:

1. All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to paragraph ~~(j) [(l)]~~ of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders;

2. All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to paragraph ~~(j) [(l)]~~ of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; and

3. All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to paragraph ~~(j) [(l)]~~ of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(m) Receipts from merchant discount.

1. If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numerator of the receipts factor shall include receipts from merchant discount.

2. If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor shall include the receipts from the merchant discount multiplied by a fraction:

a. In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to paragraph ~~(j) [(l)]~~ of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders; ~~or~~

b. In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to paragraph ~~(j) [(l)]~~ of this subsection, and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; or

c. In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to paragraph ~~(j) [(l)]~~ of this subsection, and the denominator of which is the taxpayer's

total amount of fees, interest, and penalties charged to all other card holders.

3. The taxpayer's method for sourcing each receipt from a merchant discount shall be consistently applied to the receipt in all states that have adopted sourcing methods substantially similar to subparagraphs 1. and 2. of this paragraph ~~[(4)]~~ and shall be used on all subsequent returns for sourcing receipts from ~~the[such]~~ merchant unless the department permits or requires application of an alternative method.

(n) Receipts from ATM fees. The receipts factor shall include all ATM fees that are not forwarded directly to another bank.

1. The numerator of the receipts factor shall include fees charged to a cardholder for the use at an ATM of a card issued by the taxpayer if the cardholder's billing address is in this state.

2. The numerator of the receipts factor shall include fees charged to a cardholder, other than the taxpayer's cardholder, for the use of ~~the[such]~~ card at an ATM owned or rented by the taxpayer, if the ATM is in this state.

(o) Loan servicing fees.

1. a. The numerator of the receipts factor shall include loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph ~~(g)~~~~[(f)]~~ of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b. The numerator of the receipts factor shall include loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph ~~(h)~~~~[(g)]~~ of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

2. If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include these fees if the borrower is located in this state.

(p) Receipts from services. The numerator of the receipts factor shall include receipts from services not otherwise apportioned under this section, sourced in accordance with Section 5(7), (8), (9), and (10) of this administrative regulation.

(q) Receipts from investment assets and activity and trading assets and activity.

1. Interest, dividends, net gains not less than zero, and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports shall be included in the receipts factor. Investment assets and activities and trading assets and activities shall include:

- a. Equities;
- b. Federal funds;
- c. Foreign currency transactions;
- d. Forward contracts;
- e. Future contracts;
- f. Investment securities;
- g. Notional principal contracts such as swaps;
- h. Options;
- i. Securities purchased and sold under agreements to resell or repurchase; or

j. Trading account assets.

2. With respect to the investment and trading assets and activities described in this subparagraph, the receipts factor shall include:

a. the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and

b. the amount by which interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from ~~the[such]~~ assets and activities.

3. The numerator of the receipts factor shall include interest, dividends, net gains not less than zero, and other income from investment assets and activities and from trading assets and activities described in subparagraph 1. of this ~~paragraph~~~~[subsection]~~ that are attributable to this state as follows:

a. The amount of interest, dividends, net gains not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator shall be determined by multiplying all income from these assets and activities by a fraction, the numerator of which is the average value of ~~these[such]~~ assets which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the average value of all ~~these[such]~~ assets.

b. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph 2.a. of this ~~paragraph~~~~[subsection]~~ from ~~these[such]~~ funds and securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the average value of all ~~these[such]~~ funds and ~~[such]~~ securities.

c. The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in clauses a. and b. of this subparagraph ~~[3]~~), attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph 2.b.~~[-]~~ of this ~~paragraph~~~~[subsection]~~ by a fraction, the numerator of which is the average value of ~~these[such]~~ trading assets which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the average value of all ~~these[such]~~ assets.

d. For purposes of this subparagraph ~~[3]~~, average value shall be determined as follows:

(i) Value of property owned by the taxpayer. The value of real property and tangible personal property owned by the taxpayer shall be the original cost or other basis of ~~the[such]~~ property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(ii) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer shall be computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two ~~(2)~~. If averaging on this basis does not properly reflect average value, the department may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. ~~If~~~~[When]~~ averaging on a more frequent basis is required by the department or is elected by the taxpayer, the same method of valuation shall be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission to use an alternative method for determining average value from the department, or the department requires a different method for determining average value.

4. In lieu of using the method set forth in subparagraph 3. of this ~~paragraph~~, the taxpayer may elect or the department may require, the use of the method set forth in this subparagraph ~~[4.]~~ in order to allocate and apportion income to fairly represent the extent of a taxpayer's business activity in this state.

a. The amount of interest, dividends, net gains not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator shall be determined by multiplying all income from these assets and activities by a fraction, the numerator of which is the gross income from ~~these[such]~~ assets and activities which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the gross income

from all these[such] assets and activities.

b. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph 2.a. of this paragraph[subsection] from the funds and securities by a fraction, the numerator of which is the gross income from these[such] funds and the securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all these funds and securities.

c. The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book and foreign currency transactions, but excluding amounts described in clauses a. and b. of this subparagraph [4-], attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph 2.b. of this paragraph[subsection] by a fraction, the numerator of which is the gross income from these[such] trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all these[such] assets and activities.

5. If the taxpayer elects or is required by the department to use the method set forth in subparagraph 4. of this paragraph, the taxpayer shall use this method on all subsequent returns unless the taxpayer petitions the department in accordance with KRS 141.120(12)(b)2.[(2)] and receives permission to use a different method on subsequent returns.

6. The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one (1) regular place of business and one (1) regular place of business is in this state and one (1) regular place of business is outside this state, the asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, these policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(r) All other receipts. The numerator of the receipts factor shall include all other receipts pursuant to the rules set forth in KRS 141.120, [KRS] 141.121, and this administrative regulation.

(4) Passenger airline. Pursuant to KRS 141.121(2)(b)1.[(4)], passenger airlines shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is Kentucky revenue passenger miles in this state and the denominator of which is total revenue passenger miles for the taxable year.

(5) Pipeline. Pipeline companies shall determine operating receipts in this state by multiplying total operating revenues by a fraction, the numerator of which is barrel miles transported in this state and the denominator of which is total barrel miles transported for the taxable year.

(6) Public service company. Public service companies shall allocate and apportion net income in accordance with KRS 141.121(5) and this administrative regulation.

(7) Qualified air freight forwarder. Pursuant to KRS 141.121(2)(b)2.[(2)], qualified air freight forwarders shall determine freight forwarding receipts in this state by multiplying total freight forwarding revenues by a fraction, the numerator of which shall be [is-]miles operated in this state and the denominator of which shall be [is-]total miles operated by the affiliated airline for the taxable year.

(8) Railroad. Railroads shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which shall be [is-]revenue car miles in this state and the denominator of which shall be [is-]total revenue

car miles for the taxable year.

(9) Regulated investment company. Regulated investment companies shall apportion income pursuant to KRS 141.120 and this administrative regulation,[-] except that a regulated investment company may elect an alternative method for determining receipts pursuant to KRS 141.121(4)(b).

(10) Securities brokerage services. Securities brokers operating within certain Kentucky Enterprises Zones defined by KRS 141.121(4)(c), shall apportion income pursuant to KRS 141.120 and this administrative regulation, except that a securities broker so defined may elect an alternative method for determining receipts pursuant to KRS 141.121(4)(c).

(11) Truckline. Trucklines shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which shall be [is-]miles operated in this state and the denominator of which shall be [is-]total miles operated for the taxable year.

Section 7. This administrative regulation shall apply to tax periods beginning on or after January 1, 2018.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: October 14, 2021

FILED WITH LRC: October 15, 2021 at 11:44 a.m.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance on the computation of the corporation income tax receipts factor used to compute a multistate corporation's taxable net income subject to Kentucky's corporation income tax. This regulation includes guidance specific to the computation of the receipts factor for financial institutions that are now subject to corporation income tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide corporation income tax taxpayers with guidance on the computation of the corporation income tax receipts factor used to compute a multistate corporation's taxable net income.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS Chapter 13A that require an agency to maintain guidance and current statutory references in its regulations to avoid deficiency. This regulation also includes guidance specific to the computation of the receipts factor for financial institutions that are now subject to corporation income tax under KRS Chapter 141.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language assists a corporate taxpayer by providing guidance on the computation of the corporation income tax receipts factor used to compute a multistate corporation's taxable net income subject to Kentucky's corporation income tax. This regulation includes guidance specific to the computation of the receipts factor for financial institutions that are now subject to corporation income tax.

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

(a) How the amendment will change this existing administrative regulation: This amended regulation corrects statutory references and provides guidance specific to the computation of the receipts factor for financial institutions that are now subject to corporation income tax.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(c) How the amendment conforms to the content of the

authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Multistate corporations, including financial institutions doing business in the Commonwealth of Kentucky may utilize this regulation when computing their Kentucky corporation income tax.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments related to multistate financial institutions will enable them to accurately compute their corporation income tax liability. Other amendments to this regulation are merely technical to conform with the provisions of KRS Chapter 13A.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Multistate corporations will need to follow the guidance provided in this regulation to file a correct corporation income tax return.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An accurate filing of corporation income tax returns will occur.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. The administrative costs have already been absorbed through current staff and budgeted funding.

(b) On a continuing basis: There are no additional cost expected continually at this time.

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

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

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 141.120, and 141.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No expenditures or revenues are expected to be generated for state or local agencies by this administrative regulation. This administrative

regulation only provides guidance on how a multistate corporation computes the receipts factor.

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

(c) How much will it cost to administer this program for the first year? Current budgetary funding for the Department of Revenue will absorb the administrative costs associated with administering this program.

(d) How much will it cost to administer this program for subsequent years? No additional funding (not already budgeted to the Department) is needed for subsequent years at this time.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### BOARDS AND COMMISSIONS

##### Board of Dentistry

##### (Amended After Comments)

#### 201 KAR 8:520. Fees and fines.

RELATES TO: KRS 218A.205(3)(e)4., 313.022, 313.030, 313.100(2)(c)

STATUTORY AUTHORITY: KRS 218A.205(3)(e)4., 313.022(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

Section 1. Dentists. (1) The initial licensure fee for a [general] dental license applied for in the first year of the biennial license period ~~[a nonrenewal year]~~ shall be \$325.

(2) The initial licensure fee for a [general] dental license applied for in the second year of the biennial license period ~~[a renewal year]~~ shall be \$175.

(3) The renewal fee for a [general] dental license appropriately renewed ~~[on or]~~ before the expiration of the license shall be \$295.

(4) The ~~[renewal]~~ reinstatement fee for an expired ~~[a general]~~ dental license reinstated ~~[renewed]~~ between January 1 and January 15 of the year following the expiration of the license shall be ~~\$575~~ **\$280 in addition to the renewal fee**.

(5) The ~~[renewal]~~ reinstatement fee for an expired ~~[a general]~~ dental license reinstated ~~[renewed]~~ between January 16 and January 31 of the year following the expiration of the license shall be ~~\$835~~ **\$560 in addition to the renewal fee**.

(6) The ~~[renewal]~~ reinstatement fee for an expired ~~[a general]~~ dental license reinstated ~~[renewed]~~ on or after February 1 of the year following the expiration of the license shall be ~~\$1,141~~ **\$1,120 in addition to the renewal fee**.

(7) ~~The reinstatement fee for a properly retired dental license shall be \$325 [initial licensure fee and renewal fee for a charitable limited dental license shall be twenty-five (25) dollars].~~ ~~[The initial fee for a dental anesthesia or sedation permit shall be \$250.~~

~~(8) The renewal fee for a dental anesthesia or sedation permit shall be seventy-five (75) dollars and is in addition to the renewal fee for a general dental license.~~

~~(9) The initial fee for an anesthesia or sedation facility certificate shall be \$250.~~

~~(10) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.]~~

~~(8) [(44)] The initial licensure fee for a dental specialty license [application fee] shall be \$100.~~

~~(9) [(42)] The renewal fee for a dental specialty license~~

VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

properly renewed before the expiration of the license [renewal fee] shall be fifty (50) dollars ~~[and is]~~ in addition to the renewal fee for a standard [general] dental license.

~~(10)[(13)]~~ The reinstatement fee for an expired [reinstatement of] a ~~[properly][retired]~~ [general] dental specialty license shall be fifty (50) dollars in addition to the reinstatement fee for an expired standard dental license [\$325] [350].

~~(11)[(14)]~~ The reinstatement fee for [reinstatement of] a properly [properly] retired dental specialty license shall be fifty (50) dollars ~~[and is]~~ in addition to the reinstatement [renewal] fee for a retired standard [general] dental license.

(12) The initial licensure fee and renewal fee for a charitable limited dental license shall be twenty-five (25) dollars.

(13) The initial fee for a dental anesthesia or sedation permit shall be \$250.

(14)[(13)] The renewal fee for a dental anesthesia or sedation permit properly renewed before the expiration of the permit shall be seventy-five (75) dollars.

(15) The reinstatement fee for an expired dental anesthesia or sedation permit shall be seventy-five (75) dollars.

Section 2. Dental Hygienists. (1) The initial licensure fee for a dental hygiene license applied for in the first year of the biennial license period ~~[a nonrenewal year]~~ shall be \$125.

(2) The initial licensure fee for a dental hygiene license applied for in the second year of the biennial license period ~~[a renewal year]~~ shall be seventy-five (75) dollars.

(3) The renewal fee for a dental hygiene license appropriately renewed ~~[on or]~~ before the expiration of the license shall be \$110.

(4) The ~~[renewal]~~ reinstatement fee for an expired dental hygiene license reinstated ~~[renewed]~~ between January 1 and January 15 of the year following the expiration of the license shall be \$240[130 in addition to the renewal fee].

(5) The ~~[renewal]~~ reinstatement fee for an expired dental hygiene license reinstated ~~[renewed]~~ between January 16 and January 31 of the year following the expiration of the license shall be \$370[260 in addition to the renewal fee].

(6) The ~~[renewal]~~ reinstatement fee for an expired dental hygiene license reinstated ~~[renewed]~~ on or after February 1 of the year following the expiration of the license shall be \$630[520 in addition to the renewal fee].

(7) The initial licensure fee and renewal fee for a charitable limited dental hygiene license shall be twenty-five (25) dollars.

(8) The initial registration fee to administer local anesthesia [registration fee] shall be fifty (50) dollars.

~~(9)[(8)]~~ The initial registration fee to practice under [dental hygiene]—general supervision [registration fee] shall be fifty (50) dollars.

~~(10)[(9)]~~ The initial registration fee to administer an [dental hygiene] intravenous access line [registration fee] shall be fifty (50) dollars.

~~(11)[(40)]~~ The initial registration fee to perform [dental hygiene] laser debridement [registration fee] shall be fifty (50) dollars.

~~(12)[(41)]~~ The initial registration fee to be a public health registered dental hygienist shall be fifty (50) dollars.

(13) The reinstatement fee for ~~[reinstatement of]~~ a properly retired dental hygiene license shall be \$125.

Section 3. Anesthesia and Sedation Facilities. (1) The initial certification fee for an anesthesia or sedation facility shall be \$250.

(2) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.

(3) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated between January 1 and January 15 of the year following the expiration of the certificate shall be \$125[50 in addition to the renewal fee].

(4) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated between January 16 and January 31 of the year following the expiration of the certificate shall be \$175[100 in addition to the renewal fee].

(5) The reinstatement fee for an expired anesthesia or sedation

facility certificate reinstated on or after February 1 of the year following the expiration of the certificate shall be \$225[150 in addition to the renewal fee].

Section 4. Dental Laboratories. (1) The initial registration fee for a commercial dental laboratory shall be \$150.

(2) The renewal fee for a dental laboratory registration appropriately renewed on or before the expiration of the registration shall be \$150.

(3) The reinstatement fee for an expired dental laboratory registration reinstated between August 1 and August 15 following the expiration of the certificate shall be \$250[100 in addition to the renewal fee].

(4) The reinstatement fee for an expired dental laboratory registration reinstated between August 16 and August 31 following the expiration of the certificate shall be \$300[150 in addition to the renewal fee].

(5) The reinstatement fee for an expired dental laboratory registration reinstated on or after September 1 following the expiration of the certificate shall be \$350[200 in addition to the renewal fee].

Section 5. General Fees. (1) The fee for the verification of a license shall be forty (40) dollars.

(2) ~~[The fee for a duplicate license shall be twenty-five (25) dollars.]~~

~~(3)~~ The fee for a contact list for either currently licensed dentists, currently licensed dental hygienists, or currently registered dental assistants shall be:

(a) \$100 for lists obtained for not-for-profit use; and

(b) \$1,000 for lists obtained for profit use.

~~(3)[(4)]~~ The fee for a query of the National Practitioner Data Bank shall be twenty-five (25) dollars.]

~~(5)~~ The fee for any returned check or rejected electronic payment shall be ~~[twenty-five (25) dollars]~~ equal to the fee charged to the board by the bank.

Section 6. ~~[Section 4.]~~ General Fines. (1) The payment of reinstatement fees shall not be construed to exempt licensees and other entities regulated by the board from additional penalties associated with practicing or operating without an appropriate license, permit, or registration.

(2) Fines shall be determined ~~[may be agreed to]~~ by settlement or agreed order ~~[agreement or as listed in this section]~~ as negotiated by the Law Enforcement Committee or as issued by a hearing panel in accordance with KRS 313.100.]

~~(2)~~ The costs of a disciplinary action taken as a result of a hearing shall be equal to the amount of all actual and necessary costs associated with the hearing.

~~(3)~~ If a licensee is found to be deficient on hours following a continuing education audit, the fine shall be \$200 per hour deficient not to exceed \$5,000.

~~(4)~~ The fine for failure of a follow-up infection control inspection shall be \$500.

~~(5)~~ The fine for failure of a follow-up anesthesia or sedation facility inspection, performed no sooner than thirty (30) days following an initial failed inspection, shall be \$1,500.]

Section 7. ~~[Section 5.]~~ All fines and fees paid to the board shall be nonrefundable.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: October 15, 2021

FILED WITH LRC: October 15, 2021 at 11:45 a.m.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets amounts for the various fees and fines issued by the board.

(b) The necessity of this administrative regulation: KRS 313.022(1) requires the board to promulgate administrative regulations regarding fees and fines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a schedule of reasonable fees, fines, and other charges that do not exceed the national average of other state dental boards, as required by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standardized fees and fines in conformity with its authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides language to clarify fee structures and categories.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to minimize confusion about fee structures and improve conformity with KRS 313.030(4).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates and clarifies the schedule of fees and fines in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the schedule of fees and fines issued by the board is clear, appropriate, and uniformly applied in compliance with applicable law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately six thousand dentists and dental hygienists licensed in Kentucky, as well as future applicants for such licenses. Dental labs doing business in Kentucky will also be affected.

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

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will continue to require that entities pay all applicable fee(s). The vast majority of entities will experience no changes as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs for most entities will be unchanged as a result of this amendment. Exceptions include the establishment of a \$25 limited license fee for out of state providers performing charitable work in Kentucky as well as various penalties for the late renewal of sedation facilities and dental labs, which range from \$50 to \$200. Also, licensees who pay fines associated with settlement agreements or administrative hearings will no longer need to conform to a mandatory fine schedule. Instead, these punitive costs will be determined on a case-by-case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the transparency and detail this amendment adds to the existing administrative regulation, thereby reducing non-compliance and associated costs.

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

(a) Initially: No added costs are anticipated as a result of the amendment.

(b) On a continuing basis: Added costs as a result of this amendment are anticipated to be negligible or nonexistent.

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

implementation and enforcement of this administrative regulation? Licensure fees will fund implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new fee categories will generate minimal revenue but should still cover the negligible expenses associated with implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, this administrative regulation is specifically intended to provide a fee schedule in accordance with its authorizing statute.

(9) TIERING: Is tiering applied? No, this amendment impacts all similarly situated practitioners equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.022.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to alter the revenue generated by the existing administrative regulation.

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

(c) How much will it cost to administer this program for the first year? This amendment is not expected to alter the costs associated with the existing administrative regulation.

(d) How much will it cost to administer this program for subsequent years? This amendment is not expected to alter the costs associated with the existing administrative regulation.

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

Revenues (+/-): None expected. Any increase in revenue from fees should be negligible and will likely be offset by a decrease in revenue from fines as a result of improved compliance.

Expenditures (+/-): None expected.

Other explanation: Not applicable.

BOARDS AND COMMISSIONS

Board of Nursing

(Amended After Comments)

**201 KAR 20:472. Initial approval for dialysis technician training programs.**

RELATES TO: KRS 314.035, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs.

Section 1. (1) A training program that prepares an individual to become a credentialed dialysis technician shall be approved by the board of nursing.

(2)(a) A dialysis technician training program that seeks to be approved by the board shall file an Application for Dialysis

Technician Training Program Approval and pay a fee of \$2,000; and

(b) The dialysis technician training program shall include with its application:

1. A copy of the approval of certification for the dialysis technician training program's governing organization to operate a renal dialysis center from the Centers for Medicare and Medicaid Services (CMS); and

2. The most recent site visit or survey report a statement of deficiencies and plan of correction, if applicable.

Section 2. A training program that prepares an individual to become a dialysis technician which is located in this state shall meet the standards established by this administrative regulation. A training program that is located out of state shall not be subject to the approval process specified in this administrative regulation. However, an applicant who has completed an out of state training program may apply for a dialysis technician credential pursuant to 201 KAR 20:476, Section 1(1)(b).

Section 3. Renal Dialysis Organization. (1)(a) An organization which is licensed to operate a renal dialysis center pursuant to 902 KAR 20:018 shall assume full legal responsibility for the overall conduct of the dialysis technician training program.

(b) The organization shall appoint a program administrator who shall be administratively responsible for the oversight of the dialysis technician training program on a twelve (12) month basis.

(c) The organization shall submit to the board in writing the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.

(d) The board shall be notified in writing of a change, vacancy, or pending vacancy, in the position of the program administrator within thirty (30) days of the dialysis technician training program's awareness of the change, vacancy, or pending vacancy.

(2) The organization shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each dialysis technician training program location.

(3) A system of official records and reports essential to the operation of the dialysis technician training program shall be maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system of records shall include:

(a) A policy that all records shall be maintained for at least five (5) years;

(b) Provider name, dates of program offerings and sites of the training program;

(c) Admission materials, grades received, and clinical performance records;

(d) Trainee roster that includes name, date of birth, social security number, and program completion date;

(e) Faculty records including:

1. Validation of current licensures or credentials; and

2. Performance evaluation for faculty employed more than one (1) year.

(f) Systematic plan of evaluation;

(g) Graduates of the dialysis technician training program; and

(h) Administrative records and reports from accrediting agencies.

Section 4. Program Administrator and Assistant Program Administrator. (1) The program administrator shall have the following qualifications:

(a) 1. A minimum of a master's degree from an accredited college or university;

2. A program administrator who currently does not hold a master's degree from an accredited college or university shall be required to obtain the degree within five (5) years of the effective date of this administrative regulation. The program administrator shall provide documentation that shows active and steady

progression towards the degree;

3. The board may waive this requirement upon a showing that the proposed program administrator is otherwise qualified.

(b) A minimum of the equivalent of one (1) year of full time teaching experience;

(c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;

(d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;

(e) An active and unencumbered Kentucky registered nurse license, temporary work permit or multistate privilege; and

(f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.

(2) A dialysis technician training program may have an assistant program administrator at each location. An assistant program administrator shall have the following qualifications:

(a) 1. A minimum of a baccalaureate degree in nursing;

**2. An assistant program administrator who currently does not hold a baccalaureate degree in nursing from an accredited college or university shall be required to obtain the degree within five (5) years of the effective date of this administrative regulation. The assistant program administrator shall provide documentation that shows active and steady progression towards the degree;**

**3. The board may waive this requirement upon a showing that the proposed assistant program administrator is otherwise qualified.**

(b) A minimum of the equivalent of one (1) year of full time teaching experience;

(c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;

(d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;

(e) An active and unencumbered Kentucky registered nurse license, temporary work permit or multistate privilege; and

(f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.

Section 5. Faculty. (1) The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the student, and the educational technology utilized.

(2) The faculty shall be approved by the program administrator and shall include didactic and clinical faculty.

(3) The name, title and credential identifying the education and professional qualifications of each didactic and clinical faculty shall be provided to the board within thirty (30) days of hire. With each change in faculty, whether a new hire or a termination or retirement, an updated list of current faculty shall be provided to the board.

(4) Didactic faculty.

(a) Didactic faculty shall have a minimum of a baccalaureate degree from an accredited college or university.

**1. A faculty member who currently does not hold a baccalaureate degree from an accredited college or university shall be required to obtain the degree within five (5) years of the effective date of this administrative regulation. The program administrator shall provide documentation that shows active and steady progression towards the degree.**

**2. The board may waive this requirement upon a showing that the faculty member is otherwise qualified.**



(b) Didactic faculty shall consist of multidisciplinary members with expertise in the subject matter.

(c) Didactic faculty who hold a credential other than as a registered nurse shall document a minimum of two (2) years full time or equivalent experience in their profession or discipline.

(d) Didactic faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(e) Didactic faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(5) Clinical faculty and preceptors.

(a) Clinical faculty or a preceptor shall hold a current, unencumbered Kentucky nursing license, temporary work permit, or multistate privilege or a current, unencumbered Kentucky dialysis technician credential.

(b) Clinical faculty or a preceptor shall have evidence of clinical competencies in end stage renal disease and dialysis care.

(c) A preceptor who is a dialysis technician shall hold certification by one of the following dialysis technician certification organizations: the Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT).

(6) There shall be documentation that the clinical faculty have been oriented to the course, program outcomes, student learning objectives, evaluation methods used by the faculty, and documented role expectations.

Section 6. Standards for Training. (1) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the training program shall be clearly defined in writing by the faculty and shall be consistent with those of the Renal Dialysis Center.

(b) The program outcomes shall be consistent with those required by the Centers for Medicare and Medicaid Services and the dialysis technician certification organizations listed in paragraph (2)(b) of this section.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(d) The training program shall include a minimum of 200 hours of didactic course work and 200 hours of direct patient contact. The didactic course work and direct patient contact shall be at least ten (10) weeks. The training program shall maintain a log of clinical hours for each student. It ~~may~~**shall** also include an internship of at least 160 hours. The internship shall begin after **two (2) unsuccessful/successful completion of** attempts to pass the final examination. **The internship shall be completed prior to a third final examination attempt.** The internship shall be under the supervision of a registered nurse and shall include a preceptor.

(2) The curricula of the program shall minimally include the following topics:

(a) The legal and ethical aspects of practice including:

1. The history of dialysis;
2. The state and federal regulations governing dialysis including 201 KAR 20:478, 902 KAR 20:018, 907 KAR 1:400, and 42 C.F.R. 494.140;
3. The resources available for pursuing personal and career development;
4. The principles and legal aspects of documentation, communication and patient rights;
5. The roles of the dialysis technician and other multidisciplinary team members;
6. The principles related to patient safety; and
7. The role of the board of nursing.

(b) Anatomy and physiology applicable to renal function including:

1. Renal anatomy;
2. Organs of the urinary system and components of the

nephron; and

3. Functions of the normal kidney.

(c) Diseases of the kidney including:

1. Causes and complications of acute renal failure; and
2. Causes and complications of chronic renal failure.

(d) The psychosocial and physical needs of the end stage renal disease (ESRD) patient and family including:

1. The impact on family and social systems;
2. Coping mechanisms utilized;
3. Rehabilitative needs;
4. Community resources available;
5. All aspects of renal diet and fluid restrictions; and
6. Educational needs of patients receiving dialysis including the role of the technician and resources available.

(e) The principles of pharmacology as related to ESRD including:

1. Commonly used medications and their side effects;
2. The principles of medication administration;
3. The indications, dosage, action, and adverse effects of heparin, local anesthetics, and normal saline; and
4. The accurate administration of heparin, local anesthetics and normal saline.

(f) Aseptic techniques and established infection control practices including:

1. Dialysis precautions as issued by the United States Centers for Disease Control; and
2. Proper hand washing technique.

(g) Principles of dialysis and dialysis treatment including:

1. Definitions and terminology;
2. Principles of osmosis, diffusion, ultrafiltration and fluid dynamic;
3. The structure and function of various types of circulatory access sites and devices;
4. The indications, advantages, disadvantages, and complications of internal arteriovenous (A/V) fistulas and A/V grafts, and central venous access devices;
5. The various types of dialyzers;
6. The benefits, risks and precautions associated with dialyzer reuse;
7. The purpose and concept of water treatment;
8. Knowledge and ability to manage and operate dialysis equipment;
9. Knowledge and ability to appropriately monitor and collect data throughout the course of treatment;
10. The etiology, signs and symptoms, prevention, intervention and treatment, and options for the most common complications;
11. The knowledge and ability to safely initiate and discontinue treatment; and
12. Routine laboratory tests, values and collection techniques.

(h) Other treatment modalities for ESRD including:

1. Renal transplantation; and
2. Home dialysis options.

(3) Implementation of the curriculum.

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program and shall prepare the student to meet the qualifications for certification as established by the Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT).

(c) The dialysis technician training program shall have written measurable program outcomes that reflect the role of the dialysis technician graduate upon completion of the program.

(d) The dialysis technician training program shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(e) A course syllabus shall be developed to include outcomes, planned instruction, learning activities, and method of evaluation.

(f) The teaching methods and activities of both instructor and learner shall be specified. The activities shall be congruent with

stated objectives and content shall reflect adult learning principles.

(g) A copy of the course syllabus shall be on file in the dialysis technician training program office and shall be available to the board upon request.

(h) Any proposed substantive changes to the dialysis technician training program syllabus shall be submitted to the board in writing at least two (2) months prior to implementation and shall not be implemented without approval from the board. A substantive change is any change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum.

(i) Training may be offered through distance learning technologies. Training offered through the use of distance learning technologies shall be comparable to the training offered in a campus based program.

(4) The curriculum shall require that the student hold a current Basic Life Support (BLS) certificate.

#### Section 7. Students in Dialysis Technician Training Programs.

(1) Preadmission requirements shall be stated and published in all publications utilized by the dialysis technician training program including recruitment materials.

(a) Program information communicated by the program shall be accurate, complete, consistent, and publicly available.

(b) Participation shall be made available for students in the development, implementation, and evaluation of the program.

(2) Written dialysis technician training program student policies shall be accurate, clear, and consistently applied.

(3) Upon admission to the training program, each student shall be advised in electronic or written format of policies pertaining to:

(a) Prerequisites for admission, readmission or dismissal;

(b) Evaluation methods that include the grading system;

(c) Any fees or expenses associated with the training program and refund policies;

(d) Health requirements and other standards as required by the renal dialysis center;

(e) Student responsibilities;

(f) A plan for emergency care while in the clinical setting; and

(g) Program completion requirements.

(4) A student enrolled in a training program is exempt from the credentialing requirement while enrolled. The student shall use the title dialysis technician (DT) trainee.

#### Section 8. Program Completion Requirements. (1)

Requirements for successful completion of the dialysis technician training program shall be clearly specified.

(2) The requirements shall provide evidence of clinical competency through the use of evaluation methods and tools that measure the progression of the student's cognitive, affective, and psychomotor achievement of clinical outcomes based on published rubrics and sound rationale;

(3) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(4) A final examination shall be administered only during the final forty (40) hours of the first 400 hours of the training program.

(a) The final examination shall be mapped to program outcomes and blueprinted to the examination content of one (1) of the certification organizations as listed in Section 6 (2)(b) of this administrative regulation.

(b) Following successful completion of the final examination, the student may begin the internship.

(5) The individual who successfully completes the training program, including the internship, shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of the program administrator or the assistant program administrator.

(6) The program shall submit the List of Dialysis Technician Training Program Graduates within three (3) working days of the

program completion date.

Section 9. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", 4/2021; and

(b) "List of Dialysis Technician Training Program Graduates", 4/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.

JESSICA WILSON, President

APPROVED BY AGENCY: September 24, 2021

FILED WITH LRC: October 12, 2021 at 11:45 a.m.

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, email [Morgan.Ransdell@ky.gov](mailto:Morgan.Ransdell@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for dialysis technician ("DT") training programs.

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 314.137(2) by establishing standards for DT training programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021, as amended effective June 30, 2021, and KRS 314.137(2), by establishing standards for DT training programs.

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

(a) How the amendment will change this existing administrative regulation: The fee increases set forth in this amendment are addressed below. This regulation: heightens the qualification requirements for a DT training program administrator and for faculty; creates an assistant program director and preceptor roles, and sets minimum qualifications for the roles; assigns responsibility for the overall conduct of a DT training program to a renal dialysis organization licensed pursuant to 902 KAR 20:018; requires the submission to the Board of Centers for Medicaid Services (CMS) reports, surveys and correction plans; specifies an "in state" requirement as a prerequisite for approval, but clarifies that graduates of out-of-state DT training programs may obtain the credential in Kentucky pursuant to 201 KAR 20:476 Section 1(1)(b); specifies that the two hundred hour clinical component last a minimum of ten weeks and involve direct patient contact; sets new DT training program curriculum requirements including principles of dialysis, psychosocial and physical needs of end stage renal disease patients, related principles of pharmacology, and infection control; requires Board approval for substantive syllabus and curriculum changes; allows for didactic education to be accomplished via distance learning technologies; requires publication of pre-admission requirements; requires students to be certified in basic life support; defines the internship phase of DT training, which replaces the "DT applicant" phase and designation; modifies program completion requirements; and modifies the format of the material incorporated by reference within the regulation (DT training program application and list of DT training program graduates).

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary for the oversight of the practices and training of dialysis technicians, as required by KRS

314.021 (amendment effective June 30, 2021), and KRS 314.137(2).

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137(2), by establishing appropriate standards for DT training programs in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will assist in the effective administration of KRS 314.021, KRS 314.131(1) and KRS 314.137(2), by establishing standards for DT training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 8, 2021, there were 712 dialysis technicians with a current and active Kentucky DT credential. There are currently seven DT training programs that are located and licensed in Kentucky. The Kentucky Board of Nursing, the seven Kentucky DT training programs in the Commonwealth, and all renal dialysis organizations that provide dialysis services within the Commonwealth will all be affected by the repeal of 201 KAR 20:470 and the promulgation of 201 KAR 20:472. The two largest renal dialysis organizations in Kentucky are Davita, Inc., and Fresenius Medical Care North America. Students who are not currently certified in basic life support will be required to undergo training, and certain program administrators, faculty and preceptors who do not satisfy new minimum qualification requirements will have five years in which to meet the new requirements. Board staff is unaware of the number or identity of new renal dialysis organizations that will seek initial approval status following the effective date of 201 KAR 20:472.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each existing DT training program and renal dialysis organization in Kentucky will need to evaluate their programmatic requirements and standards in light of 201 KAR 20:472, as the standards for program approval are also relevant to the evaluation of existing programs pursuant to 201 KAR 20:472 Section 2 and 201 KAR 20:474 Section 2(1). Any new DT training programs and renal dialysis organizations that seek to open in the Commonwealth will be guided by 201 KAR 20:472, and must meet the requirements set forth in the regulation. DT students who are not currently certified in basic life support will need to obtain such certification. Individual program administrators, faculty, and preceptors will require additional education within five years of the effective date of the regulation, if they do not currently satisfy new minimum qualification requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): New DT training programs seeking approval status will have a \$2000 application fee, which is an increase from the current \$950 fee. The existing fee is not adequate to cover the staff cost associated with the provision of staff guidance to the DT training program, and the review of the program's application and associated submissions, which requires approximately 30 hours of work, on average. The hourly salary inclusive of all benefits of the KBN employee who conducts program review is \$69.98.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with 201 KAR 20:472 allows DT training programs to operate lawfully and avoid closure. Compliance with educational requirements allows DT program administrators, faculty and preceptors to perform those roles. Compliance with the basic life support certification requirement will allow students to remain enrolled in DT training programs.

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

(a) Initially: Implementation of 201 KAR 20:472 will result in a larger commitment of staff work hours in the review of materials submitted by renal dialysis organizations who seek to open a new

program, and in collaboration with existing programs that seek guidance with regard to 201 KAR 20:472; however, it is impossible to calculate the precise cost of the additional demands upon staff that are anticipated. Agency costs associated with implementation of 201 KAR 20:472 are further addressed below in Section 3(c) of the Fiscal Note on State or Local Government.

(b) On a continuing basis: Following implementation of 201 KAR 20:472 by all existing DT training programs in the Commonwealth, additional agency cost associated with 201 KAR 20:472 will be attributable entirely to the work hours associated with coordination with new renal dialysis organizations, and associated document review. Agency costs associated with the continued enforcement 201 KAR 20:472 of are further addressed below in Section 3(d) of the Fiscal Note on State or Local Government.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees paid by DTs and DT training programs are the primary source of funding for implementation of 201 KAR 20:472.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The increase in the initial application fee, from \$950 to \$2,000, is implemented to address an existing inequity, as the review of a renal dialysis organization application pursuant to 201 KAR 20:472, and associated submissions, requires approximately 30 hours of work, on average. The hourly salary, inclusive of all benefits, of the KBN employee who conducts program review is \$69.98. The existing fee of \$950 for new DT training programs was determined immediately following passage of HB 184 in 2001, which is when the Kentucky Board of Nursing was first assigned regulatory authority over DTs and DT training programs. In the twenty years since, the fee has remained static, while personnel costs have increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: New DT training programs seeking approval status will have an application fee of \$2,000, which is an increase from the current \$950 fee.

(9) TIERING: Is tiering applied? Tiering was not applied to 201 KAR 20:472, as the regulation treats all renal dialysis organizations similarly.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and KRS 314.137.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? In FY2020, KBN revenues from receipts associated with the DT program were \$15,106. For FY2021, revenues from receipts associated with the program are \$7,973 to date. The precise amount of anticipated FY2022 DT program receipts is not known, but is expected to be approximately \$15,000. The bulk of DT program receipts are attributable to DT renewal fees. These receipts are not consistent year to year, in light of the two-year DT renewal cycle. The fee increase for renal dialysis organizations seeking initial program approval will not have a significant impact on agency receipts, as there are only seven DT training programs in Kentucky currently, and the Board does not anticipate a significant number of new program applications.

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

counties, fire departments, or school districts) for subsequent years? As the agency is not anticipating a significant number of new DT training program applications, the fee increase specified in 201 KAR 20:472 will not have a substantial impact on revenues.

(c) How much will it cost to administer this program for the first year? The agency expended \$26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is \$26,600, and \$25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022.

(d) How much will it cost to administer this program for subsequent years? Board staff anticipates that DT program expenditures will rise from a baseline cost of \$26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: In light of the small number of new DT training program applications that are anticipated in future years, there being only seven active programs in the state at this time, the anticipated fiscal impact of the fee increase specified in 201 KAR 20:472 is small, amounting to \$1,050 for each such application.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**(Amended After Comments)**

**501 KAR 2:060. Procedures for housing of Class C and D [and Class C] felons.**

RELATES TO: KRS 196.035, 197.020, 197.045, 431.215, 441.045, 441.075, 441.510, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5) [532.100(4)] requires the Department of Corrections to house qualifying Class C and D [and Class C] felons in [county] jails. This administrative regulation establishes the procedures to implement the required housing program.

Section 1. Eligibility. Any county housing qualified inmates pursuant to KRS 532.100(5) [532.100(4)] shall be eligible to continue to do so unless the department, through its minimum jail standards enforcement procedures established by KRS 441.075, orders a [county] jail to cease housing Class C and D [and Class C] felons.

Section 2. Submission of Documents for Class D Felons. In any [county] jail housing Class D felons, the jailer shall forward to the assessment and classification center the following documents, within ten (10) working days of receipt of the judgment, for each Class D felon for whom a transfer has not been requested:

(1) Picture, which shall be updated annually in accordance with Section 13 of this administrative regulation;

(2) Any detainers;

(3) Any incident or disciplinary reports; and

(4) Body identification sheet.

Section 3. Custody Assignment for Class D Felons. (1) The assessment and classification center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody classification level to the Class D felon.

(2) The AC Center staff shall notify the jailer of the custody classification level assignment. Offender Information Services[Branch], Central Office, shall audit the file within five (5) working days of receipt.

(3) If the custody level assigned is minimum or community, the Class D felon may:

(a) Participate in community service work or any program offered inside or outside the secure perimeter of the jail; and

(b) Be housed inside the secure perimeter of the jail, in the restricted custody area of the jail, or in a restricted custody center.

(4) If the custody level assigned is [restricted, the Class D felon:

(a) May only participate in community service work under direct supervision of jail personnel;

(b) Shall not participate in any outside program; and

(c) Shall be housed:

1. Inside the secure perimeter of the jail;

2. In a restricted custody area with a barrier fence; or

3. In a restricted custody center with a barrier fence.

(5) If the custody level assigned is] medium[, close,] or maximum, the Class D felon:

(a) Shall not be eligible to participate in any program or work outside the secure perimeter of the jail; and

(b) Shall be housed in the secure perimeter of the jail.

(6) The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Any additional custody review may be completed as deemed necessary by the Director of Population Management [Classification Branch Manager].

Section 4. Assignment of Class C Felons. (1) The assessment and classification center shall identify and inform the jailer of a Class C felon who qualifies under KRS 532.100(5)(c)1. [532.100(4)(c)1-] to be housed in a county jail.

(2) The AC center shall notify the jailer when an inmate has been assigned as a Class C felon.

Section 5. Parole Board[Assessment Summary Reports]. (1) Prior to the meeting of the Parole Board, jail personnel shall provide each inmate scheduled for review by the board with a Jail Offender Information form. Jail personnel shall submit the completed form to the Division of Local Facilities[prepare and submit an assessment summary report on each qualified inmate to the Offender Information Branch] via KOMS or electronically, as requested by the Parole Board.

(2) Jail personnel shall inquire if a qualified inmate scheduled for review by the board would like to waive his or her Parole Board hearing and request a serve out if the qualified inmate scheduled to meet the Parole Board has ninety (90) days or less remaining until his or her minimum expiration date. If the qualified inmate decides to waive his or her Parole Board hearing and request a serve out, jail personnel shall have the inmate sign the Request Declining Parole form and submit it to the Parole Board via KOMS or electronically.

(3) Deaf or Hard of Hearing Inmate.

(a) If a deaf or hard of hearing inmate has a hearing before the Parole Board, the jail shall assist the Parole Board with appropriate accommodation **necessary for effective communication for the inmate for the hearing.**

(b) The jail shall provide headphones **if headphones are necessary to meet the needs of deaf and hard of hearing inmates for effective communication** or work with the Parole Board to provide other **necessary hearing accommodation services for the Parole Board hearing.**

Section 6. Transportation. Jail personnel shall be responsible for the transportation of a qualified inmate except as specified in KRS 431.215(1) and 441.510.

Section 7. Release Procedures. (1) The release of a qualified inmate shall follow the procedure established by CPP 25.6, incorporated by reference in 501 KAR 6:020.

(2)(a) Jail personnel shall not release a qualified inmate to any other county jail or agency without submission of external movement information to the Director of Local Facilities or designee. The information shall include:

1. Name;

2. Inmate number;

3. Facility transferring felon;

VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

4. Facility receiving felon; and
5. Date transferred and received.

(b) Any jail that is under order of the department relating to restrictions on state inmates shall receive prior authorization from the Director of Local Facilities before requesting state inmates from the department or any other [county] jail.

(c) A qualified inmate shall not be released to another state or to federal authorities without advance notice and approval of the Director of Local Facilities or designee.

(3) Jail personnel shall notify the Director of Local Facilities or the Offender Information Services[Branch] of any detainee or holder lodged against the qualified inmate by another jurisdiction.

Section 8. ~~[Furlough Program. (1) The Classification Branch Manager shall have the authority and responsibility to grant and monitor any furloughs of a qualified inmate.~~

~~(2) Eligibility for a furlough shall be determined in accordance with this subsection.~~

~~(a) The furlough of a qualified inmate shall be a privilege, not a right.~~

~~(b) To be considered for a furlough, a community or minimum custody qualified inmate shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.~~

~~(c) A Class D felon who is community custody or minimum custody or a Class C felon, who meets the requirement established in paragraph (b) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his final sentencing date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.~~

~~(d) To be considered for a furlough, a probation or parole violator who is a community or minimum custody qualified inmate shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.~~

~~(e) A probation or parole violator who is a community or minimum custody qualified inmate, who meets the requirement established in paragraph (d) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his commitment date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.~~

~~(f) To be considered for a furlough, a qualified inmate shall meet the furlough criteria established in CPP 25.4, incorporated by reference in 501 KAR 6:020, with the exception of the six (6) continuous months of minimum or community custody requirement.~~

Section 9. Escape. If a qualified inmate escapes, the jailer, jail administrator, or jail personnel shall immediately:

(1) Notify the Division of Local Facilities jail inspector;

(2) Notify Kentucky State Police (KSP) or local law enforcement;

(3) Activate VINE through use of the Emergency Override Line (EOL); and

(4) Enter the prisoner's escape status into the jail management system.

Section 9[40]. Medical Needs. The department shall pay each jail a per diem for state prisoners as established by KRS 532.100(7) [532.100(6)]. The jail shall pay for routine medical and medication expenses. If the inmate requires an admission to a hospital with at least one (1) night stay or outpatient surgery in which a general anesthesia is used, the cost shall be paid by the department. The jailer, jail administrator, or jail personnel shall notify the Department of Corrections Medical Division designee if any qualified inmate is admitted to the hospital for twenty-four (24) hours or longer.

Section 10[44]. Inmate Pay. A qualified inmate on a work assignment shall be paid in accordance with CPP 19.3.

Section 11[42]. Good Time. For a qualified inmate housed in a county jail, the awarding of good time or sentence credit shall be in accordance with this section.

(1) Statutory good time shall follow the procedures established in KRS 197.045(1)(b)1.

(2) Meritorious good time shall follow procedures established in KRS 197.045(1)(b)2. and CPP 15.3, incorporated by reference in 501 KAR 6:020.

(3) Educational good time shall follow procedures established in KRS 197.045(1)(a)2. and CPP 20.1, incorporated by reference in 501 KAR 6:020.

(4) If the jail has a substance abuse program approved by the department, then the felon shall receive credit to his sentence allowed by KRS 197.045(1)(a)3.

Section 12[43]. Annual Photograph. The jailer, jail administrator, or jail personnel shall take a photograph each year of each qualified inmate and immediately send it by United States mail, [or] electronically, or via KOMS to Department of Corrections, Offender Information Services, [Central Office,] P.O. Box 2400, Frankfort, Kentucky 40602.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Information to the Kentucky Parole Board" (2021), is incorporated by reference; and

(b) "Request Declining Parole" (2021).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Corrections, Division of Population Management, 275 East Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at <https://corrections.ky.gov/About/Pages/lrcfilings.aspx>.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: October 6, 2021

FILED WITH LRC: October 13, 2021 at 9:56 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for housing Class C and D felons in jails.

(b) The necessity of this administrative regulation: This administrative regulation provides the procedures required for KRS 532.100(5) for Class C and D felons housed in jails.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. The administrative regulation establishes the procedures necessary for Class C and D felons housed in jails as authorized by KRS 196.035 and required by KRS 532.100(5).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the procedures for housing Class C and D felons in county jails.

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

(a) How the amendment will change this existing administrative regulation: It revises statute citations because of amendments to the statute. It adds a provision (with forms) for an inmate with 90 days or less to serve out to decide whether to be considered for parole or to waive parole consideration to complete the inmate's sentence. The furlough provision is deleted and revisions are made to classification categories to match classification changes within the Department of Corrections.

(b) The necessity of the amendment to this administrative regulation: It complies with statute changes and Classification Manual changes.

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

(c) How the amendment conforms to the content of the authorizing statutes: The changes are within the authority granted by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: It makes revisions in compliance with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 15 Local Facilities staff, and approximately 5,585 Class C and D felons in the jails.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jails will need to follow the revised process for inmates being considered for parole and classification provisions and shall not furlough state inmates.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The classification levels will be consistent for inmates committed to the Department of Corrections. Inmates nearing the end of their sentences will be able to determine if they want to complete the remainder of their sentence or possibly receive parole and be under supervision for the period of parole.

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

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment impacts the Department of Corrections and jails that house state inmates.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 196.035, 197.020, 532.100

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not create any revenue for the Department of Corrections, the counties, or other government entity.

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

counties, fire departments, or school districts) for subsequent years? The amendment does not create any revenue for the Department of Corrections, the counties, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendment makes limited modifications to some of the operational procedures for housing Class C and D inmate in jails. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

(d) How much will it cost to administer this program for subsequent years? The amendment makes limited modifications to some of the operational procedures for housing Class C and D inmate in jails. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Board of Education Department of Education (Amended After Comments)

#### 702 KAR 7:150. Home or hospital instruction.

RELATES TO: KRS 160.290, 202A.011, 314.011

STATUTORY AUTHORITY: KRS 158.033, 156.070, 156.160, 159.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.033 requires the Kentucky Board of Education to promulgate administrative regulations establishing the components of home or hospital instruction. KRS 156.070 requires the Kentucky Board of Education to establish policy or act on all matters relating to the administrative responsibility of the Department of Education. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 159.030 provides exemptions from compulsory attendance for students whose physical or mental condition prevents or renders inadvisable attendance at school or application to study. This administrative regulation establishes minimum requirements for home or hospital instruction programs.

#### Section 1. General Provisions.

(1) A local board of education shall establish home or hospital instructional programs for students pursuant to KRS 158.033 and the criteria contained in this administrative regulation.

(2) A local board of education shall establish a local board policy setting forth parameters for the operation of home or hospital instructional programs.

(3) A student referred for home or hospital instruction and not in attendance at school shall not be counted for attendance purposes prior to the date recommended by an eligible health care provider on an approved application or for students with disabilities, the date determined by the Admissions and Release Committee (ARC) as defined in 707 KAR 1:002.

(4) Home or hospital instruction shall be used only for a student for whom there is an expectation of an inability to attend regular school for more than five (5) consecutive school days.

(5) For students with disabilities, the ARC shall be responsible for placement decisions regarding home or hospital instruction in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et. seq and 707 KAR 1:350.

(6) The ARC chairperson shall provide written notice of eligibility and documentation to the local Director of Pupil Personnel (DPP) for purposes of program enrollment using the Notice of Home or Hospital Instruction Placement by Admissions

and Release Committee (ARC) Form.

Section 2. Home or Hospital Review Committee.

(1) A local board of education shall establish a Home or Hospital Review Committee (Review Committee). The Review Committee shall accept and review applications to determine student eligibility for home or hospital services.

(2) The Review Committee shall consist of a local director of pupil personnel, a home or hospital teacher, a home or hospital instructional program director, medical or mental health personnel, and may consist of other professionals relevant to the application being reviewed.

(3) The condition of pregnancy shall not be considered a physical or health impairment in and of itself, and the nature and extent of any complication shall be delineated prior to consideration of home or hospital instruction for this condition.

(4) **Except as provided by subsection (5) of this section,** eligibility for home or hospital instruction shall cease, for students placed by the Review Committee[,] if the student works, plays sports or participates in extracurricular activities.

**(5) For students with a 504 plan pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, eligibility for home or hospital instruction shall not cease if the student works, plays sports or participates in extracurricular activities if participation in work, sports or extracurricular activities is consistent with the student's 504 plan.**

Section 3. Placement for Students on Home or Hospital Instruction.

(1) Pursuant to its authority established in KRS 160.290, a local board of education shall implement referral and placement procedures in accordance with local board policy for students with temporary conditions, including fractures, surgical recuperation, or other physical, health, or mental conditions.

(2) A student with a recurring condition, which results in periods in which the need for home or hospital instruction is intermittent and the student is able to attend school for short periods, may be exited and reentered on home or hospital instruction, and the following shall apply:

(a) Initial approval by the Review Committee shall be required;

(b) The Review Committee shall review the need for an alternative schedule of services based on verification by the professional statement in the application for home or hospital instruction of the need for intermittent services;

(c) If a health professional who completed the initial application for a student to be served on home or hospital determines the student needs additional time for services, the health professional shall submit a written statement, either mailed or faxed, to the Director of Pupil Personnel, requesting additional time up to two (2) weeks for services and provide a brief explanation for the extension;

(d) The Review Committee shall meet to review this extension and either approve or deny the request for an extension, prior to provision of any extended services;

(e) The Review Committee shall review intermittent placement at least every six (6) months, and at that time a statement from a second professional, shall be required by the Review Committee for continued program eligibility; and

(f) The parent or guardian shall notify the principal or Director of Pupil Personnel prior to the need for school reentry or to exit to home or hospital instruction.

Section 4. Home or Hospital Instruction Operation.

(1) Instructional sessions shall be delivered by a certified teacher. Instructional sessions may be delivered in person, electronically, or telephonically. If the instruction is other than in person, the district shall ensure the instruction is meaningful and require the certified teacher to directly contact the student during instructional sessions.

(2) When a home or hospital instruction teacher is physically present in the home or hospital, a parent, guardian, medical professional, assigned hospital staff member or an adult authorized by the parent or guardian shall be present in the home or hospital

room during the time of instruction.

(3) A home or hospital instruction teacher shall complete a visitation and planning schedule on a weekly basis. This schedule shall include specific times for instruction, travel, planning and conferences. A copy of this schedule shall be on file in the central office.

(4) Attendance records and services descriptions shall be maintained and summarized on an annual basis on the Home/Hospital Program Form for submission to the department at the end of each school year.

(5) The school's records of daily attendance and the teacher's monthly attendance reports shall be maintained and summarized on a monthly basis as to home and hospital instruction.

(6) Pursuant to its authority established in KRS 160.290, a local board of education shall develop timelines for determination of continuing student eligibility for home or hospital instruction. The Review Committee shall schedule a review of continued student eligibility for home or hospital instruction at any time based on changes in the student's condition.

(7) A teacher serving students on home instruction shall not exceed a caseload of twelve (12) students. A teacher serving students on hospital instruction shall not exceed a caseload of fifteen (15) students. For a teacher serving a combination of home and hospital students, the caseload maximum shall be determined by the setting in which the majority of his students are served.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Home or Hospital Instruction", June 2021; and

(b) "Notice of Home or Hospital Instruction Placement by Admissions and Release Committee (ARC) Form", June 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Finance and Operations, 300 Sower Building, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

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

JASON GLASS, Commissioner  
LU YOUNG, Chair

APPROVED BY AGENCY: October 12, 2021

FILED WITH LRC: October 15, 2021 at 11:53 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the components of home or hospital instruction as required by KRS 158.033(5).

(b) The necessity of this administrative regulation: KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. It is therefore necessary to change and relocate the regulation within the Kentucky Department of Education's (KDE) range of regulations through repeal and replacement. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.033 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations to establish the components of home or hospital instruction. This regulation sets forth the components of home or hospital instruction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes the requirements for school districts to operate home and hospital educational programs.

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

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

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts currently provide home or hospital instructional programs for students. KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

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

(a) Initially: There are no additional costs associated with this administrative regulation. Total cost of implementation is dependent on the number of students enrolled in home or hospital instruction.

(b) On a continuing basis: There are no additional costs associated with this administrative regulation. Total ongoing cost of implementation is dependent on the number of students enrolled in home or hospital instruction.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: School district general funds. School districts receive additional state support for home or hospital students.

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

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

(9) TIERING: Is tiering applied? Explain why tiering was or was not used. No tiering is applied. The regulation is applicable to all school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.033.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulation will not likely have an impact on expenditures or revenues. School districts currently provide home or hospital instructional programs for students. KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulation will not likely have an impact on expenditures or revenues. School districts currently provide home or hospital instructional programs for students. KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

(c) How much will it cost to administer this program for the first year? There are no new costs to school districts anticipated with this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no new costs to school districts anticipated with this regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: School districts receive additional state funding for home or hospital program students. The regulation permits districts to provide educational services to students through electronic and telephonic means where appropriate. This may reduce district expenditures.

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

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

RELATES TO: KRS 194A.060, [199.892,] 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, [199.8994,] 214.036, 314.011(5), 337.275, 600.020, 605.120(5), 620.020(10), [2016 Ky. Acts ch. 149, Part 4, 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



## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

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(10)]~~.

(24) "Provider" means the entity providing child care services, such as:

- (a) A member of a limited liability corporation (LLC);
- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(25) "Qualified alien" or "qualified immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "State median income" or "SMI" means the estimated median income of households in the state.

(31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

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

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

- a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or
- b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

- a. Has a physical or mental disability; and
- b. Needs special accommodation due to the impairment.

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

(c) An applicant may be:

- 1. Assisted by another individual of choice in the application

process; and

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

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

1. Deaf; or
2. Hard of hearing.

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

(3) The cabinet or its designee shall not discriminate against 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] engaged in job search; and

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

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

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

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) **1. Through December 31, 2021,** 160 percent of the federal poverty guidelines [level] **at initial application; and**  
**2. Effective January 1, 2022, 200 percent of the federal poverty guidelines** as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 [2048] at initial application; or

(b) **1. Through December 31, 2021,** 200 percent of the federal poverty guidelines [level] **at recertification or recalculation; and**  
**2. Effective January 1, 2022, eighty-five percent (85%) of the SMI as prepared by the U.S. Census Bureau [adjusted annually by the U.S. Department of Health and Human Services]** through calendar year 2021 [2048] 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.

**(6)(a) Effective March 4, 2022, to the extent funds are available, the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall**

# VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

continue to receive assistance for three (3) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.

(b) During the transitional period established in paragraph (a) of this subsection, the provider shall continue to receive fifty percent (50%) of the maximum payment rate established in the DCC-300.

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

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

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

1. Full day;
2. Part day;
3. Licensed Type I;
4. Licensed Type II;
5. Certified;
6. Registered;
7. Infant/Toddler;
8. Preschool child; and
9. School-age child.

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

- (a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:
  1. National Association for the Education for Young Children;
  2. National Early Childhood Program Accreditation;
  3. National Association for Family Child Care;
  4. Council on Accreditation; or
  5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

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

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

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

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:
  1. Physically or mentally incapable of caring for himself as determined by a health professional; or
  2. Under court supervision.

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

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

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and
2. Related to the provider.

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

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

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

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

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

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

**VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021**

3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

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

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

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

Section 12. Family Rights and Responsibilities. (1) The family 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 a certificate of completion for [documentation demonstrating completion of] cabinet approved training on billing once during each year of operation or upon change of the staff member submitting billing information.

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

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

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

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

1. Each employee of each shift;

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

3. The management for each shift;

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

5. The children enrolled for each shift.

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

1. The operating plan meets all requirements of:

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

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

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

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

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

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

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

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

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

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

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

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

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

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

1. A death in the family;

2. An illness of the:

a. Child; or

b. Applicant; or

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

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

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

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

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

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

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

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

(i) Cease if a provider denies:

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

a. Entry into the provider's premises during operating hours; or

b. Access to a child in care; or

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

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

b. Review by another agency with regulatory authority;

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

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

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

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

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

921 KAR 2:055.

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

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

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

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

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

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

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

—(e) "DCC-94, Child Care Service Agreement and Certificate", 07/21[40/47];

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

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

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

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

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

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

(i)[(j)] "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 12/21 [07/21] [42/48].

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVE BY AGENCY: October 11, 2021

FILED WITH LRC: October 15, 2021 at 8:23 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, CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

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

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

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

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

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

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

incorporates the appropriated General Fund moneys in the amount of \$12,000,000 in fiscal year 2021-2022 to the Department for Community Based Services to provide a \$2 per child increase in the Child Care Assistance Program provider reimbursement rate for full-day care. This amendment is consistent with House Bill 405 (2021 Regular Session, Acts Chapter 176) and is reflected in the incorporated material - the DCC-300, Kentucky Child Care Maximum Payment Rate Chart. The amendment also requires CCAP-participating child care providers to complete annual training on billing and makes other necessary updates and technical corrections in accordance with KRS Chapter 13A.

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, and to increase the CCAP provider reimbursement rate for registered child care providers. This increase in provider reimbursement rates was effective on October 1, 2021.

American Rescue Plan Act (ARPA) funds will be utilized to increase access to the program through changes in the eligibility requirements contained in Section 8 of the administrative regulation. The cabinet will also cover the cost of the CCAP co-payment for families with a monthly income at or below \$1,399.00.

Effective March 4, 2022, to the extent funds are available, ARPA funds will also be utilized to aid families in reducing a benefit cliff effect by allowing families three months to transition away from CCAP after exceeding the income limitations established in Section 8 of the administrative regulation.

The amendment also allows providers to use a cabinet-approved electronic system for keeping attendance as an alternative to the DCC-94E form and makes technical corrections identified by administrative regulation staff of the Legislative Research Commission.

(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. Additionally, federal funding supports changes made in the Amended After Comments version of the administrative regulation.

(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. Federal American Rescue Plan Act (ARPA) funds support the Amended After Comments amendments.

(7) Provide an assessment of whether an 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. Federal funds have also been received to support this amendment.

(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. \$12M in General Fund appropriations was received to increase the CCAP reimbursement rate and federal American Rescue Plan Act (ARPA) support the other amendments.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Education Professional Standards Board**  
**(Amendment)**

**16 KAR 1:030. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial.**

RELATES TO: KRS Chapter 13B, 160.380, 161.010-161.100, 161.120, 218A.010[~~(6)~~]

STATUTORY AUTHORITY: KRS 161.028(1), 161.120(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining an educator's certificate. The EPSB is authorized to revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued to Kentucky certified educators for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the EPSB[Education Professional Standards Board] to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the EPSB[Education Professional Standards Board] because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. This administrative regulation identifies the conditions for initiating a disciplinary action against an educator's certificate and establishes procedures for certificate reinstatement, reissuance, and application denial.

Section 1. Purpose. (1) In order to support the mission of the EPSB[Education Professional Standards Board (EPSB)], the EPSB[board] may take action against an educator's certificate in an effort:

(a) To ensure that an educator has an understanding of an educator's professional duties and responsibilities; and

(b) To protect students, parents of students, school personnel, or school officials.

(2) The EPSB[board] may take action against any certificate issued under KRS 161.010 to 161.100 for any of the reasons set forth in KRS 161.120(1).

Section 2. Complaints and Reports. (1) A complaint may be made by any person, organization, or entity. The complaint shall be in writing and shall be signed by the person offering the complaint.~~The complaint shall be sent to the offices of the EPSB.~~The complaint shall be sent to the EPSB and contain:

(a) The name, phone number, and address of the person making the complaint, and the name of the educator against whom the complaint is made. If known, the person making the complaint shall include the address of the school district where the educator works; and

(b) A clear and concise description of the issues of fact.

(2) A report shall be sent to the EPSB by superintendents of local school districts pursuant to KRS 161.120(2)(a).

(a) A superintendent's duty to report shall include the reporting of criminal convictions discovered by the district pursuant to KRS 160.380, even if the conviction occurred prior to the date the educator's certification was issued.

(b) The superintendent~~or the superintendent's designee~~ shall have thirty (30) days from the date ~~the~~that superintendent receives notice of the criminal conviction to report that criminal conviction to the EPSB pursuant to KRS 161.120(2)(a).

(c) Failure of the superintendent to provide the full facts and circumstances or to forward copies of all relevant documents and records in the superintendent's possession pursuant to

161.120(2)(b), may result in action against the superintendent's certificate pursuant to 161.120(1)(i).

(d) The superintendent shall supplement the report in writing within 30 days of the superintendent receiving the additional information or supporting documentation.

(3) EPSB staff shall do an initial review of all complaints and reports to determine whether there is sufficient credible evidence that a violation of KRS 161.120(1) may have occurred. If the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, EPSB staff shall open a file and assign that file a number.

(a) The EPSB staff shall send a copy of these complaints and reports by certified mail to the educator's address on file with EPSB.

(b) The educator shall have the right to file a rebuttal with the EPSB within thirty (30) calendar days from the date the educator receives the complaint or report from the EPSB unless the parties agree to extend that deadline.

(c) EPSB staff shall add the case to the EPSB's docket and prepare the file for EPSB[board] review by redacting all the educator's identifiers if one (1) of the following occurs:

1. The educator's rebuttal is received;
2. The notice is returned as undeliverable; or
3. The educator:
  - a. Fails to file a rebuttal with the EPSB; and
  - b. Has not requested to extend the thirty (30) day deadline.

(d) The EPSB[board] shall determine whether the nature and quality of the alleged violation warrants deferral, dismissal, training, admonishment, further investigation, or initiation of a hearing.

(e) In making its determination, the EPSB[board] shall consider if the allegation, if proven, would warrant sanction by the EPSB[board].

(f) When making a determination as to the level of sanctions warranted, the EPSB[board] shall consider the following factors:

1. The seriousness of the alleged violation;
  2. Whether the alleged violation was premeditated or intentional;
  3. Whether an attempt to conceal the alleged violation was made;
  4. Whether there were any prior violations;
  5. Whether training is appropriate to prevent further violations;
  6. Whether the sanction is necessary to deter future violations;
- or
7. Other relevant circumstances or facts.

(4)(a) If the EPSB[board] determines that sanctions are warranted, the EPSB[board] shall refer the matter to hearing.

(b) If the EPSB[board] refers the matter to hearing, the EPSB[board] shall, by majority vote, approve the issuance of a notice of hearing and the statement of charges. The statement of charges shall include specific reasons for the EPSB's[board's] proposed action, including the:

1. Statutory or regulatory violation;
2. Factual basis on which the disciplinary action is based; and
3. Penalty sought.

(c) The parties may agree to resolve the matter informally at any time. Any agreement to resolve the matter shall be memorialized in an agreed order. To be valid, the agreement shall be approved by the EPSB[board]. The agreed order shall be signed by the educator, the educator's attorney, if any, and the EPSB[board] chair.

(d) The EPSB staff shall initiate the hearing process, in accordance with KRS Chapter 13B, within thirty (30) days after the EPSB[board] refers the matter to hearing.

Section 3. (1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) Either party may be entitled to a reasonable continuance of

the hearing date for good cause.

(3) The educator has the right to request a private in-person hearing.

(a) The educator shall waive the right to a private in-person hearing if the educator fails to specifically make a written[the] request for a private in-person hearing at least five (5) days prior to the hearing[in writing].

(b) Even if the educator elects to proceed with a private, in-person hearing, the hearing transcript for that hearing shall be subject to disclosure after the EPSB[board] issues its final order[decision] unless exempt from disclosure by law.

(c) All hearings shall be conducted in the office of the EPSB[Education Professional Standards Board, 100 Airport Road, Frankfort, Kentucky 40604] unless a new location is agreed upon by the parties.

(4) The hearing officer's recommended order shall include a discussion of the factors set forth in Section 2(3)(f) of this administrative regulation if recommending sanctions.

(5) A party may file any exceptions to the recommended order within fifteen (15) calendar days from the date the recommended order is mailed[after receiving the recommended order].

(a) This time limit shall not be extended, and responses to exceptions shall not be considered by the EPSB[board].

(b) Any disagreement with a factual finding or conclusion of law in the recommended order not contained in the exceptions shall be waived.

Section 4. Final Decision. (1) The EPSB may delegate to the EPSB chair the authority to sign a decision made or order issued under this section on behalf of a majority of the EPSB board members. [In making its final decision, the board shall consider the record including the recommended order and any exceptions filed.]

(2) After the EPSB[board] chair certifies that a quorum is present, a majority of the voting members present shall be required to make a final decision on the recommended order, agreed order, or request for the issuance of an order of default judgment.

(3) In making a final order in accordance with KRS 13B.120, the EPSB shall consider the record including the recommended order and any exceptions filed. [The board may delegate to the board chair the authority to sign a decision made or order issued under this section on behalf of a majority of the board members.]

Section 5. Procedure for Suspension, Surrender, or Revocation of a Certificate. (1) When the EPSB[board] issues a final decision [in accordance with KRS 13B.120], the EPSB staff shall mail a copy of the final decision to the educator by certified mail using the address the educator provided to the EPSB[Education Professional Standards Board], or any other means permitted by law.

(2) A record of EPSB[board] action shall become part of the educator's official records maintained by EPSB staff.

(3) Immediately following the issuance of the EPSB[board's] final decision, the EPSB staff shall notify the reporting parties of the action taken.

(4) EPSB staff shall also ensure that the suspension, surrender, or revocation is noted on EPSB's Web site.

(5) EPSB staff shall also ensure that the information is provided to the National Association of State Directors of Teacher Education and Certification (NASDTEC) for inclusion in the NASDTEC Clearinghouse. The clearinghouse is a searchable database administered by NASDTEC relating to educator certification and discipline.

Section 6. Procedure for Reinstatement of a Suspended Certificate. (1) Reinstatement of a suspended certificate for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010[(6)].

(a) A certificate that has been suspended by the EPSB shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the EPSB.

(b) If a certificate lapses during a period of suspension, the certificate holder shall apply for renewal of the certificate at the end of the suspension period. The EPSB[board] shall renew the

certification if the certificate holder has met all educational requirements for renewal and has completed all of the conditions and requirements ordered by the EPSB[board].

(c) The burden to initiate the process to reinstate a suspended certificate shall be on the certificate holder.

1. If the suspension does not include conditions, the EPSB staff shall remove all references of the suspension from the Web site at the conclusion of the suspension period.

2. If the suspension includes conditions, the certificate holder shall provide the EPSB proof that all conditions have been met.

a. The EPSB shall reinstate the certificate at the conclusion of the suspension period once the EPSB receives evidence from the certificate holder demonstrating that the conditions of suspension were met.

b. The EPSB shall remove from its Web site any reference to the suspension once the certificate holder has provided evidence that the conditions of suspension have been met.

(d) The record of suspension as well as reinstatement of the certification shall become part of the educator's official certification records, but the record of suspension shall not be referenced on any certificate subsequently issued to the certificate holder.

(2) Reinstatement of a suspended certificate for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010[(6)].

(a) In addition to conditions for reinstatement of a suspended certificate established in subsection (1) of this section, the certificate holder shall provide written evidence that the certificate holder has submitted to a drug test at the certificate holder's own expense administered by a drug testing facility approved by the EPSB[board] within thirty (30) days of reinstatement [or submission of an application for reissuance of the certificate].

(b) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the EPSB.

(c) A certificate holder subject to the terms of this subsection may petition the EPSB to approve a drug testing facility of the certificate holder's choice.

1. Petition to Approve Drug Testing Facility. The petition shall contain the following information:

- a. The drug testing facility's name and location;
- b. The name and telephone number for the director of the facility;
- c. The method of test specimen collection;
- d. The drug testing facility's method of assuring identity of the test subject;
- e. Procedures for testing specimens, including forensic testing methods; and
- f. Chain of custody protocols.

2. The drug testing facility shall test at a minimum for the following named controlled substances:

- a. Marijuana;
- b. Cocaine;
- c. Opiates;
- d. Amphetamines;
- e. Phencyclidine;
- f. Morphine;
- g. MDMA (Ecstasy);
- h. Methadone;
- i. Benzodiazepines;
- j. Barbiturates; and
- k. Oxycodone.

(d) If the results of the drug test indicate illegal drug use by the certificate holder, the certificate shall not be reinstated [or reissued].

Section 7. Procedure for Reissuance of a Certificate after Revocation. (1) If revocation was for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010[(6)], the conditions established in this subsection shall apply.

(a) The former certificate holder shall complete the same application that all educators in Kentucky shall complete to obtain certification.

(b) The former certificate holder shall bear the burden of

proving that the certificate holder is fit for practice.

(c) The former certificate holder shall satisfy all current educational requirements for the certificate sought.

(d) The ~~EP~~~~SB~~~~[Education Professional Standards Board]~~ may include terms and conditions that the ~~EP~~~~SB~~~~[board]~~ reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(1)(b) if reissuing the certificate.

(2) If revocation was for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010[~~(f)~~], the former certificate holder shall:

(a) Comply with the requirements established in Section 6(1) of this administrative regulation [~~for reissuance of certification after revocation for all other offenses~~]; and

(b) Submit to drug testing as established in Section 6(2) of this administrative regulation [~~for the suspension resulting from illegal use of controlled substances~~].

(3) Regardless of the reason for the revocation, the revocation shall be noted on the certificate that is issued and shall remain on the EP~~SB~~ Web site.

Section 8. Denial of Application for a Certificate. If the ~~EP~~~~SB~~~~[Education Professional Standards Board]~~ denies an individual's application for a Kentucky certificate pursuant to this administrative regulation, the applicant may file an appeal in accordance with KRS 161.120(5)(a)2.

Section 9. Motion to Reconsider. (1) The EP~~SB~~ may reconsider, modify or reverse its decision of its own volition.

(2) Under exceptional circumstances, the EP~~SB~~ may reconsider, modify or reverse its decision on any disciplinary matter upon a motion by one (1) of the parties.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: October 12, 2021

FILED WITH LRC: October 15, 2021 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 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 December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the conditions for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify the conditions for initiating a disciplinary action against an educator's certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance and application denial.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education

Professional Standards Board to establish the standards and requirements for obtaining and maintaining a teaching certificate; and provides the authority to issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate for reasons delineated in KRS 161.120(1) KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial.

(2) If 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 minor changes to the formatting and order of sections. It also adds sections to provide clarity regarding a superintendent's duty to report, requests for a private hearing and motions to reconsider. In addition, the proposed amendment removes the EP~~SB~~'s former office address from the regulation and corrects the timing required to file exceptions to a recommended order to match the requirement in KRS 13B.110(4).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide additional clarity and improve efficiency in the EP~~SB~~'s processes relating to educator cases and appeals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate, and provides the authority to issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment further clarifies the EP~~SB~~'s procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial and will ensure the efficient processing of complaints and reports filed against certificate holders.

(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 applicants seeking teaching certifications, educators currently holding certifications, and superintendents for the 171 Kentucky public school districts that employ educators holding certifications.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action by the listed entities will be required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be clarity for superintendent's on their duty to report and clarity for educators on requesting a private hearing and filing motions to reconsider.

(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: Restricted funds generated by educator certification application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.120, KRS 161.175

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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. The EPSB spends approximately \$500,000 per year to process complaints and reports against educators holding a certification.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the amendment. The EPSB hopes to reduce the administrative costs associated with the processing of complaints and reports against educators holding a certification once this amendment is made to its existing 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:

#### BOARDS AND COMMISSIONS

##### Board of Cosmetology (Amendment)

#### 201 KAR 12:082. Education requirements and school administration.

RELATES TO: KRS 317A.020, 317A.050, 317A.090

STATUTORY AUTHORITY: KRS 317A.060, 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h) requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetic practices, and nail technology. KRS 317A.090 establishes licensing requirements for schools of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes requirements for the hours

and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetic practices, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the subject areas identified in this section.

(1) Basics:

(a) History and Career Opportunities;

(b) Life Skills;

(c) Professional Image; and

(d) Communications.

(2) General Sciences:

(a) Infection Control: Principles and Practices;

(b) General Anatomy and Physiology;

(c) Skin Structure, Growth, and Nutrition;

(d) Skin Disorders and Diseases;

(e) Properties of the Hair and Scalp;

(f) Basic Chemistry; and

(g) Basics of Electricity.

(3) Hair Care:

(a) Principles of Hair Design;

(b) Scalp Care, Shampooing, and Conditioning;

(c) Hair Cutting;

(d) Hair Styling;

(e) Braiding and Braid Extensions;

(f) Wig and Hair Additions;

(g) Chemical Texture Services; and

(h) Hair Coloring.

(4) Skin Care:

(a) Hair Removal;

(b) Facials; ~~and~~

(c) Facial Makeup; ~~and~~ and

(d) Application of Artificial Eyelashes.

(5) Nails:

(a) Manicuring;

(b) Pedicuring;

(c) Nail Tips and Wraps;

and  
(d) Monomer Liquid and Polymer Powder Nail Enhancements;

(e) Light Cured Gels.

(6) Business Skills:

(a) Preparation for Licensure and Employment;

(b) On the Job Professionalism; and

(c) Salon Businesses.

Section 2. A school or program of instruction of any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 ~~[cosmetology, esthetic practices, and nail technology]~~ shall teach the students about the various supplies and equipment used in the usual salon practices.

#### Section 3. Instructional Hours.

(1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a minimum of:

(a) 375 lecture hours for science and theory;

(b) 1,085 clinic and practice hours; and

(c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.

(2) A cosmetology student shall not perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors.

(1) A training period for a student shall be no more than eight (8) ~~ten (10)~~ hours per day, forty (40) hours per week.

(2) A student shall be allowed thirty (30) minutes per eight (8) hour day or longer for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.

Section 5. Laws and Regulations.

(1) At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and 201 KAR Chapter 12.

(2) Schools or programs of instruction of any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [~~of cosmetology, esthetic practices, and nail technology,~~] shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 6. Nail Technician Curriculum. The nail technician course of instruction shall include the following:

- (1) Basics:
  - (a) History and Opportunities;
  - (b) Life Skills;
  - (c) Professional Image; and
  - (d) Communications.
- (2) General Sciences:
  - (a) Infection Control: Principles and Practices;
  - (b) General Anatomy and Physiology;
  - (c) Skin Structure and Growth;
  - (d) Nail Structure and Growth;
  - (e) Nail Diseases and Disorders;
  - (f) Basics of Chemistry;
  - (g) Nail Product Chemistry; and
  - (h) Basics of Electricity.
- (3) Nail Care:
  - (a) Manicuring;
  - (b) Pedicuring;
  - (c) Electric Filing;
  - (d) Nail Tips and Wraps;
  - (e) Monomer Liquid and Polymer Powder Nail Enhancements;
  - (f) UV and LED Gels; and
  - (g) Creative Touch.
- (4) Business Skills:
  - (a) Seeking Employment;
  - (b) On the Job Professionalism; and
  - (c) Salon Businesses.

Section 7. Nail Technology Hours Required.

(1) A nail technician student shall receive no less than 450 hours in clinical and theory class work with a minimum of:

- (a) 150 lecture hours for science and theory;
- (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
- (c) 275 clinic and practice hours.

(2) A nail technician student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 8. Apprentice Instructor Curriculum. The course of instruction for an apprentice instructor of any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 shall include no less than 750 hours, 425 hours of which shall be in direct contact with students. 325 hours of the required theory instruction may be taken in person or online, in the following areas:

- (1) Orientation;
- (2) Psychology of student training;
- (3) Introduction to teaching;
- (4) Good grooming and professional development;
- (5) Course outlining and development;
- (6) Lesson planning;
- (7) Teaching techniques (methods);
- (8) Teaching aids, audio-visual techniques;
- (9) Demonstration techniques;
- (10) Examinations and analysis;
- (11) Classroom management;
- (12) Recordkeeping;
- (13) Teaching observation;
- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. Supervision. An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

Section 10. Instructors Online Theory Course. All online theory instruction completed to comply with Section 8 of this administrative regulation shall be administered from an approved digital platform at a licensed Kentucky school of cosmetology, esthetic practices, or nail technology.

Section 11. Additional Coursework. Apprentice Esthetics and Nail Technology Instructors shall also complete an additional fifty (50) hours of advanced course work in that field within a two (2) year period prior to the instructor examination.

Section 12. Schools may enroll persons for a special supplemental course in any subject.

Section 13. Esthetician Curriculum. The regular course of instruction for esthetician students shall consist of courses relating to the subject areas identified in this section. (1) Basics:

- (a) History and Career Opportunities;
- (b) Professional Image; and
- (c) Communication.
- (2) General Sciences:
  - (a) Infection Control: Principles and Practices;
  - (b) General Anatomy and Physiology;
  - (c) Basics of Chemistry;
  - (d) Basics of Electricity; and
  - (e) Basics of Nutrition.
- (3) Skin Sciences:
  - (a) Physiology and Histology of the Skin;
  - (b) Disorders and Diseases of the Skin;
  - (c) Skin Analysis; and
  - (d) Skin Care Products: Chemistry, Ingredients, and Selection.
- (4) Esthetics:
  - (a) Treatment Room;
  - (b) Basic Facials;
  - (c) Facial ~~Massage~~ [Message];
  - (d) Facial Machines;
  - (e) Hair Removal;
  - (f) Advanced Topics and Treatments; [and]
  - (g) Application of Artificial Eyelashes; and
  - (h) [(g)] Makeup.
- (5) Business Skills:
  - (a) Career Planning;
  - (b) The Skin Care Business; and
  - (c) Selling Products and Services.

Section 14. Esthetician Hours Required.

(1) An esthetician student shall receive no less than 750 hours in clinical and theory class work with a minimum of:

- (a) 250 lecture hours for science and theory;
- (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
- (c) 465 clinic and practice hours.

(2) An esthetician student shall have completed 115 hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 115 hours.

Section 15. Blow Drying Services License Subject Areas. The regular courses of instruction for blow drying services license students shall contain courses relating to the subject areas identified in this section.

- (1) Basics:
  - (a) History and Career Opportunities;
  - (b) Life Skills;
  - (c) Professional Image; and
  - (d) Communications.
- (2) General Sciences:

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

- (a) Infection Control: Principles and Practices;
- (b) General Anatomy and Physiology of head, neck and scalp;
- (c) Skin Disorders and Diseases of head, neck and scalp;
- (d) Properties of the Hair and Scalp; and
- (e) Basics of Electricity.
- (3) Hair Care:
  - (a) Principles of Hair Design;
  - (b) Scalp Care, Shampooing, and Conditioning;
  - (c) Hair Styling;
  - (d) Blow drying;
  - (e) Roller Placement;
  - (f) Finger waves/ pin curls;
  - (g) Thermal curling;
  - (h) Flat iron styling;
  - (i) Wig and Hair Additions; and
  - (j) Long hair styling.
- (4) Business Skills:
  - (a) Preparation for Licensure and Employment;
  - (b) On the Job Professionalism; and
  - (c) Salon Businesses.

### Section 16. Blow Drying Services License Hours Required.

- (1) A blow drying services license student shall receive no less than 400 hours in clinical and theory class work with a minimum of:
  - (a) 150 lecture hours for science and theory;
  - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
  - (c) 275 clinic and practice hours.
- (2) A blow drying services license student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 17. Extracurricular Events. Each cosmetology, nail technician, and esthetician student shall be allowed up to sixteen (16) hours for field trip activities pertaining to the profession of study, sixteen (16) hours for attending educational programs, and sixteen (16) hours for charitable activities relating to the field of study, totaling not more than forty-eight (48) hours and not to exceed eight (8) hours per day. Attendance or participation shall be reported to the board within ten (10) business days of the field trip, education show, or charitable event on the Certification of Student Extracurricular Event Hours form.

### Section 18. Student Records. Each school shall:

- (1) Maintain a ~~[legible and]~~ accurate daily attendance record ~~[used only for the verification and tracking of the required contact hours for education]~~ for all full-time students, part-time students, and apprentice instructors ~~[with records that shall be recorded using a digital biometric time keeping program as follows:~~
  - ~~(a) All beginning, end, break, and lunch times shall be recorded;~~
  - ~~(b) All instructors shall comply with the biometric time keeping system; and~~
  - ~~(c) Previously licensed schools will have six (6) months from the effective date of this administrative regulation to comply.]~~
- (2) Keep a record of each student's practical work and work performed on clinic patrons;
- (3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
- (4) Make records required by this Section available to the board and its employees upon request.

### Section 19. Certification of Hours.

- (1) Schools shall forward to the board digital certification of a student's hours completed within ten (10) business days of a student's withdrawal, dismissal, completion, or the closure of the school.
- (2) No later than the 10th day of each month, a licensed school shall submit to the board via electronic delivery a certification of each student's total hours obtained for the previous month and the total accumulated hours to date for all students enrolled. Amended reports shall not be accepted by the board without satisfactory

proof of error. Satisfactory proof of error shall require, at a minimum, a statement signed by the school manager certifying the error and the corrected report.

Section 20. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

### Section 21. Instructor Licensing and Responsibilities.

- (1) A person employed by a ~~[cosmetology, nail technology, or esthetic practices]~~ school or program for the purpose of teaching or instruction shall be licensed by the board as an instructor and shall post his or her license as required by 201 KAR 12:060.
- (2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.
- (3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.
- (4) Licensed schools shall not permit an instructor to perform services in the school for compensation during school hours.
- (5) An instructor shall not permit students to instruct or teach other students in the instructor's absence.
- (6) Except as provided in subsection (7) of this section, schools may not permit a demonstrator to teach in a licensed school.
- (7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if a licensed instructor is present.
- (8) Licensed schools or programs of instruction in any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [cosmetology, esthetic practices, and nail technology] shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) students enrolled and supervised.
- (9) Licensed schools or programs of instruction in any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [cosmetology, esthetic practices, and nail technology] shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.
- (10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.

### Section 22. School Patrons.

- (1) All services rendered in a licensed school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.
- (2) A licensed school shall not guarantee a student's work.
- (3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: "Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

### Section 23. Enrollment.

- (1) Any person enrolling in a school or program for instruction in any practice listed in KRS Chapter 317A or 201 KAR Chapter 12 [for a cosmetology, nail technician, or esthetics course] shall furnish proof that the applicant has:
  - (a) A high school diploma,
  - (b) A General Educational Development (GED) diploma; or
  - (c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of the twelfth grade of high school.
- (2) The applicant shall provide with the enrollment a passport photograph taken within thirty (30) days of submission of the application.
- (3) A student enrolling in a licensed school who desires to transfer hours from an out of state school shall, prior to enrollment, provide to the board certification of the hours to be transferred from the state agency that governs the out of state school.
- (4) If the applicant is enrolled in a board approved program at an approved Kentucky high school, the diploma, GED, or equivalency requirement of this Section is not necessary until examination.

### Section 24. Certificate of Enrollment.

- (1) Schools shall submit to the board the student's digital

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

enrollment, accompanied by the applicant's proof of education, as established in Section 23 of this administrative regulation, within ten (10) business days of enrollment.

(2) All student identification information on the school's digital enrollment shall exactly match a state or federal government-issued identification card to take the examination. If corrections shall be made, the school shall submit the Enrollment Correction Application and the enrollment correction fee in 201 KAR 12:260 within ten (10) days of the erroneous submission. Students with incorrect enrollment information shall not be registered for an examination.

### Section 25. Student Compensation.

(1) Schools shall not pay a student a salary or commission while the student is enrolled at the school.

(2) Licensed schools shall not guarantee future employment to students.

(3) Licensed schools shall not use deceptive statements and false promises to induce student enrollment.

Section 26. Transfer. A student desiring to transfer to another licensed school shall:

(1) Notify the school in which the student is presently enrolled of the student's withdrawal; and

(2) Complete a digital enrollment as required for the new school.

Section 27. Refund Policy. A school shall include the school's refund policy in school-student contracts.

Section 28. Student Complaints. A student may file a complaint with the board concerning the school in which the student is enrolled, by following the procedures outlined in 201 KAR 12:190.

Section 29. Student Leave of Absence. The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

(1) In writing from the student to the school; and

(2) Clearly denote the beginning and end dates for the leave of absence.

Section 30. Student Withdrawal. Within ten (10) business days from a student's withdrawal, a licensed school shall report the name of the withdrawing student to the board.

Section 31. Credit for Hours Completed. The board shall credit hours previously completed in a licensed school as follows:

(1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and

(2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 32. Program Transfer Hours. If a current licensee chooses to enter into the practice of cosmetology, they shall complete and submit the Program [Hour] Transfer [Request] form. Upon receiving a completed Program [Hour] Transfer [Request] form, the board shall treat the transferred license as earned credit hours in a cosmetology program subject to the following:

(1) Transfer of a current esthetics license shall credit the transferee no more than 400 hours in a cosmetology program;

(2) Transfer of a current nail technologist license shall credit the transferee no more than 200 hours in a cosmetology program;

(3) Transfer of a current blow drying services license shall credit the transferee no more than 300 hours in a cosmetology program; or

(4) Transfer of a current barber license shall credit the transferee no more than 750 hours in a cosmetology program.

(5) Credit hours transferred pursuant to this section shall only take effect upon the transferee's completion of the remaining hours necessary to complete a cosmetology program.

Section 33. Emergency Alternative Education. Digital theory content may be administered by a licensed school in the event of

forced long-term or intermittent emergency closure(s) due to a world health concern or crisis to be approved by the board. The board may determine when emergency alternative education shall begin and end. The necessary compliance steps for implementation are:

(1) Full auditable attendance records shall be kept showing actual contact time spent by a student in the instruction module.

(2) Milady supported Mind Tap, Pivot Point supported LAB, or recorded video conference participation shall be used.

(3) Schools shall submit an outline to the board within ten (10) days prior to occurrence defining the content scope to be taught or completed and a plan for a transition into a digital training environment. Plans may be submitted for approval by the board to be kept for future use in the event emergency alternative education is allowable.

(4) Completion certificates showing final scoring on digital modules shall be maintained in student records.

(5) Schools and students shall comply with Section 4 of this regulation on accessible hours.

(6) No student shall accrue more than the total required theory instruction hours outlined in the above instructional sections in emergency alternative education time.

(7) Board may determine eligibility for accruals based on duration of crisis and applicable time limits for alternative emergency education availability.

Section 34. [Section--33.] Incorporation by Reference. The following material is incorporated by reference:

(1)(a) "Certification of Student Extracurricular Event Hours", October 2018;

(b) "Enrollment Correction Application", October 2018; and

(c) "Program Transfer Form", January 2019.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: September 22, 2021

FILED WITH LRC: October 1, 2021 at 1:23 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2021, at 9:00 a.m., at Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 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: Julie M. Campbell, Board Administrator, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, phone (502) 564-4262, email julie.campbell@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions for licensed schools of cosmetology, esthetics, and nail technology in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standardized education that complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to all aspects of KRS 317A.050 and 317A.090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines and defines education standards



and the quantity of course hours required for licensed schools and students seeking Kentucky licensure by the board.

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

(a) How the amendment will change this existing administrative regulation: The current pandemic of COVID-19 requires the need for possible temporary alternative education methods it creates that option temporarily

(b) The necessity of the amendment to this administrative regulation: This amendment will create a temporary pathway for alternative education in light of the world pandemic COVID-19.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides additional education options for currently licensed schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated regulatory scheme for licensed schools that complies with the governing statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 58 licensed cosmetology schools this will only effect those facilities and any individuals planning on opening a school.

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

(a) List 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 licensed entity will have the option to provide education in this manner during the pandemic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a forced additional cost to this measure. It is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will allow alternative education methods as defined during the emergency created by COVID-19.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All Kentucky Board of Cosmetology funding comes from fees collected from licensees and applicants. Current funding will not change as a result of this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created directly or indirectly for the agency by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation apply equally to all licensed schools.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050 and KRS 317A.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. There is no anticipated effect on state or local government agency revenue as a result of this 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? No additional revenue is anticipated as a result of 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? No additional revenue is anticipated as a result of this amendment.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated for subsequent years.

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

#### DEPARTMENT OF AGRICULTURE Office of Agricultural Marketing (Amendment)

#### 302 KAR 50:021. Procedures and policies for hemp growers.

RELATES TO: KRS 61.870 – 61.844, Chapter 217B, 260.850-260.869, 7 U.S.C. 1739P, 7 C.F.R. Part 990 [~~7 U.S.C. 1639p, 5940, 21 U.S.C. Chapter 9~~]

STATUTORY AUTHORITY: KRS 260.862, 7 U.S.C. 1739P

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(a) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the department's Hemp Licensing Program.

#### Section 1. Definitions.

(1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.

(2) "Applicant" means a person who submits an application on his or her behalf or on behalf of a business entity to participate in the Hemp Licensing Program.

(3) "Broker" means to engage or participate in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.

(4) "Cannabis":

(a) Means the plant that, depending on its THC concentration level, is either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and

(b) Does not mean a "publicly marketable hemp product," as defined by subsection (37) of this section.

(5) "CBD" means cannabidiol.

(6) "Commissioner" is defined by KRS 260.850(1).

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "Conviction":

(a) Means an adjudication or finding of guilt, including a plea of guilty or nolo contendere; and

(b) Does not mean a conviction subsequently overturned on appeal, pardoned, or expunged.

(9) "Corrective action plan" means a document established by the department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850-260.869 or a requirement of 302 KAR Chapter 50.

(10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.

(11) "Decarboxylation" means the completion of the chemical reaction that converts the delta-9-THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven-tenths (87.7) percent of delta-9-THC-acid.

(12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations are measured post- decarboxylation (result commonly referred to as total THC).

(13) "Department" or "KDA" is defined by KRS 260.850(3).

(14) "Geospatial location" means a location designated through a GPS or other global system of navigational satellites used to determine the precise ground position of a place or object.

(15) "GPS" means Global Positioning System.

(16) "Handling" is defined by KRS 260.850(4).

(17) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(18) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869 [260.863], and this administrative regulation.

(19) "Hemp Processor/Handler License" means a document issued by the department authorizing the person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and 302 KAR 50:031.

(20) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).

(21) "Key participant":

(a) Means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership and includes an entity's chief executive officer, chief operating officer, and chief financial officer; and

(b) Does not mean farm managers, field managers, or shift managers.

(22) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency or drug suppression unit.

(23) "Licensed grower" means a person authorized in the Commonwealth by the department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through 260.859 and this administrative regulation.

(24) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license KRS 260.850 through 260.869 [260.859], and 302 KAR 50:031.

(25) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

(26) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.

(27) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.

(28) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent

germination rate.

(29) "Person" means an individual or business entity.

(30) "Pesticide" means any substance or mixture of substances intended to:

(a) Prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Be used as a plant regulator, defoliant, or desiccant; or

(c) Be used as a spray adjuvant, once mixed with a U.S. Environmental Protection Agency registered product.

(31) "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:056. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials), homogenous, and not mixed with non-hemp materials or hemp from another lot.

(32) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:056.

(33) "Prohibited variety" means a variety or strain of cannabis excluded from the Kentucky Hemp Licensing Program.

(34) "Processing" is defined by KRS 260.850(9).

(35) "Program" means the department's Hemp Licensing Program.

(36) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(37) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a) The product:

1. Does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

2. Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent);

(b) The product is CBD that was derived from "hemp", as defined by subsection (17) of this section; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(38) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:

(a) In a given lot [pløt] after the first pre-harvest sample is taken; and

(b) On a different day than the initial pre-harvest sample.

(39) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.

(40) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability, or distinction requirements to be considered a variety.

(41) "University" means an accredited institution of higher learning located in the Commonwealth.

(42) "Variety" means a subdivision of a species that is:

(a) Uniform, in that the variations in essential and distinctive characteristics are describable;

(b) Stable, in that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c) Distinct, in that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publically known varieties, or other characteristics from all other publicly known varieties.

(43) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

(44) "Volunteer cannabis plant" means any cannabis plant that:

(a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and

(b) Is not intentionally planted.

Section 2. Grower License Application.

(1) Any person who wishes to grow hemp at any location in the Commonwealth shall submit to the department a completed Hemp Grower License Application, or annual license renewal, incorporated by reference as part of the Hemp Grower Licensing Application Packet in 302 KAR 50:080.

(2) Existing grower license holders shall annually complete the department's requirements for license renewal by March 15.

(3) A person who does not hold a license from the department shall not:

(a) Grow, cultivate, handle, or process; or

(b) Broker, store, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Commonwealth.

(4) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.

(5) Completed Hemp Grower License Applications shall be received by the department by the end of the application period established in the application.

(6) Completed Hemp Grower License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(7) The department shall deny any Hemp Grower License Application that fails to meet the deadline established in the application.

(8) Each applicant shall pay a grower application fee in the amount established in 302 KAR 50:060.

(9) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees.

(10) The department shall deny any Hemp Grower License Application that is received without the application fee established in 302 KAR 50:060.

(11) With the Hemp Grower License Application form, the applicant shall submit, at a minimum:

(a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available);

(b) If the applicant is a business entity:

1. the entity's name, Employer Identification Number, business location address in Kentucky, and principal business location;

2. for the individual who will have signing authority on the entity's behalf, his or her full name, title within the entity, business address, telephone number, and email address (if available); and

3. for each key participant, his or her full name, title within the entity, business address, telephone number, and email address (if available);

(c) The proposed acreage or greenhouse or indoor square footage to be planted;

(d) Street address, location ID, and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or stored;

(e) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for field boundaries, and Location IDs corresponding to the GPS coordinates; and

(f) Agreement to all terms and conditions established in the hemp grower application.

(12) Any Grower License Application that is missing required information shall be subject to denial.

(13) The terms and conditions established in the hemp grower application shall include for a licensed grower, at a minimum:

(a) Acknowledgement that licensed growers shall comply with all requirements established in 302 KAR Chapter 50;

(b) Agreement to pay a licensing fee in the amount established in 302 KAR 50:060;

(c) Acknowledgement that licensed growers shall comply with instructions from representatives of the department and law enforcement agencies;

(d) A consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located or

licensed to be located, by representatives of the department and law enforcement agencies, with or without cause and with or without advance notice;

(e) A consent to forfeiture and destruction, without compensation, of:

1. Material found to have a measured delta-9-THC content in excess of zero and three-tenths (0.3) percent on a dry weight basis;

2. Plants located in an area that is not licensed by the department; and

3. Plants not accounted for in required reporting to the department;

(f) Agreement to apply for licensing of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;

(g) Acknowledgement that licensed growers shall [submit]:

1. Submit a [A] Site Modification Request, incorporated by reference in 302 KAR 50:080;

2. Submit the [The] appropriate fees based on the requested changes; and

3. Obtain prior [Prior] written approval from a representative of the department before implementing any change to the licensed sites stated in the hemp grower license and an acknowledgement that growing site changes shall be subject to a site modification surcharge in the amount established in 302 KAR 50:060 for a new set of GPS coordinates;

(h) Acknowledgement that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 16 of this administrative regulation;

(i) Acknowledgement that the risk of financial or other loss shall be borne solely by the licensed grower;

(j) Acknowledgement that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;

(k) Agreement that any time hemp is in transit, a copy of the hemp grower license shall be available for inspection upon the request of a representative of the department or a law enforcement agency;

(l) Agreement that, upon request from a representative of the department or a law enforcement agency, a licensed grower shall immediately produce a copy of his or her hemp grower license for inspection;

(m) Agreement to submit Field Planting Reports and Harvest Reports incorporated by reference in 302 KAR 50:080, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;

(n) Agreement to scout and monitor unlicensed fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the department;

(o) Agreement not to employ or rent land to cultivate hemp from any person whose hemp license [employment] was terminated or who was denied admission to the Hemp Licensing Program for:

1. Failure to obtain an acceptable criminal background check;

2. Failure to comply with an order from a representative of the department; or

3. Both; and

(p) Agreement to abide by all land use restrictions for licensed growers established in Section 5 of this administrative regulation.

Section 3. Criminal Background Check.

(1) Each licensed grower, applicant, or key participant within an entity that is a grower or applicant, shall undergo and pay for an annual criminal background check from the Department of Kentucky State Police as required by KRS 260.862(2)(d).

(2) A licensed grower, applicant, or key participant within an entity that is a grower or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the licensing application or renewal.

(3) The department shall not accept a report from a criminal

background check that occurred more than sixty (60) days prior to the date of the application.

(4) Failure to submit the background check with the application shall be grounds for license denial.

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the substitute signing authority.

Section 4. Application for Hemp Grower License; Criteria and Procedure for Evaluation.

(1) The department shall apply the criteria established in paragraphs (a) through (m) [(h)] of this subsection in evaluating an application for the grower license.

(a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.

(b) For an applicant who has been a Hemp Licensing Program participant previously, the applicant shall comply with the responsibility to submit:

1. Field Planting Report and Greenhouse/Indoor Planting Report, incorporated by reference in 302 KAR 50:080;

2. Harvest Report, incorporated by reference in 302 KAR 50:080;

3. Any other reports deemed necessary by the department to which the applicant has agreed.

(c) The applicant's growing sites, handling sites, and storage sites shall be located in the Commonwealth of Kentucky.

(d) The applicant's primary residence shall be located in Commonwealth of Kentucky or within fifty (50) miles of at least one (1) of the applicant's Kentucky growing sites.

(e) The applicant shall affirm that the applicant resides at the primary residence listed on the Grower License Application form from May 1 to September 30.

(f) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:

1. A felony conviction; or

2. A drug-related misdemeanor conviction or violation.

(g) A person who has been convicted of any felony or any drug-related misdemeanor or violation in the previous ten (10) years from the date of application shall not be eligible to obtain a license.

1. A person who was growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by Section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) shall be eligible to obtain a license.

2. A person who was lawfully growing hemp before December 20, 2018 and was convicted prior to December 20, 2018 shall be eligible to obtain a license.

(h) Including those times when the applicant was not a participant in the department's Hemp Licensing Program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.

(j) The applicant shall not have any unpaid fees, fines, or civil penalties owed to the department.

(k) The applicant shall not have and shall not make any false statements or representations to a representative of the department or a law enforcement agency. Any person who materially falsifies any information contained in an application shall be ineligible to obtain a license from the department.

(l) The applicant's proposed growing sites shall comply with the land use restrictions established in Section 5 of this administrative regulation. Denial of all proposed growing sites shall constitute grounds for denial of the application.

(m) The applicant shall not have had a hemp license revoked within five (5) years previous to the date of this application.

(2) The department shall conditionally approve an application

for a hemp grower license if the application complies with this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program until the applicant has received a hemp grower license from the department.

(4) Applicants shall pay licensing fees prior to receiving a hemp grower license.

(5) Applicants shall complete a mandatory orientation session at a location designated by the department. The department shall not allow any person to complete orientation in lieu of the applicant.

(6) After the date of issuance for a license, the applicant shall no longer be conditionally approved; he, she, or it shall be fully approved as a participant in the Hemp Licensing Program.

Section 5. Land Use Restrictions for Licensed Growers.

(1) A licensed grower shall not plant or grow any cannabis that is not hemp.

(2) A licensed grower shall not plant or grow hemp or other cannabis on any site not licensed.

(3) A licensed grower shall not grow hemp or other cannabis in or within 100 feet of any structure that is used for residential purposes without first obtaining written permission from the department.

(4) A licensed grower shall not handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(5) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the department.

(6) A licensed grower shall plant a minimum of 1,000 plants in each growing site unless prior approval is received in writing from the department.

(7) A licensed grower shall plant a minimum of one-quarter (0.25) acre in each outdoor growing site unless prior approval is received in writing from the department.

(8) Except as established in subsection (9) of this section, a licensed grower shall not grow hemp or other cannabis in any outdoor field that is located within 1,000 feet of a school or a public recreational area.

(9) Notwithstanding the prohibition in subsection (8) of this section, hemp may be grown within 1,000 feet of a school, if:

(a) The applicant has been designated by a school district superintendent;

(b) The applicant is a vocational agriculture instructor, agriculture teacher, or other qualified person who is employed by a school district; and

(c) The school district's board has voted to approve the applicant's proposal.

(10) An applicant or licensed grower shall not include any property on his or her application or Site Modification Request, incorporated by reference in 302 KAR 50:080, to grow, cultivate, or store hemp that is not owned or completely controlled by the applicant or licensed grower, as evidenced by a written lease or other document that shall be provided to the department upon request.

(11) A licensed grower shall not grow, handle, or store hemp or other cannabis on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or whose hemp license was [employment] terminated, or who was denied admission to the Hemp Licensing Program for:

(a) Failure to obtain an acceptable criminal background check;

(b) Failure to comply with an order from a representative of the department; or

(c) Both.

(12) Licensed growers [with plots of one (1) acre or less] shall post signage at each greenhouse, indoor growing location, storage building, and lot of one (1) acre or less [the plot location]. The signage shall include the:

(a) Agency title, "Kentucky Department of Agriculture Hemp Licensing Program";

(b) License holder's name;

- (c) License holder's license number; and
- (d) Department's telephone number.

Section 6. Administrative Appeal from Denial of Application.

(1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards established in this administrative regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 7. Hemp Grower Licenses.

(1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a hemp grower license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.

(2) The grower license application shall establish the terms and conditions, pursuant to KRS Chapter 260 and 302 KAR Chapter 50, governing participation in the Hemp Licensing Program.

(3) Failure to agree or comply with terms and conditions established in the hemp grower license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the grower license and expulsion from the Hemp Licensing Program.

(4) A Hemp Grower License shall remain in force as long as the license holder meets annual renewal requirements by March 15 of each year.

(5) A Hemp Grower License may be terminated by the license holder or the department upon thirty (30) days prior written notice.

(6) A Hemp Grower License authorizes the license holder to grow hemp; handle his or her own hemp, including drying, grinding, separating foliage from stem, storing, and packaging; and market his or her own hemp. A Hemp Grower License shall not authorize the grower to process hemp, handle other person's hemp, or market another person's hemp.

(7) The department shall issue grower's license numbers in accordance with this format: "21\_0001" through "21\_9999."

Section 8. Licensing Fees; Secondary Pre-Harvest Sample Fees.

(1) Licensing fee.

(a) The conditionally approved applicant or license holder shall pay a licensing fee prior to the issuance of a new license or an annual license renewal. (b) The licensing fee for each growing address shall be in the amount established in 302 KAR 50:060.

(2) Secondary Pre-Harvest Sample fee.

(a) If a licensed grower fails to complete the harvest within thirty (30) ~~[fifteen (15)]~~ days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee.

(b) If four (4) or more samples are taken from the same address, then the licensed grower shall be required to pay a secondary pre-harvest sample fee for each sample taken from that address in excess of three (3) samples.

(c) The secondary Pre-Harvest sample fee shall be paid to the department within fifteen (15) days of invoice by the department. The secondary pre-harvest sample fee shall be as established in 302 KAR 50:060. [

~~(d) The licensed grower shall pay the secondary pre-harvest sample fee within fifteen (15) days of invoice.]~~

(d) ~~[(e)]~~ The licensed grower shall not harvest the remaining crop until the department collects a secondary pre-harvest sample if one is required as established in paragraph (a) or (b) of this subsection.

Section 9. Site Modifications and Site Modification Surcharge Fees.

(1) A licensed grower who elects to grow hemp in a new growing location or store or handle at a site other than the sites specified by the GPS coordinates listed on the hemp grower license, shall submit a Site Modification Request, incorporated by reference in 302 KAR 50:080, and obtain written approval from a representative of the department, prior to planting or storing at the proposed location.

(2) Any request for a new growing location shall comply with the land use restrictions established in Section 5 of this administrative regulation.

(3) The department shall charge a site modification surcharge fee for each new Location ID, (specifically, a GPS coordinate for each new individual field or greenhouse or indoor structure) where hemp will be grown. The amount of the site modification surcharge fee shall be as established in 302 KAR 50:060.

(4) The department shall not approve a site modification request for a new growing location until the department has received the site modification surcharge fee.

(5) The department shall not assess a site modification surcharge for changes to storage only locations.

Section 10. Seed and Propagule Acquisition.

(1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List, which is posted on the department's website ~~[in the application packet incorporated by reference in 302 KAR 50:080]~~.

(a) If the variety or strain is listed on the Summary of Varieties List, no pre-approval from the department shall be required.

(b) If the variety or strain is not listed on the Summary of Varieties List, the license holder shall submit a New Hemp Variety or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC (measured post-decarboxylation, also referred to as total THC) content of not more than 0.300% on a dry weight basis from an independent third-party laboratory.

(2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.

(3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan does not infringe on the intellectual property rights of any person and that the seed or propagule source is a current legal hemp operation.

(4) The department shall not approve a New Hemp Variety or Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.

(5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a Prohibited Variety on the department's published Summary of Varieties list.

(6) Upon request from a representative of the department, a

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds or propagules were distributed.

(7) Any person engaging in the distribution of hemp seeds shall adhere to the applicable Kentucky seed laws (KRS 250.010 through 250.990) and administrative regulations (12 KAR 1:116 through 1:175).

(8) Any person who intends to move transplants or other living plants to a location outside Kentucky shall obtain a Class A Nursery License from the Kentucky Office of the State Entomologist.

### Section 11. Seeds of Wild, Landrace, or Unknown Origin.

(1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the department shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

### Section 12. Planting Reports to USDA's Farm Service Agency (FSA).

(1) Prior to the submission of Planting Reports, a licensed grower shall report hemp crop acreage to USDA's Farm Service Agency (FSA) including, at a minimum, the:

(a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced;

(b) Location as identified by the FSA Office: Farm Serial Number, Tract Number, Field Number, and Sub-Field Number;

(c) ~~[(b)]~~ Acreage (or square footage, in the case of a greenhouse or other indoor growing facility) dedicated to the growing of each variety or strain of hemp; ~~[and]~~

(d) ~~[(e)]~~ Grower's name and license number; ~~and [-]~~

(e) The farm serial number, tract number, field number, and sub-field number for each lot must be recorded by the license holder and submitted on all hemp planting and harvest reports to the department.

(2) The department shall collect and retain, for a period of at least three (3) calendar years, location ID information for every site or location where the department has approved hemp to be grown.

### Section 13. Planting Reports for Outdoor Plantings.

(1) A licensed grower shall submit to the department a complete and current Field Planting Report, within fifteen (15) days after every planting, including complete replanting, of seeds or propagules in an outdoor location.

(2) Each Field Planting Report shall identify the:

(a) Correct variety or strain name;

(b) Address and Field location ID as listed on the hemp grower's license;

(c) The farm serial number, tract number, field number, and sub-field number (lot number) [Lot number] provided by the USDA FSA Office; and

(d) Amount planted and the primary intended use of the harvest.

(3) A licensed grower who does not plant hemp in an approved outdoor site listed in the hemp grower license shall submit a Field Planting Report, on or before July 31, stating that hemp has not been planted and will not be planted at that site.

### Section 14. Planting Reports for Indoor Plantings.

(1) A licensed grower shall submit to the department a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location.

(2) Each Greenhouse/Indoor Planting Report shall identify the:

(a) Correct variety or strain name;

(b) Address and Greenhouse or indoor growing location ID as listed in the hemp grower license;

(c) The farm serial number, tract number, field number, and sub-field number (lot number) [Lot number] provided by the USDA FSA Office; and

(d) Amount planted and the primary intended use of the harvest or of the hemp plants.

(3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports, which are ~~[in the application packet]~~ incorporated by reference in 302 KAR 50:080, for each location ID to the department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

### Section 15. Site Access for Representatives of the Department and Law Enforcement Agencies.

(1) The department shall provide information about approved growing, handling, and storage site locations to representatives of the Kentucky State Police, USDA, DEA, and other law enforcement agencies whose representatives request licensed site information, including GPS coordinates.

(2) Licensed growers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower license.

(3) A licensed grower, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower's license, with or without cause and with or without advanced notice.

### Section 16. Pesticide Use.

(1) A licensed grower who uses a pesticide on hemp shall first be certified to apply pesticides by the department pursuant to KRS Chapter 217B.

(2) A licensed grower who is certified to apply pesticides by the department pursuant to KRS Chapter 217B shall not use, or be eligible to use, a Category 10 license to apply pesticides to hemp in violation of the product label.

(3) A licensed grower shall not use any pesticide in violation of the product label.

(4) A licensed grower who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.

(5) The department may perform pesticide testing on a random basis or if representatives of the department have reason to believe that a pesticide may have been applied to hemp in violation of the product label.

(6) Hemp seeds, plants, and materials bearing pesticide residue in violation of the label shall be subject to forfeiture or destruction without compensation.

### Section 17. Responsibility of a Licensed Grower Regarding Harvest of Hemp Lots [Plots].

(1) The department may inspect a Licensed Grower's premise or collect samples of any hemp or other cannabis material, at any time.

(2) The grower shall not harvest hemp plants from a lot without the department first collecting samples from that lot.

(3) At least fifteen (15) days prior to the anticipated harvest of hemp plants, the grower shall submit to the department a completed and current Harvest Report form identifying the intended date of harvest (or date of destruction, in the case of a failed crop).

(4) The department's receipt of a Harvest Report shall trigger a sample collection by a properly trained representative of the department in accordance with the procedures established in 302 KAR 50:056.

(5) During the department's scheduled sample collection, the

grower or an authorized representative of the grower shall be present at the growing site.

(6) Representatives of the department shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the hemp grower's license.

(7) The licensed grower shall harvest the crop not more than thirty (30) ~~fifteen (15)~~ days following the date of sample collection by the department, unless specifically authorized in writing by the department.

(8) If the licensed grower fails to complete a harvest within thirty (30) ~~fifteen (15)~~ days following the date of sample collection, then the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee in the amount established in 302 KAR 50:060.

(9) Floral materials shall not be moved outside the Commonwealth, nor moved beyond a processor, nor commingled, nor extracted, until the department releases the material in writing.

(10) Harvested materials from one (1) lot shall not be commingled with other harvested lots without prior written permission from the department.

(11) A licensed grower who fails to submit a Harvest Report shall be subject to revocation of his or her license.

(12) A licensed grower who proceeds to harvest a crop without first obtaining authorization from the department shall be subject to revocation of his or her license.

(13) The department shall conduct inspections of some licensed growers on a randomly selected basis.

#### Section 18. Collection of Samples; THC Testing; Post-Testing Actions.

(1) The department shall collect hemp samples for THC testing in accordance with the procedures established in 302 KAR 50:056.

(2) The designated laboratory shall receive, prepare, and release hemp samples in accordance with the procedures established in 302 KAR 50:056.

(3) The designated laboratory shall measure delta-9-THC concentration of each hemp sample (postdecarboxylation, often referred to as total THC) in accordance with the procedures established in 302 KAR 50:056.

(4) The department shall undertake post-testing actions in accordance with the procedures established in 302 KAR 50:056.

(5) All samples shall become the property of the department and shall not be returnable. Compensation shall not be owed by the department.

(6) If the designated laboratory is not able to provide THC testing services required by the department, the department may identify and contract with a third party lab to perform THC testing services.

(7) The department may collect samples of hemp or other cannabis material at any time.

#### Section 19. Restrictions on Sale or Transfer.

(1) A licensed grower shall not sell or transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed grower shall not sell or transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth who is not authorized to possess such materials under the laws of that jurisdiction.

(3) The department shall allow the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of zero and three-tenths (0.3) percent) and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(4) A licensed grower selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall

retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(5) A licensed grower shall not sell or transfer floral extracts containing a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

(6) Licensed growers shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) A licensed grower shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth, who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

(8) A person shall not ship, transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

#### Section 20. Other Prohibited Activities.

(1) A licensed grower shall not allow another person, other than an agent of the licensed grower, to grow, handle, or store hemp under their license in lieu of obtaining a separate hemp grower license.

(2) A license holder shall not make, manufacture, or distribute in the Commonwealth any of the prohibited products listed in 302 KAR 50:070.

#### Section 21. Information Submitted to the Department Subject to Open Records Act, KRS 61.870 Through 61.844.

(1) Except as established in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses shall be shielded from disclosure to the maximum extent permitted by law, except that the department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

#### Section 22. Violations Requiring Temporary License Suspension Procedures.

(1) The department shall notify a licensed grower in writing that the Hemp Grower License has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed grower has:

(a) Plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation, in accordance with KRS 260.864;

(b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license with a culpable mental state greater than negligence;

(c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;

(d) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration above zero and three-tenths (0.3) percent with a culpable mental state greater than negligence; or

(e) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.

(f) Been found to be growing or in possession of cannabis plant material with a measured THC concentration of 3.000% or greater.

(2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but not later than sixty (60) days following the notification of temporary suspension.

(3) A person whose Hemp Grower License has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time the department issued its notice of temporary

suspension, except as authorized in writing by a representative of the department.

(4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed grower's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed grower's possession.

#### Section 23. License Revocation Hearings and Consequences of Revocation.

(1) The department shall notify a person whose Hemp Grower License has been temporarily suspended of the date the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.

(3) License revocation hearings shall be open to the public.

(4) A person whose Hemp Grower License has been temporarily suspended shall appear in person at the assigned hearing time. Barring unexpected events, such as inclement weather, failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the hemp grower license.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the hemp grower license.

(6) A person whose hemp grower license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the hemp grower license.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed grower has committed any of the acts listed in subsection (1) of this section, then the hemp grower license shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the hemp grower license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the hemp grower license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or violated the grower license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.

(13) A person whose grower license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

#### Section 24. Monetary Civil Penalties.

(1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license application, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort,

Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Barring unexpected events, such as inclement weather, failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

#### Section 25. Licensing for Representatives of Universities and Colleges.

(1) Except as established in this section, faculty members, administrators, and staff members of an institution of higher education shall be subject to all requirements of this administrative regulation.

(2) An institution of higher education shall not allow its faculty, administration or staff members, or any sponsored student to be in possession of, or conduct academic research involving, living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.

(3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.

(4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License shall be issued by the department.

(5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License shall be issued by the department. An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving, leaf material or floral material from hemp shall complete and submit a Processor/Handler License Application.

(6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.

(7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only and not intended for commerce.

(8) Sampling and testing of hemp grown under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.

(9) An eligible institution of higher education shall:

(a) Be accredited by, and in good standing with, a regional or national higher education accreditation agency;



(b) Confer academic degrees at the associate, bachelor, master, or doctoral level; and

(c) Have a principal campus or office that is located at a site within the Commonwealth of Kentucky.

Section 26. Record Keeping Requirements; Three (3) Year Retention Period.

(1) For at least three (3) years, license holders shall maintain and make available for inspection by the department during reasonable business hours, records regarding:

(a) Acquisition of hemp plants;

(b) Production and handling of hemp plants;

(c) Storage of hemp plants; and

(d) Disposal of all cannabis plants that do not meet the definition for "hemp".

(2) The department shall have access to any premises where hemp plants could be held during reasonable business hours.

(3) All reports and records required to be submitted to the department as part of participation in the program in this part, which include confidential data or business information, such as information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one (1) or more employees of the department or their representatives. Confidential data or business information may be shared with applicable federal, state, or local law enforcement agencies or their designees in compliance with applicable law.

Section 27. Corrective Action Plans for Negligent Violations.

(1) If the department determines that a grower committed a negligent violation of any provision within KRS Chapter 260.850 to 260.869 or 302 KAR Chapter 50, or 7 C.F.R. 990.6(b) then the department shall devise and implement a corrective action plan for the grower.

(2) Examples of negligent violations shall include but not be limited to:

(a) Failure to license land where hemp is grown;

(b) Failure to obtain a license; and

(c) Production of cannabis with THC exceeding one (1) percent.

(3) [(2)] Corrective action plans shall remain in place for at least two (2) years and include, at a minimum:

(a) The date by which the grower shall correct each negligent violation;

(b) Steps to correct each negligent violation; and

(c) A description of the procedures to demonstrate compliance.

(4) [(3)] A grower who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.

(5) [(4)] If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan shall be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(6) [(5)] A grower who commits three negligent violations within a five (5) year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to January 1, 2022 ~~[2024]~~ shall not count toward the three (3) violations referred to in this subsection.

(7) The department shall perform at least two (2) inspections to ensure the licensee's compliance with the corrective action plan.

Section 28. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in this administrative regulation and 302 KAR 50:031, a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements

established in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the:

(a) Attorney General of the United States;

(b) Commissioner of the Kentucky State Police; and

(c) Commander of the Kentucky State Police's Cannabis Suppression Branch.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 13, 2021 at 1:21 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone 502-782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Hemp Program administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the rules for growers.

(2) If 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 filing undated items to address current events and federal requirements.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp by laying out the rules required for the program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate by creating easy to understand rules.

(d) How the amendment will assist in the effective administration of the statutes: This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the rules for growers.

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

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

administrative regulation: The Kentucky Department of Agriculture, 970 growers, 12 Universities and 170 processors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 1739p.

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1739p. establishes requirements for hemp programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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, additional, or different requirements or responsibilities 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? Kentucky Department of Agriculture, and any agency that might concern hemp shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.682

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Income for the entire hemp program for 2021 was approximately \$482,000

(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? Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2020 were \$947,712

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): 2020=\$1,067,000, 2021=\$482,000

Expenditures (+/-): 2020= \$947,000, 2021 no estimate yet

Other Explanation:

### DEPARTMENT OF AGRICULTURE Office of Agricultural Marketing (Amendment)

#### 302 KAR 50:031. Procedures and policies for hemp processors and handlers.

RELATES TO: KRS 61.870 - 61.844, 260.850-260.869, 7 U.S.C. 1739p, 21 U.S.C. Chapter 9

STATUTORY AUTHORITY: KRS 260.862; 7 U.S.C. 1739p

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(a) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to process or handle hemp as a participant in the department's Hemp Licensing Program.

#### Section 1. Definitions.

(1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.

(2) "Applicant" means a person who submits an application on his or her behalf or on behalf of a business entity to participate in the Hemp Licensing Program.

(3) "Brokering" means engaging or participating in the marketing of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers

(4) "Cannabis":

(a) Means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and

(b) Does not mean a "publicly marketable hemp product," as defined by subsection (31) of this section.

(5) "CBD" means cannabidiol.

(6) "Commissioner" is defined by KRS 260.850(1).

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "Conviction":

(a) Means an adjudication or finding of guilt, including a plea of

guilty or nolo contendere; and

(b) Does not mean a conviction subsequently overturned on appeal, pardoned, or expunged.

(9) "Corrective action plan" means a document established by the department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850 - 260.869 or a requirement of 302 KAR Chapter 50.

(10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.

(11) "Decarboxylation" means the completion of the chemical reaction that converts delta-9-THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9-THC-acid.

(12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations are measured post- decarboxylation (result commonly referred to as total THC).

(13) "Department" or "KDA" is defined by KRS 260.850(3).

(14) "GPS" means Global Positioning System.

(15) "Handling" is defined by KRS 260.850(4).

(16) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(17) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.863, and this administrative regulation.

(18) "Hemp Processor/Handler License" means a document issued by the department authorizing the person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and this administrative regulation.

(19) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).

(20) "Key participant":

(a) Means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership and includes an entity's chief executive officer, chief operating officer, and chief financial officer; and

(b) Does not mean facility managers or shift managers.

(21) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency, or drug suppression unit.

(22) "Licensed grower" means a person authorized in the commonwealth by the department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through 260.869 [260.859], and 302 KAR 50:021.

(23) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license, KRS 260.850 through 260.869 [260.859], and this administrative regulation.

(24) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

(25) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.

(26) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(27) "Person" means an individual or business entity.

(28) "Prohibited variety" means a variety or strain of cannabis excluded from the Kentucky Hemp Licensing Program.

(29) "Processing" is defined by KRS 260.850(9).

(30) "Program" means the department's Hemp Licensing Program.

(31) "Propagule" means a plant or plant part that can be

utilized to grow a new plant.

(32) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a) The product:

1. Does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

2. Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent);

(b) The product is CBD that was derived from "hemp", as defined by subsection (16) of this section; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(33) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.

(34) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability, or distinction requirements to be considered a variety.

(35) "Variety" means a subdivision of a species that is:

(a) Uniform, in that the variations in essential and distinctive characteristics are describable;

(b) Stable, in that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c) Distinct, in that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.

(36) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta 9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

#### Section 2. Processor or Handler License Application.

(1) Any person who wishes to engage in the processing, handling, brokering, or marketing of hemp that does not fall within the definition of a "publicly marketable hemp product" at any location in the Commonwealth shall submit to the department a complete Processor/Handler License Application, or annual license renewal, incorporated by reference as part of the Processor/Handler License Application [Packet] in 302 KAR 50:080.

(2) Existing processor or handler license holders shall complete the department's requirements for license renewal by December 31.

(3) Any person who does not hold a grower license from the department shall not grow, cultivate, or handle living hemp plants or other cannabis.

(4) Any person who does not hold a processor/handler license from the department shall not process, handle, broker, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the commonwealth.

(5) A person under the age of eighteen (18) years of age shall not apply for or hold a processor or handler license.

(6) Application deadlines.

(a) Completed Processor/Handler License Application forms shall be postmarked or received by the department by the end of the application period established in the application.

(b) Completed Processor/Handler License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(c) The department shall deny any Processor/Handler License Application that is not received by the deadline established in the application.

(7) The department shall require each applicant to pay a processor or handler application fee in the amount established in 302 KAR 50:060.

(8) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency.

(9) The department shall deny any Processor/Handler License Application that is received without the application fee established in 302 KAR 50:060.

(10) With the Hemp Processor/Handler License Application form the applicant shall submit, at a minimum:

(a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available); or

(b) If the applicant is a business entity:

1. The entity's name, Employer Identification Number, business location address in Kentucky, and principal business location; and

2. For the individual who will have signing authority on the entity's behalf, his or her full name, title within the entity, business address, telephone number, and email address (if available);

(c) Complete and accurate responses to each request for information on the application form; and

(d) Maps and the street address, location ID, and GPS coordinates for each building or site where hemp will be processed, handled, or stored.

(11) Any Processor/Handler License Application that is missing required information shall be subject to denial.

#### Section 3. Criminal Background Check.

(1) Each licensed processor/handler or applicant shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).

(2) A licensed processor/handler or applicant, or key participant within an entity that is a processor/handler or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the application or renewal.

(3) The department shall not accept a report from a criminal background check that occurred more than sixty (60) days prior to the date of the application.

(4) Failure to submit the background check with the application shall be grounds for license denial.

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the substitute signing authority.

#### Section 4. Application for Processor or Handler Licensing; Criteria and Procedure for Evaluation.

(1) The department shall apply the criteria established in paragraphs (a) through (m) [(f)] of this subsection in evaluating applications for a processor/handler license.

(a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.

(b) An applicant who has been a program participant previously, the applicant shall comply with the responsibility to submit any reports required by 302 KAR Chapter 50.

(c) All involved business entities shall be registered and in good standing with the Kentucky Secretary of State.

(d) The applicant's processing sites, handling sites, and storage sites, shall be located in the Commonwealth of Kentucky.

(e) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:

1. A felony conviction; or

2. A drug-related misdemeanor conviction or violation.

(f) The applicant's planned activities shall remain compliant with state law and administrative regulations.

(g) The applicant shall have adequate facilities or plans to acquire adequate facilities sufficiently to complete the planned activities.

(h) Including those times the applicant was not a participant in the Hemp Licensing Program, the applicant shall have

demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.

(j) The applicant shall not have any unpaid fees, fines, or civil penalties owed to the department.

(k) The applicant shall not have made and shall not make any false statements or representations to a representative of the department or a law enforcement agency.

(l) The applicant's proposed sites shall comply with the land use restrictions established in Section 5 of this administrative regulation. Denial of all proposed processing and handling sites shall constitute grounds for denial of the application.

(m) The applicant shall not have had a hemp license revoked within 5 years previous to the date of this application.

(2) The department shall conditionally approve an application for a processor/handler license if the application satisfies the criteria established in this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program until the applicant has received a hemp processor/handler license from the department.

(4) Applicants shall pay licensing fees prior to receiving a processor/handler license.

(5) Applicants shall complete a mandatory orientation session at a location to be determined by the department. The department shall not allow any person to complete orientation in lieu of the applicant.

#### Section 5. Land Use Restrictions for Licensed Processors or Handlers.

(1) A licensed processor or handler shall not process or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes without first obtaining written permission from the department.

(2) A licensed processor or handler shall not apply to process, handle, or store hemp on any property that is not owned or completely controlled by the applicant or licensed processor.

(3) A licensed processor or handler shall not process, handle, or store hemp on property owned by, leased from, or previously submitted in an application by any person who is ineligible or was terminated or denied admission to the Hemp Licensing Program for:

(a) Failure to obtain an acceptable criminal background check;

(b) Failure to comply with an order from a representative of the department; or

(c) Both.

#### Section 6. Administrative Appeal from Denial of Application.

(1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appellant shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards established in this administrative regulation to

determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appellant applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

#### Section 7. Hemp Processor or Handler Licenses.

(1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a processor/handler license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees. (2) The processor/handler license application shall establish the terms and conditions governing participation in the Hemp Licensing Program.

(3) Failure to agree or comply with terms and conditions established in the processor/handler license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the license and expulsion from the Hemp Licensing Program.

(4) Annual renewal of a processor/handler license shall require the license holder to:

(a) Submit to the department an annual criminal background check for the signing authority of record;

(b) Complete a mandatory, annual program orientation session hosted by the department;

(c) Pay annual fees in the amount established in 302 KAR 50:060;

(d) Update all licensed addresses, location IDs, and GPS coordinates with the department; and

(e) Agree to comply with the policies established in 302 KAR Chapter 50.

(5) A processor/handler license shall remain in force as long as the license holder meets the annual renewal requirements by December 31 of each year.

(6) A processor/handler license may be terminated by the license holder or the department upon thirty (30) days prior written notice.

(7) The department shall issue processor/handler's license numbers in accordance with this format: "P\_0001" through "P\_9999."

#### Section 8. Processor or Handler Licensing Fee.

(1) The licensing fee for processing harvested hemp fiber shall be the amount established in 302 KAR 50:060.

(2) The licensing fee for processing harvested hemp grain shall be the amount established in 302 KAR 50:060.

(3) The licensing fee for processing hemp floral material (for example, CBD extraction) shall be the amount established in 302 KAR 50:060.

(4) A licensed processor or handler that processes more than one (1) harvest component (for example, fiber, grain, and floral material) shall pay the licensing fee that is required for each harvested component that is applicable.

(5) A handler that does not engage in processing (for example, a seed cleaner, laboratory or dryer) shall be subject to a licensing fee in the amount established in 302 KAR 50:060.

(6) The licensed processor or handler fee shall be paid annually in full prior to the issuance or renewal of the processor/handler license.

Section 9. Seed and Propagule Acquisition. (1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List.

(a) If the variety or strain is listed on the Summary of Varieties List, a pre-approval from the department shall not be required.

(b) If the variety or strain is not listed on the Summary of Varieties List, the license holder shall submit a New Hemp Variety or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed

variety or strain have a floral material delta-9-THC (measured post-decarboxylation, also referred to as total THC) content of not more than 0.300% on a dry weight basis from an independent third-party laboratory.

(2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.

(3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan shall not infringe on the intellectual property rights of any person and the seed or propagule source is a current legal hemp operation.

(4) The department shall not approve a New Hemp Variety or Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.

(5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a prohibited variety on the department's published summary of varieties list.

(6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds or propagules were distributed.

(7) Any person engaging in the distribution of hemp seeds shall adhere to all applicable Kentucky seed laws (KRS 250.010 through 250.990) and regulations (12 KAR 1:116 through 1:175).

(8) Any person who intends to move transplants or other living plants to a location outside Kentucky shall obtain a Class A Nursery License from the Kentucky Office of the State Entomologist.

#### Section 10. Seeds of Wild, Landrace, or Unknown Origin.

(1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor or handler found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without permission from the department shall be subject to suspension or revocation of their license and forfeiture without compensation of their materials.

#### Section 11. Site Access for Representatives of the Department and Law Enforcement Agencies.

(1) The department shall provide information about approved growing, handling, processing, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request licensed site location information, including GPS coordinates.

(2) Licensed processors or handlers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler license.

(3) A licensed processor or handler, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler license, with or without cause, and with or without advance notice.

#### Section 12. Collection and Retention of Cannabis Samples.

(1) The department may collect, test, and retain samples of hemp or other cannabis, and substances derived from hemp or cannabis in the possession of a licensed processor or handler.

(2) All samples collected by the department shall become the

property of the department and shall be nonreturnable. Compensation shall not be owed by the department.

(3) The material to be collected for sampling shall be determined by the department inspector.

#### Section 13. Restrictions on Sale or Transfer.

(1) A licensed processor or handler shall not sell, transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to or from any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed processor or handler shall not sell, transfer, or allow the sale or transfer, of living plants, viable seeds, leaf material, or floral material to or from any person outside the Commonwealth who is not authorized to possess materials under the laws of that jurisdiction.

(3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, cannabinoid extracts (excluding THC in excess of zero and three-tenths (0.3) percent), and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent and is otherwise lawful and compliant with regulations.

(4) A licensed processor or handler selling, transferring, or allowing the sale or transfer of floral or plant extracts (including CBD), shall conduct and retain testing data reflecting the decarboxylated delta-9-THC level for at least three (3) years.

(5) A licensed processor or handler shall not sell or transfer floral extracts containing a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent except that pursuant to KRS 260.8635, a licensed processor, or a person acting as a representative of a licensed processor, may move or transport hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%) from one (1) licensed processing location in the Commonwealth to another licensed processing location in the Commonwealth, if:

(a) The hemp extract material shall move directly from one (1) licensed processing location to another; and

(b) The licensed processor shall provide written notice to the department of the planned movement at least twenty-four (24) hours in advance by submitting to the department a completed Hemp Concentrate Transport Notification Form.

(6) A licensed processor or handler shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) Any person making human-consumable products, or substances that will be used to make human-consumable products, shall be Good Manufacturing Practices-compliant and permitted by the Department of Public Health within the Cabinet for Health and Family Services.

(8) Any person packaging a product prior to sale shall comply with the Uniform Packaging and Labeling Regulations as established in 302 KAR 75:130.

(9) Any person packaging a hemp-derived cannabinoid product shall comply with 902 KAR 45:190, Hemp-derived cannabinoid products: packaging and labeling requirements.

~~(10) [(9)]~~ A licensed processor or handler shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

~~(11) [(10)]~~ A person shall not ship, transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

(12) A licensed processor or handler shall only purchase or receive harvested hemp plant material that has been determined compliant and released for sale or transfer by the appropriate hemp regulatory program in the grower's area of jurisdiction.

#### Section 14. Other Requirements.

(1) A licensed processor or handler shall not process or store hemp on any site not listed in the processor/handler license.

(2) A person shall not convert a substance that was extracted or derived from hemp or other cannabis into a Schedule I controlled substance.

(3) A license holder shall not make, manufacture, or distribute any of the prohibited products listed in 302 KAR 50:070.

(4) A person shall not possess living hemp or other cannabis plants without a hemp grower license.

(5) A licensed processor or handler shall not allow another person, other than an agent of the licensed processor or handler, to process, handle or store hemp under their license in lieu of obtaining a separate hemp processor/handler license.

(6) Processors using hazardous materials or flammable solvents (for example, ethanol) shall comply with the requirements of the State Fire Marshal.

(7) Any person owning or operating an analytical laboratory offering third-party testing services shall report post-decarboxylated delta-9-THC on a 100% dry weight basis.

(8) Any person owning or operating an analytical laboratory offering third-party testing services shall participate in the University of Kentucky's Hemp Proficiency Testing Program.

#### Section 15. Information Submitted to Department Subject to Open Records Act, KRS 61.870 Through 61.844.

(1) Except as established in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses shall be shielded from disclosure to the maximum extent permitted by law. The department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

#### Section 16. Violations Requiring Temporary License Suspension Procedures.

(1) The department shall notify a licensed processor/handler in writing that the Processor/Handler License has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed processor/handler has:

(a) Plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864;

(b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence;

(c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;

(d) Been found to be in possession of cannabis with a measured delta-9-THC concentration above zero and three tenths (0.3) percent with a culpable mental state greater than negligence;

(e) Been found to be growing hemp or cannabis without a hemp grower license with a culpable mental state greater than negligence; or

(f) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.

(g) Been found to be in possession of cannabis plant material with a measured THC concentration of 3.000% or greater.

(2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

(3) A person whose processor/handler license has been temporarily suspended shall not process or remove cannabis from the premises where hemp or other cannabis was located at the time the department issued its notice of temporary suspension,

except as authorized in writing by a representative of the department.

(4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed processor/handler's premises and perform an inventory of all cannabis, hemp, and hemp substances that are in the licensed processor/handler's possession.

Section 17. License Revocation Hearings and Consequences of Revocation.

(1) The department shall notify a person whose processor/handler license has been temporarily suspended of the date the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.

(3) License revocation hearings shall be open to the public.

(4) A person whose processor/handler license has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the processor/handler license.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the processor/handler license.

(6) A person whose processor/handler license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the processor/handler license.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed processor or handler has committed any of the acts listed in Section 16(1) of this administrative regulation then the processor/handler license shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the processor/handler license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the processor/handler license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp substances that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.

(13) A person whose processor/handler license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

Section 18. Monetary Civil Penalties.

(1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor or handler license application, then the department shall assess a monetary civil penalty based on the severity of the violation and not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA

Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appellant shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

Section 19. Licensing for Representatives of Universities and Colleges.

(1) Except as established in this section, faculty members, administrators, and staff members of an institution of higher education shall be subject to all requirements of this administrative regulation.

(2) An institution of higher education shall not allow or authorize its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.

(3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.

(4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License shall be issued.

(5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License shall be issued.

(6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.

(7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only and that is, not intended for commerce.

(8) Sampling and testing of hemp processed or handled under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.

(9) An eligible institution of higher education shall:

(a) Be accredited by, and in good standing with, a regional or national higher education accreditation agency;

(b) Confer academic degrees at the associate, bachelor, master, or doctoral level; and

(c) Have a principal campus or office that is located at a site within the Commonwealth of Kentucky.

Section 20. Corrective Action Plans for Negligent Violations.

(1) If the department determines that a processor or handler committed a negligent violation of any provision within KRS Chapter 260.850 through 260.869 or 302 KAR Chapter 50, then the department shall devise and implement a corrective action plan for the processor or handler.

(2) Corrective action plans shall remain in place for at least two (2) years and include, at a minimum:

(a) The date by which the processor or handler shall correct each negligent violation;

(b) Steps to correct each negligent violation; and

(c) A description of the procedures to demonstrate compliance.

(3) A processor or handler who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.

(4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan shall be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(5) A processor or handler who commits three (3) negligent violations within a five (5) year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to January 1, 2021 shall not count toward the three (3) violations referred to in this subsection.

Section 21. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in 302 KAR 50:021 and this administrative regulation, a person who is found by the department to have violated a requirement of KRS Chapter 260 or 302 KAR Chapter 50 with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the commander of the Kentucky State Police's Cannabis Suppression Branch.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 13, 2021 at 1:21 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 782-0284 fax (502) 564-2133, email clint.quarles@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Hemp Program administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This

regulation is necessary to establish provisions for movement, processing and possession of hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the rules for processors.

(2) If 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 filing undated items to address current events and federal requirements.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp by laying out the rules required for the program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate by creating easy to understand rules.

(d) How the amendment will assist in the effective administration of the statutes: This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the rules for processors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, 970 growers, 12 Universities and 170 processors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower and processor numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements..



FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 1739p.
2. State compliance standards. KRS 260.850-260.869
3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1739p. establishes requirements for hemp programs. This administrative regulation establishes the requirements for participation in Kentucky.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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, additional, or different requirements or responsibilities 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? Kentucky Department of Agriculture, and any agency that might concern hemp shall be affected by this administrative regulation.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.682
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Income for the entire hemp program for 2021 was approximately \$482,000
  - (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? Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.
  - (c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2020 were \$947,712
  - (d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): 2020=\$1,067,000, 2021=\$482,000  
 Expenditures (+/-): 2020= \$947,000, 2021 no estimate yet  
 Other Explanation:

**DEPARTMENT OF AGRICULTURE**  
**Office of Agricultural Marketing**  
**(Amendment)**

**302 KAR 50:056. Sampling and THC testing; disposal of non-compliant harvests; post-testing actions.**

RELATES TO: KRS Chapter 217B, 260.850-260.869, 7 U.S.C. 1739p, 7 C.F.R. Part 990

STATUTORY AUTHORITY: KRS 260.862, 7 U.S.C. 1739p

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1) authorizes the department to promulgate administrative

regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(a) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for sampling and THC testing, and establishes procedures for the movement or disposal of hemp following the completion of THC testing.

Section 1. Definitions.

(1) "Acceptable Hemp THC Level" means the sum of the statewide Measurement of Uncertainty plus the 0.300% delta-9-THC limit on a dry weight basis established in federal law, 7 U.S.C., and KRS Chapter 260.

(2) "Cannabis":

(a) Means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and

(b) Does not mean a "publicly marketable hemp product," as defined by 30s KAR 50:021, Section 1(37).

(3) "CBD" means cannabidiol.

(4) "Certified seed" means the progeny of breeder, foundation or registered seed handled to maintain satisfactory genetic purity and varietal identity and certified to AOSCA (Association of Official Seed Certifying Agencies) standards and having an official AOSCA seed label. (This does not include a state's THC compliance verification program.)

(5) [(4)] "Decarboxylated" means the completion of the chemical reaction that converts delta-9-THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9-THC-acid.

(6) [(5)] "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations are measured post- decarboxylation or by another method which shall include both delta-9-THC and delta-9-THCA (also known as total THC).

(7) [(6)] "Department" or "KDA" is defined by KRS 260.850(3).

(8) [(7)] "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(9) "Hemp transplants" means hemp seedlings, rooted cuttings, immature plants produced from tissue culture, or other means of reproduction, which are not harvested but transplanted into a large container or field to mature for harvest. The movement of transplants from their original location to the crop production location is not considered a harvest.

(10) [(8)] "Inspector" means an employee or other representative of the department sent to collect samples and perform inspections.

(11) [(9)] "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.

(12) [(10)] "Measurement of uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement. [The statewide Measurement of Uncertainty is the greater of the measurements of uncertainty computed by the designated laboratories testing samples for the department.]

(13) [(11)] "MSU BVC" means the Breathitt Veterinary Center at the Murray State University in Hopkinsville.

(14) [(12)] "Person" means an individual or business entity.

(15) [(13)] "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:056 [50:055]. The entire lot's harvest is in the same form (for example, intact-plant, or [flowers,] ground materials), homogenous, and not mixed

with non-hemp materials or hemp from another lot.

(16) [(14)] "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:056 [50:055].

(17) [(45)] "Program" means the department's Hemp Licensing Program.

(18) [(46)] "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(19) [(47)] "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment in Lexington.

#### Section 2. Procedures for Inspection and Sample-Collection Visits.

(1) A hemp plant shall not be harvested from any lot before a department inspector completes an inspection and sample-collection visit.

(2) The licensed grower shall submit to the department a completed Harvest Report form at least fifteen (15) days prior to the grower's expected harvest date.

(3) Upon receiving a completed Harvest Report form, the department shall contact the licensed grower to schedule an inspection and sample-collection visit for a specific time on a date that is not later than the grower's expected harvest date.

(4) The licensed grower, or the grower's authorized representative, shall be present during the inspection and sample-collection visit.

(5) During the inspection and sample-collection visit, the licensed grower shall provide to the inspector, complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested; all land, buildings, and other structures used for the cultivation and storage of hemp and other cannabis plants; and all locations listed in the Hemp Grower License.

(6) During the inspection and sample-collection visit, the inspector shall perform a visual inspection of each location listed in the Hemp Grower License in order to verify the GPS coordinates and look for evidence that hemp plants or other cannabis plants were harvested without authorization prior to the inspector's inspection and sample-collection visit or any other suspicious circumstance.

(7) The licensed grower shall complete the harvest of the crop from a lot not more than thirty (30) ~~[fifteen (15)]~~ days following the date of the inspection and sample-collection visit. ~~[, unless specifically authorized in writing by the department. Authorization shall not exceed an additional five (5) days and shall not be granted by the department without its determination that the cause for delay was inclement weather or another circumstance beyond the licensed grower's control.]~~

(8) If the licensed grower fails to complete the harvest of the crop from a lot within thirty (30) ~~[fifteen (15)]~~ days following the date of sample collection, then the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee established in 302 KAR 50:060.

(9) Floral material shall not be moved outside the Commonwealth, nor moved beyond a processor; nor commingled, extracted, converted into a consumer-ready product, enter commerce, until the department releases the material in writing.

#### Section 3. Standards and Procedures for Performance Based Sampling.

(1) The department intends to sample and test every lot of hemp prior to harvest every year. In the event that it is not feasible to sample and test every lot, then the department may implement these performance-based sampling procedures.

(2) The goal is to ensure at a confidence level of ninety-five (95) percent that no more than one (1) percent of the plants in each lot will exceed the acceptable THC level and ensure that a representative sample is collected that represents a homogenous composition of the lot.

(3) A lot of hemp shall only be eligible for performance based sampling consideration if the licensee maintains records documenting the variety or cultivar's compliance with the

acceptable THC concentration.

(4) The transfer of hemp transplants from one (1) location to the location at which the plants will grow to maturity and from which the plants will be harvested shall not be considered to be a harvest. Hemp transplants will not be subject to sampling before the plants are transferred to the location at which these plants will grow to maturity. Instead, the mature crop produced from hemp transplants will be subject to sampling and testing.

(5) A hemp licensee who has met all four (4) of the below compliance history requirements may not be subject to the sampling and testing requirement in the current year:

(a) Produced hemp for the past three (3) consecutive years;  
(b) Underwent THC testing by the department each of those three (3) years;

(c) Received THC testing results below the acceptable THC level (total THC not more than 0.3%) each of those three (3) years; and

(d) Currently growing the same variety(s) or cultivar(s) as in the previous three (3) years.

(6) Hemp crops which were planted with known Certified seed varieties for grain or fiber, and which are to be harvested only for grain or fiber (with no leaf or floral material harvested) may not be subject to the sampling and testing requirement. Previous testing of those varieties in Kentucky by the department revealed that only 9 of 179 lots (five (5) percent) tested above the acceptable hemp THC level. At least fifty (50) percent of all lots produced from these varieties will be sampled each year on a random basis.

(7) Hemp varieties appearing on the department's Summary of Varieties list that have been tested below the acceptable THC level at least ninety (90) percent of the time may be subject to a lower frequency of sampling and testing. At least fifty (50) percent of all lots produced from these varieties will be sampled each year on a random basis.

#### Section 4. [Section 3:] Procedure for Collecting Samples.

(1) The inspector shall use the following equipment and supplies:

(a) ~~An Inspection and Sample Collection form [which is in the application packet incorporated by reference in 302 KAR 50:080];~~  
(b) Alcohol wipes;  
(c) Pruning shears;  
(d) Paper sample-collection bags;  
(e) A permanent marker;  
(f) Security tape or a stapler;  
(g) A GPS unit, or a device with GPS-capable technology;

~~[and]~~  
(h) Nitrile disposable gloves; and [.]  
(i) A ruler.

(2) The inspector shall take cuttings from five (5) plants in each lot to make up a composite sample for that lot. The number of plants selected to form a composite sample was calculated using the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999. In 2019, Kentucky's hemp testing program showed that 43% of the pre-harvest samples were above 0.30% THC; therefore "I" is equal to 0.43. For a confidence level of ninety-five (95) percent, the minimum plant number required shall be three (3). A lot from a thousand-acre field would require five and three-tenths (5.3) plants.

(3) The inspector shall select the individual plants to be sampled from each lot by selecting at random at least five (5) plants that appear to be representative of the composition of the lot and avoiding selecting plants that are close to the perimeter of the lot.

(4) From each individual plant selected for sampling, the inspector shall cut the highest twenty (20) centimeters from the plant's primary stem of female flower. The inspector shall not remove seed, stem, or other material from the sample that is cut from the plant.

(5) The inspector shall place the cuttings from the lot into a paper sample-collection bag, shut the bag by folding over its top, and secure the fold with security tape or a stapler.

(6) Using a permanent marker, the inspector shall write on the

sealed paper sample collection bag the Sample ID consistent with:

- (a) The last four (4) digits of the Grower License number;
- (b) The date, in MMDDYY format; and
- (c) A two (2) digit sample number assigned by the inspector.

(d) Example: For Grower License 21\_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID is 1234-101520-03.

(7) The inspector shall complete the Inspection and Sample Collection form by entering:

- (a) The licensed grower's name and contact information;
- (b) The address where the lot is located;
- (c) The Grower License number;
- (d) The inspector's name;
- (e) The date of the inspection and sample collection visit; and
- (f) For each sample collected, the Location ID, the Sample ID, the hemp variety or strain name, and a description of the crop.

(8) Following the completion of the inspection and sample-collection visit, the inspector shall deliver the sealed sample-collection bag to the department's designated drying facility.

(9) The department shall not unseal sample-collection bags during the drying process.

Section 5. [Section 4.] Procedure for THC Testing.

(1) THC testing shall be completed by a Drug Enforcement Administration-registered testing lab designated by the department.

(2) Upon receipt of a sealed sample-collection bag from the department, the laboratory shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples) or MSU BVC SOP # TOX WIN 0042 (Hemp Receiving) and MSU BVC SOP # TOX WIN 0043 (Hemp Storage and Destruction), as applicable.

(3) Hemp material not used by the laboratory for delta-9-THC testing shall be stored as a retained sample.

(4) The laboratory shall measure delta-9-THC content, including both delta-9-THC and delta-9-THCA, on a dry weight basis in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection) or MSU BVC SOP # TOX WIN 0069 (Hemp Potency), as applicable, including the Measurement of Uncertainty.

(5) A person shall not add to, amend, or in any way alter the composition of the retained sample.

Section 6. [Section 5.] Post-testing Actions.

(1) Not later than sixty (60) after the date of the inspection and sample-collection visit, the department shall notify the licensed grower of the results of the THC test results and the grower's eligibility to move the harvested materials into commerce.

(2) For the purpose of determining if a test result is compliant with the definition of hemp (0.3000% delta-9-THC on a dry-weight basis), the department shall evaluate it against the Acceptable Hemp THC Level that is applicable for the current year (that is, 0.300% delta-9-THC on a dry-weight basis plus the statewide Measurement of Uncertainty).

(3) A sample from a lot with a measured THC concentration not exceeding the Acceptable Hemp THC Level shall be deemed compliant (conforming to the legal definition of hemp).

(4) A sample from a lot with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant.

(5) Within seven (7) days of receiving notice of a measured THC concentration that exceeds the Acceptable Hemp THC Level but is less than 1.000%, the Licensed Grower shall consent to the destruction of all cannabis from that lot [leaf material and floral material], or he or she may request remediation and a post-harvest re-test in accordance with the procedures established in Section 7 [6] of this administrative regulation.

(6) The retest fee shall be paid in an amount established in 302 KAR 50:060.

(7) Samples with a measured THC concentration of 1.000% or greater shall not be eligible for a post-harvest retest and shall be

destroyed. A licensee who refuses to comply with a destruction order shall be subject to the license suspension and revocation proceedings set forth in 302 KAR 50:021 or 50:031, as appropriate.

(8) The sample for a retest shall be collected on a date determined by the department.

(9) Samples with a measured THC concentration of 3.000% or greater shall be grounds for license suspension and revocation proceedings set forth in 302 KAR 50:021.

Section 7. [Section 6.] Procedure for Collecting Samples for Post-harvest Retests of Remediated Material.

(1) The inspector shall use the following equipment and supplies:

- (a) An Inspection and Sample Collection form;
- (b) Alcohol wipes;
- (c) Pruning shears;
- (d) Paper sample-collection bags for wet samples;
- (e) Plastic sample-collection bags for dry samples;
- (f) A permanent marker;
- (g) Security tape or a stapler;
- (h) A GPS unit, or a device with GPS-capable technology; and
- (i) Nitrile disposable gloves.

(2) The material selected for Post-Harvest Sampling from this lot shall be determined by the inspector, not the grower.

(3) The inspector shall perform a visual inspection to verify that the harvested material is in a homogenous state [~~for example, in an intact plant state or in a ground-up state, or in another state~~]. If the harvested material is not in a homogenous state, then the inspector shall notify the Hemp Program Manager and convey any instructions the Hemp Program Manager may designate to undertake additional remediation steps [post-harvest processing activities] to bring the entire harvest into a homogenous state. If the license holder refuses or fails to undertake the designated activities, he or she shall be deemed to have waived any right to request a post-harvest retest and the material shall be designated for disposal.

(4) Harvested [~~Floral harvested~~] material selected for Post-Harvest Sampling shall be taken following remediation by grinding the plant into biomass or removing and disposing of all leaf and flower, in accordance with the instructions established in paragraphs (a) and (b) of this subsection. [~~in the state (for example, in an intact plant state or in a ground-up state, or in another state) in which the license holder plans to sell or send the material to a processor, in accordance with the instructions established in paragraphs (a) through (c) of this subsection.~~]

(a) For ground [~~intact~~] plant post-harvest samples:

1. Ensure that the entire harvest is accounted for and in the same form. All harvested material whether whole plant or floral material only shall be ground with no intact plants or whole flowers remaining from that harvest [~~(intact plants)~~];

2. Sample material from bag or container without removing seed, stem, or other material [~~Clip the top twenty (20) cm of hemp plant, primary stem, including female floral material, without removing seed, stem, or other material;~~];

3. Sample from a minimum of five (5) locations within the containers for at least one (1) cup of material from the lot [~~Take cuttings from at least five (5) hemp plants within the harvest's storage or drying area at the discretion of the inspector;~~];

4. Place the complete sample in a plastic sample container [~~paper bag~~]; and

5. Seal the plastic sample container [~~paper bag by folding over top once and stapling to keep closed~~].

(b) For Post-Harvest Samples following the removal and disposal of leaf and flower [~~ground plant or ground floral material~~ Post-Harvest Samples]:

1. Ensure that the entire harvest is accounted for and in the same form (grain or stalk) [~~(all harvested material whether whole plant or floral material only shall be ground with no intact plants or whole flowers remaining from that harvest)~~];

2. Sample material from bag, bin, or container without removing seed, stem, or other material;

3. Sample from a minimum of five (5) locations within the containers, collecting [~~from~~] at least one (1) cup of material from

the lot;

4. Place the complete sample in a plastic sample container; and

5. Seal the plastic sample container.

~~(5) [(e)-For] Post-Harvest Samples of non-remediated crops is not recommended, but if the grower requests and pays for a Post-Harvest Sample of harvested intact plants, the sampling will be conducted according to the instructions established in paragraphs (a) through (e) [in other forms (trimmed floral material or floral material and stems)]:~~

~~(a) [1.-] Ensure that the entire harvest is accounted for and in the same form (intact plants) [(all harvested material whether whole plant or floral material only shall be ground with no intact plants or whole flowers remaining from that harvest)];~~

~~(b) [2.-] Clip the top twenty (20) cm of hemp plant, primary stem, including female floral material, without removing seed, stem, or other material; [Sample material from bag or container without removing seed, stem, or other material];~~

~~(c) [3.-] Take cuttings from at least five (5) hemp plants within the harvest's storage or drying area at the discretion of the inspector [Sample from a minimum of five (5) locations within the containers, collecting from at least one (1) cup of material from the lot];~~

~~(d) [4.-] Place the complete sample in a paper bag [plastic sample container]; and~~

~~(e) [5.-] Seal the paper bag by folding over the top once and stapling to keep closed. [plastic sample container].~~

~~(6) [(5)] The inspector shall place the cuttings or composite sample from the lot into a sample collection bag and secure the bag with security tape or staples.~~

~~(7) [(6)] Using a permanent marker, the inspector shall write on the sealed sample-collection bag the Sample ID consistent with the following format:~~

~~(a) The last four (4) digits of the Grower License number;~~

~~(b) The date, in MMDDYY format;~~

~~(c) A two (2) digit sample number assigned by the inspector; and~~

~~(d) Example: For Grower License 21\_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID is 1234-101520-03.~~

~~(8) [(7)] The inspector shall complete the Inspection and Sample Collection form by entering:~~

~~(a) The licensed grower's name and contact information;~~

~~(b) The address where the lot was grown and where it is currently located;~~

~~(c) The Grower License number;~~

~~(d) The inspector's name;~~

~~(e) The date of the inspection and sample collection visit; and~~

~~(f) For each sample collected, the Location ID, the Sample ID, the hemp variety or strain name, and a description of the crop.~~

~~(9) [(8)] Following the completion of the inspection and sample-collection visit, the inspector shall deliver the sealed sample-collection bag to the department's designated drying facility.~~

~~(10) [(9)] The department shall not unseal sample-collection bags during the drying process.~~

~~(11) [(10)] The procedure for THC testing used by UK DRS shall be the same for post-harvest retests as those established in Section 5 [4] of this administrative regulation.~~

~~(12) [(11)] A lot having a post-harvest sample with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant and designated for disposal.~~

**Section 8. [Section 7.] Disposal of Non-compliant Harvested Materials.**

(1) If a lot is designated for mandatory disposal, then the department shall ensure that all leaf material and floral material from that lot is disposed of using one (1) of the procedures established in this Section of this administrative regulation. The costs of disposal, if any are incurred by the department, shall be charged to the license holder.

(2) Disposal by on-site destruction with department supervision. Without removing the harvested material from the license holder's premises (or other licensed premises where the

harvested material is located), a department employee shall personally observe the harvested material's destruction (the act of rendering it into a useless and non-retrievable state) using one (1) of these methods:

(a) By grinding it up and incorporating it into the soil; or

(b) By controlled incineration.

(3) Disposal by on-farm transfer to a person who is registered or authorized by the department to accept controlled substances for the purposes of destruction. At the premises of the license holder (or other licensed premises where the harvested material is located), a department employee shall load, or observe the loading, of the harvested material until the transfer is complete.

(4) Disposal by vehicle transport to a department-approved location.

(a) Prior to the transport: At the premises of the license holder (or other licensed premises where the harvested material is located), a department employee shall load, or observe the loading, of the harvested material until the material is completely secured on or in the vehicle.

(b) During the transport: A department employee shall accompany the harvested material as it moves in a vehicle directly to a department-approved location. The vehicle shall constantly move towards its final destination without unnecessary stops, stops for reasons unrelated to the transport task, or stops of an extended duration.

(c) After the transport: Upon arrival at the department-approved location, a department employee shall unload, or observe the unloading, of the harvested material until the material is completely removed from the vehicle.

(d) Following the material's removal from the vehicle, a department employee shall personally observe the harvested material's destruction (the act of rendering it into a useless and non-retrievable state) using one (1) of these methods:

1. By grinding it up and incorporating it into the soil; or

2. By controlled incineration.

**Section 9. [Section 8.] Incorporation by Reference.**

(1) The following material is incorporated by reference:

(a) "UK DRS SOP# HM-MT-001 (Procedures for Measuring THC Content in Hemp by Gas Chromatography with Flame Ionization Detection (GC/FID))", 2021; ["UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection)", 2020;]

(b) "UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp [Samples])", 2021 [2020];

(c) "MSU BVC SOP # TOX WIN 0042 (Hemp Receiving)", 2020;

(d) "MSU BVC SOP # TOX WIN 0043 (Hemp Storage and Destruction)", 2020; and

(e) "MSU BVC SOP # TOX WIN 0069 (Hemp Potency)", 2020.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at [www.kyagr.com](http://www.kyagr.com).

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 13, 2021 at 1:52 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through December 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Hemp Program administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the rules for testing.

(2) If 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 filing undated items to address current events and federal requirements.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish testing rules required for the program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate by creating easy to understand rules.

(d) How the amendment will assist in the effective administration of the statutes: This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the rules for testing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, 970 growers, 12 Universities and 170 processors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR

50:060.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements..

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 1739p.

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1739p. establishes requirements for hemp programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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, additional, or different requirements or responsibilities 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? Kentucky Department of Agriculture, and any agency that might concern hemp shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.682

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Income for the entire hemp program for 2021 was approximately \$482,000

(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? Even with a fixed fee structure, revenue is almost entire determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2020 were \$947,712.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): 2020=\$1,067,000, 2021=\$482,000

Expenditures (+/-): 2020= \$947,000, 2021 no estimate yet

Other Explanation:

DEPARTMENT OF AGRICULTURE  
Office of the Consumer and Environmental Protection  
(Amendment)

**302 KAR 50:080. Materials incorporated by reference.**

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 1739p  
STATUTORY AUTHORITY: 260.850-260.869, 7 U.S.C. 1739p  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any Hemp Licensing Program [~~industrial hemp research pilot program~~] in the Commonwealth of Kentucky. This administrative regulation establishes material incorporated by reference for 302 KAR Chapter 50, except 302 KAR 50:056.

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

- (a) "Hemp Grower License Application[Packet]", 2021 [2020];
- (b) "Field Planting Report", 2021 [2020];
- (c) "Greenhouse/Indoor Planting Report", 2021 [2020];
- (d) "Harvest Report", 2021 [2020];
- (e) "New Hemp Variety or Strain Request", 2021; [~~"New Hemp Variety or Strain Request", 2020 "Site Modification Request", 2020;~~]
- (f) "Site Modification Request", 2021;
- (g) [(f)] "Processor/Handler License Application[Packet]", 2021 [2020]; and
- (h) [(g)] "University/College Application[Packet]", 2021 [2020].

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at [www.kyagr.com](http://www.kyagr.com).

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 13, 2021 at 1:21 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Hemp Program administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate hemp. This

administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the forms needed for the program.

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

(a) How the amendment will change this existing administrative regulation: This filing undated items to address current events and federal requirements.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp by laying out the forms required for the program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate by creating easy to understand rules.

(d) How the amendment will assist in the effective administration of the statutes: This program that has been administered by the KDA since the 2014 growing season. This administrative regulation and creates the forms for the program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, 970 growers, 12 Universities and 170 processors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements..

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 1739p.

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1739p. establishes requirements for hemp programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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, additional, or different requirements or responsibilities 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? Kentucky Department of Agriculture, and any agency that might concern hemp shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.682

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Income for the entire hemp program for 2021 was approximately \$482,000

(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? Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2020 were \$947,712

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): 2020=\$1,067,000, 2021=\$482,000

Expenditures (+/-): 2020= \$947,000, 2021 no estimate yet

Other Explanation:

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

#### 702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact Drill" means that drills are run at Level 3, [~~thud, or~~] Level 4, or Level 5 [~~live action~~].

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed [~~and~~] without contact.

(5) "Level 1" or "bags" means that a drill is run with [~~against~~] a bag or against another soft contact surface.

(6) "Level 2" or "control" means that a drill is run at an [~~the~~] assigned speed until the moment of contact; one (1) player is predetermined the winner by the coach; contact remains above the waist, and players stay on their feet.

(7) "Level 3" or "Control to Ground" means that a drill is run at an assigned non-competitive speed or with players pre-engaged, there is a pre-determined winner, players are allowed to take their opponent to the ground in a controlled manner.

(8) "Level 4" or "thud" means that a drill is run at a competitive [~~the assigned~~] speed through the moment of contact; there is no [~~not a~~] predetermined winner; contact is [~~remains~~] above the waist; players stay on their feet, and a quick whistle ends the drill.

(8) "Level 5" [~~Level 4~~] or "live [~~action~~]" means that a drill is run at a competitive speed in game-like conditions [~~and is the only time that players are taken to the ground~~].

(9) "Non-Contact Drill " means that drills are run at Level 0, [~~air~~]; Level 1, [~~bags~~]; or Level 2[~~, control~~].

(10) "OCR" means the United States Department of Education, Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools and private schools desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on the KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of the level of play) to be enrolled in at least grade seven (7);

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership, which provides that

each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, or other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school before being made public;

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility; and

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in an interscholastic athletics competition at any level.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school-issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school-based decision-making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(g)2;

(b) Meet the requirements of KRS 160.380(5) and (6); and

(c) Provide to the school documentation of successful

completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. The certification shall be updated as required by the approving agency;

(3) Require adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, before trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(e), and shall use the KHSAA form PPE01, with PPE02 being optional for the health care provider;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

4. The following football drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, [air,] or Level 1[-bags];

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice; and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular-season contest;

d. ~~The [Beginning July 1, 2020,]~~ the first regular season interscholastic contest shall not be played before the Saturday preceding week seven (7) of the National Federation of High Schools Standardized Procedure for Numbering Calendar Weeks;

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season, and post season games:

a. The pitch count shall be based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base shall not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat shall be allowed to finish that hitter;

d. The required calendar rest shall begin on the day following the date on which the game began, or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods shall be based on the following total pitches:

(i) Maximum pitches - eighty-five (85);

(ii) Fifty-six (56) pitches or more - three (3) calendar days rest;

(iii) Thirty-six (36) to fifty-five (55) pitches - two (2) calendar days rest;

(iv) Twenty (20) to thirty-five (35) pitches - one (1) calendar day rest; and

(v) One (1) to nineteen (19) pitches - no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season, and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by



## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

the manufacturer, when playing the positions of first base, third base, and pitcher; and

7. Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Report regularly, not less than annually to [Be autonomous with respect to] the Board of Control of the KHSAA with the Board of Control obligated to make a recommendation to the Kentucky Board of Education with respect to annually proposed regulatory changes;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies, make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics, and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school-based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

(8) Require that any student who turns:

(a) Fifteen (15) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age before August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(9) Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time before the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school-based scrimmages and regular season, school based contests in each sport or sport-

activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(10) Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(11) Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy;

(12) Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation; and

(13) The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

(a) Students shall not receive coaching or training from school personnel, whether salaried or non-salaried;

(b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;

(c) School funds shall not be expended in support of interscholastic athletics; and

(d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for a vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence if any.

Section 6. Forms. The forms incorporated by reference in this administrative regulation shall be filed:

(1) Using the paper form; or

(2) Using the electronic forms found on the Kentucky High School Athletic Association Web site at [www.khsaa.org](http://www.khsaa.org).

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KHSAA Constitution", 7/2021 [7/2020];

(b) "KHSAA Bylaws", 7/2021 [7/2020];

(c) "KHSAA Due Process Procedure", 7/2021 [6/2017];

(d) "KHSAA Board of Control and Officials Division Policies", 7/2021 [7/2020];

- (e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;
  - (f) KHSAA Form GE01, "Application for Membership", 5/2020;
  - (g) KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 7/2020;
  - (h) KHSAA Form DP02, "Request for Statutory Waiver of Bylaw 2", 6/2018;
  - (i) KHSAA Form DP06, "Application for Athletic Eligibility for Domestic Students", 7/2020;
  - (j) KHSAA Form DP07, "Application for Athletic Eligibility for Students having J-1 or F-1 Status", 7/2020;
  - (k) KHSAA Form DP08, "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status", 7/2020;
  - (l) KHSAA Form DP16, "Request for Waiver of 20 Day Notice", 6/2018;
  - (m) KHSAA Form DP17, "Add. Info for Appeal", 6/2018;
  - (n) KHSAA Form DP18 "Waiver – 15 Day Exceptions", 6/2018;
  - (o) "KHSAA Form GE14- Contract for Athletic Contests", 7/2020;
  - (p) "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;
  - (q) KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;
  - (r) KHSAA Form PPE01/Physician Clearance, "PPE01- Physician Clearance Form (Grades 6-12)", 7/2020;
  - (s) KHSAA Form PPE02/Physical Exam, "PPE02 Physical Exam Form (Grades 6-12)", 7/2021 [7/2020];
  - (t) KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 7/2019; and
  - (u) "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 7/2020.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal, Legislative and Communication Services, Department of Education, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

DR. JASON GLASS, Commissioner

DR. LU YOUNG, Chairperson

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 15, 2021 at 11:53 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on December 21, 2021 at 10:00 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2021.

**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: KRS 156.070

requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school and middle school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts at the high school and middle school levels, and publishes changes in bylaws, procedures and rules for affected schools and districts.

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

(a) How the amendment will change this existing administrative regulation: These amendments make changes to the documents incorporated by reference, including the bylaws, to make the rule compliant with the provisions of recent legislation. Specifically, recent legislation permits students to repeat the 2020-2021 school year under certain circumstances while still remaining eligible to compete in interscholastic athletics. Changes were also made as a result of the recent Annual Meeting of Member Schools where they voted to clarify the procedure to break ties when voting for member of the Board of Control that is contained in the KHSAA Constitution. Additional changes were made to update policies and other documents according to recent board action.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, substantive changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly. This amendment also is necessary to designate the KHSAA as the agent to manage interscholastic athletics at the high school and middle school level.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage interscholastic athletics in the common schools. The regulation designates the KHSAA as that agent at both the high school and middle school levels, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, Due Process Procedure, and Board of Control Policies to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input given by member schools and districts on changes that need to be made to provide a sounder structure of governance.

(d) How the amendment will assist in the effective administration of the statutes: See (c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 School Districts

(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: There will be little impact because of the nature of the changes to the regulation. There are requirements that continue to be placed on schools and coaching personnel, however the training required to

meet these requirements will be provided at no costs to the schools or the coaching personnel.

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

(a) Initially: Minimal

(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: KHSAA is funded through membership dues, as well as from gate receipts and sponsorships related to the various state championships.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, the Department of Education, and the Kentucky High School Athletic Association.

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

(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. There is no additional expense to the school districts or the department as a result of this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The costs associated to the KHSAA in administering this program for the first year are minimal.

(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administering this program in subsequent years are 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:

#### PUBLIC PROTECTION CABINET Department of Insurance Consumer Protection Division (Amendment)

#### 806 KAR 10:030. Surplus lines reporting and tax payment structure.

RELATES TO: KRS 304.1-070, 304.10-030, 304.10-040, 304.10-050, 304.10-170, 304.10-180, 304.99-085

STATUTORY AUTHORITY: KRS 304.2-110(4), 304.10-050, 304.10-170, 304.10-210,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined[established] in KRS 304.1-010. KRS 304.10-050 requires a

surplus lines broker to file an affidavit setting forth facts from which it can be determined ~~whether such~~[if the] insurance was eligible for export under KRS 304.10-040. KRS 304.10-170 requires the commissioner to establish the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 304.10-210 requires the commissioner to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation provides for[establishes] the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax pursuant to KRS 304.10-170 and 304.10-180.

#### Section 1. Affidavit Reporting.

(1) A licensed surplus broker shall file electronically a Kentucky Surplus Lines Affidavit of Insurance Transactions with the department within fifteen (15) days after the [invoice date or] effective date of each premium bearing surplus lines transaction[; whichever occurs later].

(2) The affidavit shall be filed electronically through the Department of Insurance's secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx>.

#### Section 2. Quarterly Reporting and Payment of Surplus Lines Premium Taxes for Insurance Transactions.

(1) The department shall generate a quarterly report of all surplus lines transactions reported in a preceding calendar quarter, for each surplus lines broker based on the affidavits filed in accordance with Section 1 of this administrative regulation.

(2) The department shall make the quarterly report available to a licensed surplus lines broker on its secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx>

(3) Each licensed surplus lines broker shall:

(a) Reconcile the surplus lines taxes owed on the quarterly report with the broker's own records;

(b) Notify the department of any discrepancy in surplus lines taxes owed; and

(c) Pay all surplus lines premium tax and any applicable penalties owed pursuant to KRS

304.99-085 within thirty (30) days of the end of the calendar quarter.

(4) Surplus lines premium tax shall be:

(a) Computed at the rate of three (3) percent on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as shown on the quarterly report;

(b) Payable to the Kentucky State Treasurer; and

(c) Remitted to the Kentucky Department of Insurance electronically through the department's secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx>.

(5) Agencies paying a surplus lines premium tax on behalf of a broker shall submit payment electronically through the broker's Eservices account using the department's secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx>.

(6) The department shall consider the payment of the surplus lines premium tax and any applicable penalty to be the submission of the broker's quarterly report and verified statement of transactions.

(7) The quarterly shall be submitted quarterly report by all licensed brokers even if no insurance transactions were completed during the period.

Section 3. Effective Date. ~~The~~[This] administrative regulation shall be effective beginning with the calendar quarter beginning July 1, 2021.[

~~Section 4. Incorporation by Reference. (1) "Kentucky Surplus Lines Affidavit of Insurance Transaction", May 2019, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

~~(3) This material may also be obtained on the department's secure Web site at~~

<https://insurance.ky.gov/doeservices/UserRole.aspx>]

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 14, 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 AM on December 21, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 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, Regulations Coordinator, 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 provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prescribe the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.10-170 authorizes the commissioner to prescribe the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 340.10-210 requires the commissioner to promulgate administrative regulations to effectuate the surplus lines law. This administrative regulation provides for the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax in accordance with KRS 304.10-170 and 304.10-180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the process for surplus lines brokers to report and pay the required taxes on surplus lines business on a quarterly basis to the Department of Insurance.

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

(A) How the amendment will change this existing administrative regulation: The amendments will clarify the 15-day reporting period applicable to surplus lines brokers. "Invoice date" is not defined because of the use of the electronic system, so these amendments will keep the regulation and internal processes at DOI consistent, as the Department calculates the 15 days from the effective date, not the invoice date. The Department has also added language in Section 2, which requires surplus lines brokers to submit a filing even if they had no business within that quarter.

(b) The necessity of the amendment to this administrative regulation: This proposed regulatory amendment is needed to

remove the option of utilizing the invoice date in calculating the start of the 15-day reporting requirement for surplus lines brokers, in order to alleviate any confusion on when the Department begins this reporting timeframe.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.10-170 authorizes the commissioner to prescribe the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 340.10-210 requires the commissioner to promulgate administrative regulations to effectuate the surplus lines law.

(d) How the amendment will assist in the effective administration of the statutes: This proposed regulatory amendment will ensure consistency between the regulatory language and DOI's internal practices, and will provide greater clarity regarding the deadlines applicable to the reporting process required under KRS 304.10-170.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 1,147 surplus lines brokers licensed in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to report an affidavit within 15 days of the effective date of each premium bearing line, not the invoice date.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The process set forth in this administrative regulation clarifies a long-standing practice regarding the reporting process. Because insurers have already been complying in this manner, there is no cost to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance with this proposed regulatory amendment, regulated entities will ensure compliance with KRS 304.10-170 and 304.10-180. Additionally, brokers will now only have to report from the effective date of the premium, instead of the date of invoice, creating more stability in reporting.

(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 directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies holding a certificate of authority in Kentucky and all licensed surplus lines brokers subject to local government taxes.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted as the implementer of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.10-170, 304.10-210

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 any 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? This administrative regulation is not expected to generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have a cost to implement in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have a cost to administer 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: As the amendments to this administrative regulation clarify an existing process, this administrative regulation will not have a fiscal impact on the Department of Insurance.

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(Amendment)**

**806 KAR 12:010. Advertising of accident and sickness benefits.**

RELATES TO: KRS 304.3-240, 304.12-010, 304.12-020, 304.12-060, 304.12-120, 304.12-130

STATUTORY AUTHORITY: KRS 304.2-110(1)

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 as established in KRS 304.1-010. This administrative regulation clarifies the minimum standards for advertising as established in KRS 304.12-010 and 304.12-020.

Section 1. Definitions. (1) "Exception" means:

(a) Any provision in a policy in which coverage for a specified hazard is [entirely] eliminated; or [and]

(b) A statement of risk not assumed under the policy.

(2) "Limitation" means any provision that restricts coverage under the policy other than an exception or a reduction.

(3) "Reduction" means:

(a) Any provision that reduces the amount of the benefit; and

(b) A risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than what would be otherwise payable had the reduction clauses not been used.

Section 2. Scope. The provisions of this administrative regulation shall be expressly limited to a life or health insurer

issuing any policy as defined in Section 3(2) of this administrative regulation, and shall apply to individual and group accident and sickness insurance advertisements.

Section 3. (1) An insurance advertisement for the purpose of this administrative regulation shall include:

(a) Printed and published material and descriptive literature of an insurer used in newspapers, magazines, radio and TV scripts, and billboards and similar displays;

(b) Descriptive literature and sales aids of all kinds issued by an insurer for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters; and

(c) Prepared sales talks, presentations, and material for use by agents and brokers, and representations made by agents and brokers.

(2) A policy for the purpose of the advertisement regulations shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement that provides accident or sickness benefits or medical, surgical, or hospital expense benefits, whether on a cash indemnity, reimbursement, or service basis, except if issued in connection with another kind of insurance other than life, and except disability and double indemnity benefits included in life insurance and annuity contracts.

(3) Insurer for the purpose of the advertisement regulations shall include any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, and any other legal entity engaged in the advertisement of a policy.

Section 4. [Section 3.] This administrative regulation shall apply to agents and brokers to the extent that an agent and broker are responsible for the advertisement of any policy.

Section 5. [Section 4.] (1) Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

(2) Words, phrases, or illustrations shall not be used in a manner that misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered, or premium payable. An advertisement relating to any policy benefit payable, loss covered, or premium payable shall be sufficiently complete and clear to avoid deception or the capacity and tendency to deceive.

(a) The words and phrases "all," "full," "complete," "comprehensive," "up to," "as high as," "this policy will pay your hospital and surgical bills," or "this policy will replace your income," or similar words and phrases shall not be used so as to exaggerate any benefit beyond the terms of the policy, and may be used only in a manner that fairly describes a benefit.

(b) A policy covering only one (1) disease or a list of specified diseases shall not be advertised as to imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease as to imply broader coverage than is the fact.

(c) The benefits of a policy that pays varying amounts for the same loss occurring under different conditions or that pays benefits only if a loss occurs under certain conditions shall not be advertised without disclosing the limited conditions under which the benefits referred to are provided by the policy.

(d) Phrases similar to "this policy pays \$1,800 for hospital room and board expenses" shall be incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

(3) If an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which a benefit is payable, it shall also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

(a) If a policy contains a time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date of coverage under the policy or a time period between the date a loss occurs and the date benefits

begin to accrue for the loss, an advertisement shall disclose the existence of the periods.

(b) An advertisement shall disclose the extent to which any loss is not covered if the cause of the loss is traceable to a condition existing prior to the effective date of the policy. If a policy does not cover losses traceable to preexisting conditions, the advertisement of the policy shall not state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim. This shall limit the use of the phrase "no medical examination required" and similar phrases.

Section 6.~~[Section 5.]~~ An advertisement that refers to renewability, cancelability, or termination of a policy, that refers to a policy benefit, or that states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, shall disclose the provisions relating to renewability, cancelability, and termination and any modification of benefits, losses covered or premiums because of age or for other reasons, in a manner that shall not minimize or render obscure the qualifying conditions.

Section 7.~~[Section 6.]~~ All information required to be disclosed by this administrative regulation shall be stated conspicuously and in close conjunction with the statements to which the information relates or under appropriate captions of prominence that shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

Section 8.~~[Section 7.]~~ Testimonials used in advertisements shall be genuine, represent the current opinion of the author~~[.]~~ be applicable to the policy advertising, and be accurately reproduced. The insurer, in using a testimonial shall make as its own all of the statements contained in the advertisement, and all the advertisement including the statements shall be subject to all of the provisions of this administrative regulation.

Section 9.~~[Section 8.]~~ An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not be used unless it accurately reflects all of the relevant facts. The advertisement shall not imply that statistics are derived from the policy advertised unless that is the fact.

Section 10.~~[Section 9.]~~ An offer in an advertisement of free inspection of a policy or offer of a premium refund shall not be a cure for misleading or deceptive statements contained in the advertisement.

Section 11.~~[Section 10.]~~ (1) If a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected, and that the premium will vary in conjunction with the amount of the benefits.

(2) If an advertisement refers to various benefits that could be contained in two (2) or more policies, other than group master policies, the advertisement shall disclose that the benefits are provided only through a combination of the policies.

Section 12.~~[Section 11.]~~ An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits, or otherwise falsely disparage competitors, policies, services, or business methods.

Section 13.~~[Section 12.]~~ (1) An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those ~~[these]~~ limits.

(2) Advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of language similar to "This company is licensed only in State A" or "This company is not licensed in State B."

Section 14.~~[Section 13.]~~ The identity of the insurer shall be made clear in all of the insurer's~~[insurers]~~ advertisements. An advertisement shall not use a trade name, service mark, slogan, symbol, or other device that has the capacity and tendency to mislead or deceive as to the true identity of the insurer.

Section 15.~~[Section 14.]~~ An advertisement of a particular policy shall not state or imply that prospective policyholders become group or quasi-group members, and as members, enjoy special rates or underwriting privileges, unless that is the fact.

Section 16.~~[Section 15.]~~ An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial, or special offer, and that the applicant shall receive advantages by accepting the offer, unless that is the fact.

Section 17.~~[Section 16.]~~ (1) An advertisement shall not state or imply that an insurer or a policy has been approved, or that an insurer's financial condition has been examined and found to be satisfactory by a governmental agency, unless that is the fact.

(2) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association, or other organization, unless that is the fact.

Section 18.~~[Section 17.]~~ An advertisement shall not contain untrue statements with respect to the time within which claims are paid, or statements that imply that claim settlements will be liberal or generous beyond the terms of the policy.

Section 19.~~[Section 18.]~~ An advertisement shall not contain statements that are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age, or relative position in the insurance business.

Section 20.~~[Section 19.]~~ (1) Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies, and typical printed, published, or prepared advertisements of blanket, franchise, and group policies, disseminated in this or any other state whether or not licensed in the other state, with a notation attached to each advertisement that shall indicate the manner and extent of distribution and the form number of any policy advertised. The file shall be subject to regular and periodical inspection by the Department of Insurance. All advertisements shall be maintained by the insurer for a period of not less than three (3) years.

(2) A life or health ~~[Each]~~ insurer required to file an annual statement in accordance with KRS 304.3-240, that issues any policy as described in Section 3(2) of this administrative regulation ~~[which is now or which becomes subject to the provisions of this administrative regulation]~~, shall file with the Department of Insurance, together with its annual statement, a certificate executed by an authorized officer of the insurer stating that to the best of his or her knowledge, information, and belief, the advertisements that were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of KRS Chapter 304.

Section 21.~~[Section 20.]~~ ~~[(1) The provisions of this administrative regulation shall not be expressly limited to a particular type of insurance and shall be applied to all insurance on subjects of risk located in or to be performed in Kentucky.]~~

~~(2) Any person, firm, corporation, or association who knowingly aids and abets an insurer in the violation of this administrative regulation or the applicable provisions of the Insurance Code shall be subject to the penalties established by KRS Subtitle 304.99.~~

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:

(2) Form 440, "Certificate on Advertising- Accident and Health", 10/2021 edition.

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

(3) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Insurance, 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's Web site at: <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 14, 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. on December 21, 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 December 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, Regulations Coordinator, 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 provides guidelines and requirements for advertising methods of insurance products and policies.

(b) The necessity of this administrative regulation: This proposed regulatory amendment is needed to ensure that insurance advertisements made to the public are of sound measure and in good faith, and that they do not contain deceitful advertising tactics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance shall make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the minimum standards for advertising as set forth in KRS 304.12-010 and 304.12-020.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments to this administrative regulation address exceptions to the requirements set out in Section 19. In many states, property or casualty insurers are not required to file a certificate of advertising with an annual statement. This proposed amendment would make the Department's regulation consistent with that practice, and will also ensure consistency with the Model Law upon which this regulation is based (which is limited in scope to life and health lines, as it relates to accident and sickness policies). The amendments also reflect the newly incorporated Form 440.

(b) The necessity of the amendment to this administrative regulation: This proposed regulatory amendment is needed to alleviate confusion between the regulatory requirements and the Department's policies and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and

administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the referenced statutes by setting forth advertisement filing guidelines for life and health insurers. There was previous language that applied to all insurers, but the Department does not require Property & Casualty companies to meet these filing requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The health or life insurers that are required to file annual statements, including advertisement, as well as 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: Insurers who intend to market insurance products must file with the department prior to marketing, in order to ensure that all advertisements meet the criteria of this regulation, as well as other advertising regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The process set forth in this administrative regulation clarifies a long-standing practice regarding the reporting process. Because insurers have already been complying in this manner, there is no cost to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Compliance with this regulation will allow insurers to use advertising materials publically.

(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 directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies to all life and health insurers issuing policies for accident or sickness benefits.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted as the implementer of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 any 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? This administrative regulation is not expected to generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have a cost to implement in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have a cost to administer 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: As the amendments to this administrative regulation clarify an existing process, this administrative regulation will not have a fiscal impact on the Department of Insurance.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Health and Life Insurance and Managed Care  
(Amendment)**

**806 KAR 14:007. Rate and form filing for health insurers.**

RELATES TO: KRS 304.1-010, 304.1-050, 304.3-270, 304.4-010, 304.14-120, 304.14-190, 304.17-380, 304.17A-005, 304.17A-095, 304.17A-096, 304.17C-010(5)

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code, as defined by KRS 304.1-010. This administrative regulation establishes rate and form filing procedures for health insurers.

**Section 1. Definitions.**

(1) "Commissioner" means the Commissioner of Insurance as defined by KRS 304.1-050(1).

(2) "Department" means Department of Insurance as defined by KRS 304.1-050(2).

(3) "Filing entity" means a health insurer authorized to transact business in Kentucky or an entity authorized by that health insurer to submit filings on its behalf.

(4) "Health benefit plan" is defined by KRS 304.17A-005(22).

(5) "Health policy form" or "form" means application, policy, certificate, contract, rider, endorsement, and for long-term care, short term nursing and Medicare Supplement products, including advertising.

(6) Limited health service benefit plan is defined by KRS 304.17C-010(5).

**Section 2. Filing Procedures.** (1) A health insurance rate and form filing shall be accompanied by a Face Sheet and Verification Form, Form HIPMC-F1.

(2) An individual health insurance rate filing shall be accompanied by an Individual Health Forms Actuarial Certification Form, Form HIPMC-R4.

(3) An insurer issuing, delivering, or renewing a health benefit plan or a limited health service benefit plan shall complete and attach to each plan filed a Health Summary Sheet – Form Filings, Form HL-F11.

(4) Except for a health benefit plan rate filing pursuant to KRS 304.17A-095, a rate filing shall be accompanied by a Rate Filing

Information Form, Form HIPMC-R36.

(5) If a rate or form filing submitted by a health insurer does not contain the information necessary to review the filing, the department shall use an Additional Health Information Request Form, Form HIPMC-F16, to request submittal of the incomplete information.

(6)(a) Each form shall be identified by a unique form number in the lower left-hand corner of the first page of the form; and

(b) Other numbers shall not appear in close proximity to the form number.

(7) Each submission shall be accompanied by a submittal letter listing all forms by number with a brief description of each form and listing all of the forms that will be submitted together.

(8) If a form is submitted with alternate pages or alternative benefits, the submittal letter required by subsection (7) of this section shall:

(a) State under what conditions each alternate page or alternative benefit may be used; and

(b) Identify by a unique form number each alternate page or alternative benefit.

(9) If a filing entity files a form containing variable text, the filing entity shall file an explanation of each variation the health insurer proposes to use.

(10) Except for an insert page or alternate page, each form shall contain the corporate name and address of the health insurer.

(11) A form filed for approval by the department shall not contain advertising or marketing material.

(12) If a new form is submitted, the filing entity shall identify the unique features of the form.

(13) If a filing includes a form which was previously disapproved by the department, the filing entity shall assign the form a new form number.

**Section 3. Filing Entity.** A filing entity may include in a filing multiple forms or documents pertaining to a single line of insurance, filed together on a particular date.

**Section 4. Date of Filing.** Pursuant to KRS 304.4-010(2), a fee payable under the Kentucky Insurance Code shall be collected in advance, unless an insurer is excluded from paying the fee in advance pursuant to KRS 304.4-010(3). The period of time in which the commissioner may approve or disapprove a filing shall not commence, and the submission shall not be given a filing date, until the following are received by the department:

(1) The rate or form filing;

(2) The appropriate fee pursuant to 806 KAR 4:010; and

(3) The form or letter of explanation required by Sections 2 and 6 of this administrative regulation, as appropriate.

**Section 5. Use of Forms and Rates.** (1) A form or rate shall not be used in Kentucky until:

(a) The form or rate has been approved by the department, which shall occur within the sixty (60) day ~~timeframe~~time frame identified in KRS 304.14-120(2) except as follows:

1. If the 60th day falls on a weekend or holiday, the 60th day shall be the following business day; and

2. If the commissioner grants an extension of the sixty (60) day time period required for approval or disapproval of a form or rate, and the insurer does not submit a corrected form or rate or additional requested information at least five (5) days prior to the expiration of the extended time period, the filing shall be disapproved; and

(b) If a rate for the form is required by KRS 304.14-120 to be approved, the appropriate rate schedule has been approved.

(2) A document subject to a filed only process, including advertisements and provider directories, shall be:

(a) Filed with the department; and

(b) Subject to review in accordance with KRS 304.14-120.

**Section 6. Form Revision.** If a filing includes a form which amends, replaces, or supplements a form which has been previously filed, it shall be accompanied by a letter of explanation from the filing entity which identifies:



## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

- (1) All changes contained in the newly filed form;
- (2) The form being replaced;
- (3) The date the replaced form was:
  - (a) Approved;
  - (b) Disapproved;
  - (c) Withdrawn; or
  - (d) Submitted; and
- (4) The effect the changes have upon the policy or the rates applicable to the policy.

Section 7. Rate Revision and Annual Rate Filings. (1) The following shall be included and properly completed in a filing for rate revision or annual rate filing:

- (a) Signed actuarial memorandum, in accordance with 806 KAR 17:070, Sections 3 and 4;
  - (b) New rate sheet, in accordance with 806 KAR 17:070, Section 3; and
  - (c) Forms required by Section 2 of this administrative regulation.
- (2) An appropriate fee [~~pursuant to 806 KAR 4:010~~], shall be submitted with each filing, pursuant to 806 KAR 4:010.

Section 8. Officer Signature. A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9. Electronic Filings. (1) A health insurer may file a rate or form electronically through the National Association of Insurance Commissioners' electronic system for rate and form filings via the Web site [www.serff.com](http://www.serff.com).

(2) An electronic filing as identified in subsection (1) of this section shall be in lieu of a paper filing.

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

- (a) Form HIPMC-F1, "Face Sheet and Verification Form", 10/2021 [07/2020] edition;
- (b) Form HL-F11, "Health Summary Sheet – Form Filings", 07/2020 edition;
- (c) Form HIPMC-R4, "Individual Health Forms Actuarial Certification Form", 07/2020 edition;
- (d) Form HIPMC-R36, "Rate Filing Information Form", 07/2020 edition; and
- (e) Form HIPMC-F-16, "Additional Health Information Request Form", 07/2020 edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Insurance, 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's Web site at: <https://insurance.ky.gov/ppc/CHAPTER.aspx> [~~<http://insurance.ky.gov>~~].

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 14, 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. on December 21, 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 December 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, Regulations Coordinator, 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 rate and form filing procedures for health insurers so the Commissioner will have relevant information to approve or disapprove a filing.

(b) The necessity of this administrative regulation: KRS 304.14-120 requires that all policy forms to be delivered or issued in Kentucky be filed with and approved by the Commissioner before being issued or delivered. KRS 304.14-130 requires the Commissioner to determine whether the benefits in the policy are reasonably related to the premium charged. This administrative regulation is necessary to establish the procedures for insurers to file forms and rates with the Commissioner in accordance with the law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes rate and form filing procedures for health insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the Commissioner in the proper review of form and rate filings in accordance 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 proposed amendments to this regulation incorporate the updated HIPMC-F1 Form, and address fee filing inconsistencies with 806 KAR 4:010 and KRS 304.4-010. These amendments were requested by subcommittee staff during the promulgation of 806 KAR 17:150.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to ensure that the Department's fee and fee filing requirements are consistent among both statutes and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations that aid in the effectuation of the Insurance Code. KRS 304.4-010 also prescribes that the Commissioner determine fees of the Department, and HIPMC F-1 lays out fees and fee schedules.

(d) How the amendment will assist in the effective administration of the statutes: These proposed amendments will assist in the effective administration of statutes because there are currently inconsistencies about the advancement of fee payments; as amended, the regulation and statute will require the same procedures/processes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the 470 licensed insurers writing health insurance in the state of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The proposed amendments do not require new actions of regulated entities, and do not require regulated entities to file fees in advance if they are submitting documents pursuant to KRS 304.4-010(3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The insurers will be responsible for copying and delivery costs. Because

insurers are currently required to file this information, the cost to insurers should not increase significantly, if at all.

(c) As a result of compliance, what benefits will accrue to the entities: Meeting the proper filing requirements means that filings are more likely to be approved by the Commissioner, thereby assisting with their transaction of insurance business.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: No cost is expected.

(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 ongoing cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies to all insurers.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1)

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

(b) How 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 revenue neutral.

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

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

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation:

#### PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Electrical (Amendment)

#### 815 KAR 35:020. Electrical inspections.

RELATES TO: KRS 198B.050, 211.350, 227.460, 227.480, 227.487, 227.491

STATUTORY AUTHORITY: KRS 198B.060(18), 227.480(1)(b)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.480(1)(b) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which inspections are required for electrical construction, installations, alterations, or repairs. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions it performs pursuant to KRS Chapter 198B. This administrative regulation establishes the requirements for inspections of electrical construction, installations, alterations, and repairs.

#### Section 1. Jurisdiction. (1) State jurisdiction.

(a) The department shall conduct electrical inspections for state-owned property, including each building constructed by the state under the authority of the Finance and Administration Cabinet.

(b) An electrical inspector employed by the department shall inspect any electrical work subject to inspection within a local jurisdiction if a certified electrical inspector has not been made available by the local government.

(c) An electrical inspector employed by the department may assert jurisdiction for the electrical inspection of a project subject to state plan review pursuant to Kentucky Building Code, 815 KAR 7:120.

(d) An electrical inspector employed by the department may inspect a state leased facility that is not otherwise subject to state inspection pursuant to this section, upon request.

(2) Local jurisdiction. A local electrical inspector shall conduct electrical inspections pursuant to KRS 198B.060.

Section 2. Permits. (1) Prior to the commencement of electrical work subject to state inspection, the electrical contractor, property owner, or other person responsible for the electrical work to be performed shall request and obtain a permit from the department.

(2) The person requesting a permit shall submit to the department "Electrical Permit Application" on Form EL-13.

(3) It shall be the obligation of the contractor, property owner, or other person responsible for the electrical work to supply the complete value of the electrical work, including labor and material costs, regardless of the purchaser.

(4) The department shall request other documented proof of costs from the responsible person or owner if the true value is in question.

Section 3. Electrical Inspections. (1) Except as provided in subsection (2) of this section, the department or a local certified electrical inspector having jurisdiction shall inspect each electrical construction, installation, alteration, or repair to ensure compliance with NFPA 70, the National Electrical Code, incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, Kentucky Standards of Safety.

(2) Exemptions from Electrical Inspections. Electrical inspections shall not be required for:

(a) Electrical work beyond the scope of NFPA 70;

(b) Electrical work that is exempt from permitting requirements pursuant to:

1. Section 105.2 of the Kentucky Building Code, 815 KAR 7:120;

2. Section 2703.2 of the Kentucky Building Code, 815 KAR 7:120; or

3. Section R105.2 of the Kentucky Residential Code, 815 KAR 7:125;

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

(c) Electrical wiring under the exclusive control of electric utilities, in accordance with KRS 227.460;

(d) Electrical wiring of a surface coal mine, an underground coal mine, or at a coal preparation plant; [and]

(e) Appliances[-]; and

(f) Electrical work performed beyond the service disconnect by or on behalf of the Kentucky Transportation Cabinet by pre-qualified contractors within the public right of way, which is not related to buildings for human occupancy.

(3) The department or a local electrical inspector having jurisdiction shall perform an electrical inspection upon discovery or receipt of information indicating that electrical work requiring a permit pursuant to KRS 227.480, 815 KAR 7:120, Kentucky Building Code, or 815 KAR 7:125, Kentucky Residential Code has been performed without a permit.

(4) Inspection scheduling.

(a) The permit holder or property owner shall be responsible for scheduling an inspection with the electrical inspection authority for the jurisdiction.

(b) Each electrical inspection shall be completed within five (5) working days of the request for inspection, except for an inspection performed pursuant to subsection (3) of this section.

(c) An inspection performed pursuant to subsection (3) of this section shall be conducted and completed within five (5) working days of discovery or receipt of information indicating that the electrical work has been performed.

(5) Rough-in inspections.

(a) Rough-in inspections shall be required only if any portion of the electrical work will be covered or concealed. The rough-in inspection shall be conducted prior to covering or concealment.

(b) A rough-in inspection may be requested for part of the electrical work on a project or all the electrical work on a project.

(c) Upon completion of the rough-in inspection, an electrical inspector shall attach a red sticker with his or her signature and certification number on the main service equipment or at some other appropriate location.

(6) Prohibition on covering. (a) If an installation is covered without prior inspection, the electrical inspector shall require the system to be uncovered for inspection, unless unnecessary to perform the inspection.

(b) If conditions require partial coverage of the permitted electrical work, permission shall be requested and received from the electrical inspector prior to coverage.

(c) If in the judgment of the electrical inspector uncovering the electrical work is likely to result in more damage, then exposing the electrical work shall only occur at the request of the property owner.

(7) Final inspections. A final inspection shall be conducted by the department or electrical inspector having jurisdiction after completion of the permitted electrical work and prior to use.

(8) Voluntary inspections. An inspection for any electrical construction, installation, alteration, repair, or maintenance normally exempt from inspections pursuant to subsection (2) of this section may be requested to be performed by the department or electrical inspector having jurisdiction.

(9) Construction service approval. A temporary construction service approval for a construction site shall receive a green sticker and a certificate of approval.

(10) Service only approval. A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

Section 4. Access. All access, equipment, and material necessary for inspections shall be provided by the property owner or person obtaining the electrical permit or requesting the electrical inspection.

Section 5. Fees for State Inspections. (1) The electrical contractor, property owner, or other person responsible for the electrical work shall pay the department the inspection fee required by this section.

(2) A certificate of inspection or other final approval of an electrical construction, installation, alteration, or repair shall not be issued by the department until the fee required by this subsection has been paid.

(3) The fee to inspect electrical work having a complete value of less than \$8,000 shall be \$125.

(4) The fee to inspect electrical work having a complete value more than \$8,000 but less than \$16,500 shall be \$250.

(5) The fee to inspect electrical work having a complete value more than \$16,500 but less than \$25,000 shall be \$500.

(6) The fee to inspect electrical work having a complete value of \$25,000 or more shall be calculated as a percentage of the complete value in accordance with the schedule established in this subsection.

Amount in dollars	Permit fee
\$25,000 to \$199,999	2.0%
\$200,000 to \$299,999	1.9%
\$300,000 to \$499,999	1.5%
\$500,000 to \$699,999	1.3%
\$700,000 to \$999,999	1.1%
\$1,000,000 & Higher	1.0%

Section 6. Certificate of Approval. (1) Upon final approval of an electrical installation, the electrical inspector shall:

(a) Attach a green sticker to the main service equipment:

1. With his or her signature and certification number, name of the project, and location; and

2. Stating that the system has been inspected for compliance with the code; and

(b) Provide the owner or the owner's agent with a certificate of approval.

(2) For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of approval or otherwise release the property for the supply of electricity until he or she has received the local health department's "Final Notice of Release" and has recorded its number upon the certificate of approval.

Section 7. Stickers. A red sticker for rough-in inspections pursuant to Section 3(5)(b), yellow sticker for service only pursuant to Section 3(9)(b), or green sticker or a certificate of approval pursuant to Section 6(1)(a) of this administrative regulation shall be of a type and format issued or approved by the department.

Section 8. Incorporation by Reference. (1) "Electrical Permit Application", Form EL-13, May 2020 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Electrical Section, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>. 815 KAR 35:020:

RAY PERRY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: September 3, 2021

FILED WITH LRC: October 14, 2021 at 12:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2022 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the

above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel,  
Department of Housing, Buildings and Construction, 500 Mero  
Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-  
0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for inspections of electrical construction, installations, alterations, and repairs.

(b) The necessity of this administrative regulation: KRS 227.480(1)(b) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which inspections are required for electrical construction, installations, alterations, or repairs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions it performs pursuant to KRS Chapter 198B. KRS 227.480(1)(b) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which inspections are required for electrical construction, installations, alterations, or repairs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the schedule of fees for the functions the Department of Housing, Buildings & Construction performs pursuant to KRS Chapter 198B, and establishes the requirements for inspections of electrical construction, installations, alterations, and repairs.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds an exemption from electrical inspections to electrical work performed beyond the service disconnect by or on behalf of the Kentucky Transportation Cabinet by pre-qualified contractors within the public right of way, which is not related to buildings for human occupancy.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add the above-detailed exemption and prevent duplicative inspections. The Kentucky Transportation Cabinet Division of Traffic Operations employs a Kentucky-licensed professional electrical engineer as well as a qualified electrical worker inspection staff who have been trained in the installation and operation of electrical devices and components and who ensure that the type of equipment covered by this exception is installed in accordance with KYTC standards and specifications in support of public safety. All electrical construction work performed on behalf of the Cabinet is conducted by a prequalified electrical contractor in accordance with the attached memorandum.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.480(1)(b) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which inspections are required for electrical construction, installations, alterations, or repairs. This amendment provides clarity as to what kind of inspections are exempt from electrical inspections.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes clear what type of Kentucky transportation Cabinet electrical projects are exempt from Department of Housing, Buildings & Construction electrical inspections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All electrical work performed beyond the service disconnect by or on behalf of the Kentucky Transportation Cabinet by pre-qualified contractors within the public right of way, which is not related to buildings for human occupancy will be

affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Transportation Cabinet will no longer need to have the above described projects inspected or permitted through the Department of Housing, Buildings & Construction.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By exempting the Kentucky Transportation Cabinet from these electrical inspections, duplicative electrical inspections will be prevented and Kentucky Transportation Cabinet projects meeting the criteria described in the amendment will not be delayed by the regular permitting and inspection process.

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

(a) Initially: There are no anticipated additional costs to implement this administrative regulation initially.

(b) On a continuing basis: There is no ongoing cost associated with the implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Electrical Division and the Kentucky Transportation Cabinet 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 227.480(1)(b) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which inspections are required for electrical construction, installations, alterations, or repairs. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions it performs pursuant to KRS Chapter 198B.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

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

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

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

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

**907 KAR 3:170. Telehealth service coverage and reimbursement.**

RELATES TO: KRS 194A.060, [194A.125,] 205.510 (16)[(15)], (17), 205.559, 205.5591, 205.560, 304.38-240, 422.317, 434.840-434.860, 42 C.F.R. 400.203, 415.174, 415.184, 431.300-431.307, 440.50, Part 455, 45 C.F.R. 164.530, 42 U.S.C. 1395m

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559[(2)], 205.5591[(7)], 205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), 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 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers, and KRS 205.5591 requires[205.559(2) and (7) require] the cabinet to promulgate an administrative regulation relating to telehealth services and reimbursement. This administrative regulation establishes the Department for Medicaid Services' coverage and reimbursement policies relating to telehealth services in accordance with KRS 205.559 and 205.5591.

Section 1. Definitions. (1) "Asynchronous telehealth" means a store and forward telehealth service that is electronically mediated.

(2) "Department" means the Department for Medicaid Services or its designated agent.

(3) ["Face-to-face" means:

- (a) In person; and
- (b) Not via telehealth.

(4)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(4) "In-person" means a healthcare encounter occurring:

(a) Via direct contact and interaction between the individual and healthcare provider;

(b) At the same location; and

(c) Not via telehealth.

(5) "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130 or pursuant to the process established by KRS 304.38-240.

(6) "Place of service" means anywhere the patient is located at the time a telehealth service is provided, and includes telehealth services provided to a patient located at the patient's home or office, or a clinic, school, or workplace.

(7) "Remote patient monitoring" means a digital technology that collects medical and health data from an individual in one (1)

location and electronically and securely transmits that data to a telehealth care provider in a different location.

(8) "Synchronous telehealth" means a telehealth service that simulates an in-person[a face-to-face] encounter via real-time interactive audio and video technology between a telehealth care provider and a Medicaid recipient.

(9)[(8)] "Telehealth" is defined by KRS 205.510(16)[(15)].

(10)[(9)] "Telehealth care provider" means a Medicaid provider who is:

(a) 1. Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

2.[(b)] Currently participating as a Medicaid provider in accordance with 907 KAR 1:671;

3.[(c)] Operating within the scope of the provider's professional licensure; and

4.[(d)] Operating within the provider's scope of practice; or[.]

(b) A community mental health center (CMHC) that is participating in the Medicaid program in compliance with 907 KAR 1:044, 907 KAR 1:045, or 907 KAR 1:047.

(11)[(40)] "Telehealth service" means any service that is provided by telehealth and is one (1) of the following:

(a) Event;

(b) Encounter;

(c) Consultation, including a telehealth consultation as defined by KRS 205.510(17)[(16)];

(d) Visit;

(e) Store and forward transfer, as limited by Section 6[4] of this administrative regulation;

(f) Remote patient monitoring[, as limited by Section 4 of this administrative regulation];

(g) Referral; or

(h) Treatment.

Section 2. Recipient Right to Receive Care In-Person or Via Synchronous Telehealth. (1) Any recipient, upon being offered the option of an asynchronous or audio-only telehealth visit, shall have the opportunity or option to request to be accommodated by that provider in an in-person encounter or synchronous telehealth encounter.

(2)(a) A telehealth care provider that has received a request for an in-person encounter or synchronous telehealth encounter shall provide an alternative in-person or synchronous telehealth encounter for the recipient within:

1. A reasonable time;

2. The existing availability constraints of the provider's schedule; and

3. No more than three (3) weeks of the recipient's request, unless the recipient's condition or described symptoms suggest a need for an earlier synchronous or in-person encounter.

(b) 1. A provider's failure to accommodate a recipient with a synchronous telehealth or in-person encounter shall be reported to the Office of the Ombudsman and Administrative Review of the Cabinet for Health and Family Services, or its successor organization by a:

a. Recipient;

b. Recipient's guardian or representative;

c. Another provider; or

d. Managed care organization.

2. The Office of the Ombudsman and Administrative Review shall investigate as appropriate and forward reports of a failure to accommodate to the department.

(c) If a provider fails to accommodate any recipient or combination of recipients ten (10) or more times within a calendar year, the department may:

1. Issue a corrective action plan to ensure that recipients are receiving appropriate and timely care.

2. Suspend the provider from providing asynchronous telehealth services to Medicaid recipients.

(d) The requirement to accommodate established in this subsection shall not apply to a provider who is participating in the encounter only to diagnose or evaluate an image or data file.

Section 3. General Policies. (1)(a) The telehealth policies

established in this administrative regulation shall supersede any in-person requirement established within KAR Title 907.

(b) The requirement established in paragraph (a) of this subsection shall not supersede an in-person requirement established pursuant to:

1. State or federal law, including via the state plan or a waiver;
2. A standard set by a professional criteria, such as the American Society of Addiction Medicine's (ASAM) Criteria, if applicable;
3. A licensing body; or
4. A billing code requirement established pursuant to a department utilized procedure code.

(2) Subject to any relevant restrictions in this administrative regulation, a telehealth service shall be reimbursable if it is:

(a) Appropriate and safe to be delivered via the telecommunication technology used. For the purposes of this section, whether a service is appropriate shall include any requirements and descriptions relating to a department utilized procedure code;

(b) Not prohibited by the licensing board of the telehealth care provider delivering or supervising the service; and

(c) Provided by a telehealth care provider.

(3) Unless prohibited by the relevant licensing board of the telehealth care provider, a telehealth care provider may establish a new patient and conduct an initial visit with the new patient via the use of synchronous telehealth.

(4)(a) Except as provided in paragraph (b) of this subsection, the coverage policies established in this administrative regulation shall apply to:

1. Medicaid services for individuals not enrolled in a managed care organization; and
2. A managed care organization's coverage of Medicaid services for individuals enrolled in the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services.

(b) A managed care organization shall reimburse the same amount for a telehealth service as the department reimburses unless a different payment rate is negotiated in accordance with Section 4[3](1)(a)[2-] of this administrative regulation.

(5)[(2)] A telehealth service shall not be reimbursed by the department if:

- (a) It is not medically necessary;
- (b) The equivalent service is not covered by the department if provided in an in-person[a face-to-face] setting; or
- (c) The telehealth care provider of the telehealth service is:
  1. Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;
  2. Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;
  3. Not in good standing with the Medicaid program;
  4. Currently listed on the Kentucky DMS Provider Terminated and Excluded Provider List, which is available at <https://chfs.ky.gov/agencies/dms/dpi/pe/Pages/terminated.aspx>;

(e) Currently listed on the United States Department of Health and Human Services, Office of Inspector General List of Excluded Individuals and Entities, which is available at <https://oig.hhs.gov/exclusions/>;

6. Not otherwise prohibited from participating in the Medicaid program in accordance with 42 C.F.R. 455; or

7. Not physically located within the United States or a United States territory at the time of service.

(6)[(3)](a) A telehealth service shall be subject to utilization review for:

1. Medical necessity;
  2. Compliance with this administrative regulation; and
  3. Compliance with applicable state and federal law.
- (b) The department shall not reimburse for a telehealth service if the department determines that a telehealth service is not:
1. Medically necessary;
  2. Compliant with this administrative regulation;
  3. Applicable to this administrative regulation; or
  4. Compliant with applicable state or federal law.

(c) The department shall recover the paid amount of a[reoup the] reimbursement for a previously reimbursed telehealth service if the department determines that a telehealth service was not:

1. Medically necessary;
2. Compliant with this administrative regulation;
3. Applicable to this administrative regulation; or
4. Compliant with applicable state or federal law.

(7)(a) If a telehealth service is delivered as an audio-only encounter and a telephonic code exists for the same or similar service, the department shall reimburse at the lower reimbursement rate between the two (2) types of services.

(b) An attempted and scheduled telehealth service that is completed telephonically due to provider or recipient technological failure shall be reimbursed at the reimbursement rate of the telehealth encounter.

(8)[(4)] A telehealth service shall have the same referral requirements as an in-person[a face-to-face] service.

(9)[(5)] Within forty-eight (48) hours of the reconciliation of the record of the telehealth service, a provider shall document within the patient's medical record that a service was provided via telehealth, and follow all documentation requirements established by Section 5 of this administrative regulation.

(10) Pursuant to 907 KAR 1:671 and 1:672, the department shall require a telehealth care provider to meet all relevant licensure and accreditation requirements that would be required for that provider to provide care to a recipient in an in-person setting.

Section 4[3]. Telehealth Reimbursement. (1)(a)[4-] The department shall reimburse an eligible telehealth care provider for a telehealth service in an amount that is at least 100 percent of the amount paid for a comparable in-person service.

(b)[2-] A managed care organization and provider may establish a different rate for telehealth reimbursement via contract as allowed pursuant to KRS 205.5591(2)(a)1.[(5)].

(b) A telehealth service reimbursed pursuant to this section shall be subject to cost-sharing pursuant to 907 KAR 1:604.]

(2) A provider shall appropriately denote telehealth services by place of service or other means as designated by the department or as required in a managed care organization's contract with the provider or member.

(3)(a) Pursuant to KRS 205.559(2)(a)1., the department shall reimburse an originating site fee for a qualifying Medicare-participating telehealth care provider if the Medicaid beneficiary served was physically located at a rural health clinic, federally qualified health center, or federally qualified health center look-alike when the telehealth service was performed.

(b) The payment for an originating site facility fee shall be consistent with the amounts established in 42 U.S.C. 1395m(m)(2)(B)(i).

Section 5. Telehealth Provided by an Out-of-State Telehealth Care Provider. (1) The department shall evaluate and monitor the healthcare quality and outcomes for recipients who are receiving healthcare services from out-of-state telehealth care providers.

(2) The department shall implement any in-state or out-of-state participation restrictions established by a state licensing board for the impacted provider type.

(3) In order to improve healthcare quality and outcomes for recipients, the department may:

(a) Require a telehealth care provider who is located out-of-state to practice under an agreement with a provider with a physical presence within Kentucky.

(b) Prohibit certain services, recipients, or providers from conducting telehealth services if those services are provided by a telehealth care provider located out-of-state.

Section 6.[Section 4-] Asynchronous Telehealth. (1) An asynchronous telehealth service or store and forward transfer shall be limited to those telehealth services that have an evidence base establishing the service's safety and efficacy.

(2) A store and forward service shall be permissible if the primary purpose of the asynchronous interaction involves high quality digital data transfer, such as digital image transfers. An

asynchronous telehealth service within the following specialties or instances of care that meets the criteria established in this section shall be reimbursable as a store and forward telehealth service:

- (a) Radiology;
- (b) Cardiology;
- (c) Oncology;
- (d) Obstetrics and gynecology;
- (e) Ophthalmology and optometry, including a retinal exam;
- (f) Dentistry;
- (g) Nephrology;
- (h) Infectious disease;
- (i) Dermatology;
- (j) Orthopedics;
- (k) Wound care consultation;

(l) A store and forward telehealth service in which a clear digital image is integral and necessary to make a diagnosis or continue a course of treatment;

(m) A speech language pathology service that involves the analysis of a digital image, video, or sound file, such as for a speech language pathology diagnosis or consultation; or

(n) Any code or group of services included as an allowed asynchronous telehealth service pursuant to subsection (4) of this section.

(3) Unless otherwise prohibited by this section, an asynchronous telehealth service shall be reimbursable if that service supports an upcoming synchronous telehealth or in-person[face-to-face] visit to a provider that is providing one (1) of the specialties or instances of care listed in subsection (2) of this section.

(4)(a) The department shall evaluate available asynchronous telehealth services quarterly, and may clarify that certain asynchronous telehealth services meet the requirements of this section to be included as permissible asynchronous telehealth, as appropriate and as funds are available, if those asynchronous telehealth services have an evidence base establishing the service's:

- 1. Safety; and
- 2. Efficacy.

(b) Any asynchronous service that is determined by the department to meet the criteria established pursuant to this subsection shall be available on the department's Web site.

(5) Except as allowed pursuant to subsection (4) of this section or otherwise within the Medicaid program, a provider shall not receive additional reimbursement for an asynchronous telehealth service if the service is an included or integral part of the billed office visit code or service code.

(6)[(a)] Pursuant to Section 7 of this administrative regulation, remote patient monitoring shall ~~[not]~~ be an eligible telehealth service within the fee-for-service and managed care Medicaid programs.

(7) Each asynchronous telehealth service shall involve timely actual input and responses from the provider, and shall not be solely the result of reviewing an artificial intelligence messaging generated interaction with a recipient[program unless that service is:

- 1. Expanded pursuant to subsection (4) of this section;
- 2. Otherwise included as a part of a department approved value based payment arrangement; or
- 3. Otherwise included as a value added service or payment arrangement.

(b) A managed care organization may reimburse for remote patient monitoring as a telehealth service if expanded pursuant to subsection (4) of this section or provided as a:

- 1. Value based payment arrangement; or
- 2. Value added service or payment arrangement].

Section 7.[Section 5.] Remote Patient Monitoring. (1) Conditions for which remote patient monitoring shall be covered include:

- (a) Pregnancy;
- (b) Diabetes;
- (c) Heart disease;
- (d) Cancer;

(e) Chronic obstructive pulmonary disease;

(f) Hypertension;

(g) Congestive heart failure;

(h) Mental illness or serious emotional disturbance;

(i) Myocardial infarction;

(j) Stroke; or

(k) Any condition that the department determines would be appropriate and effective for remote patient monitoring.

(2) Except for a recipient participating due to a pregnancy, a recipient receiving remote patient monitoring services shall have two (2) or more of the following risk factors:

(a) Two (2) or more inpatient hospital stays during the prior twelve (12) month period;

(b) Two (2) or more emergency department admissions during the prior twelve (12) month period;

(c) An inpatient hospital stay and a separate emergency department visit during the prior twelve (12) month period;

(d) A documented history of poor adherence to ordered medication regimens;

(e) A documented history of falls in the prior six (6) month period;

(f) Limited or absent informal support systems;

(g) Living alone or being home alone for extended periods of time;

(h) A documented history of care access challenges; or

(i) A documented history of consistently missed appointments with health care providers.

(3) A recipient may participate in a remote patient monitoring program as the result of a pregnancy if the provider documents that the recipient has a condition that would be improved by a remote patient monitoring service.

(4) Remote patient monitoring shall be ordered by:

(a) A physician;

(b) An advanced practice registered nurse; or

(c) A physician's assistant.

(5) Providers who may provide remote patient monitoring services include:

(a) A home health agency;

(b) A hospital;

(c) A federally qualified health center;

(d) A rural health center;

(e) A primary care center;

(f) A physician;

(g) An advanced practice registered nurse;

(h) A physician's assistant.

(6) A recipient participating in a remote patient monitoring service shall:

(a) Have the capability to utilize any monitoring tools involved with the ordered remote patient monitoring service. For the purposes of this paragraph, capability shall include the regular presence of an individual in the home who can utilize the involved monitoring tools; and

(b) Have the internet or cellular internet connection necessary to host any needed remote patient monitoring equipment in the home.

(7) The department may restrict the remote patient monitoring benefit by excluding:

(a) Remote patient monitoring equipment;

(b) Upgrades to remote patient monitoring equipment; or

(c) An internet connection necessary to transmit the results of the services.

Section 8. Telephonic Services. Telephonic code reimbursement shall be:

(1) An alternative option for telehealth care providers to deliver audio-only telecommunications services, and shall not supersede reimbursement for an audio-only telehealth service as established pursuant to KRS 205.559 or 205.5591;

(2) For a service that has an evidence base establishing the service's safety and efficacy;

(3) Subject to any relevant licensure board restrictions of the telehealth care provider;

(4) Subject to any synchronous telehealth limits of this

administrative regulation or other state or federal law; and

(5) For a service that is listed on the most recent version of the Physician Fee Schedule.

Section 9. Department Maintained List. (1) In order to assist with the effective and appropriate delivery of services, the department may establish and maintain an informational listing of procedure codes that are:

(a) Not allowed to be provided via telehealth due to conflicts with the requirements established within state or federal law, or this administrative regulation; or

(b) Subject to additional restrictions related to telehealth, such as a requirement that any telehealth associated with a procedure be conducted via a connection that has both video and audio of the recipient and provider.

(2) Any informational listing shall be available on the department's Web site.

Section 10. Medical Records. (1) A medical record of a telehealth service shall be maintained in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

(2) A health care provider shall have the capability of generating a hard copy of a medical record of a telehealth service.

Section 11.[Section 6.] Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 12.[Section 7.] Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal a department-written determination as to the application of this administrative regulation in accordance with 907 KAR 1:671.

(4) An appeal of a managed care organization's determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 17:010.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 11, 2021

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 21, 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 December 14, 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 December 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

## REGULATORY IMPACT ANALYSIS And Tiering Statement

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) policies relating to telehealth. The coverage policies in this administrative regulation apply to a managed care organization's (MCO's) coverage of Medicaid services for individuals enrolled in the MCO for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. An MCO is only required to reimburse according to this administrative regulation depending on the rates negotiated with providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS policies relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.

(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 telehealth policies.

(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 DMS telehealth policies.

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

(a) How the amendment will change this existing administrative regulation: The administrative regulation is amended to incorporate new definitions for "remote patient monitoring" and "in-person". The regulation is also amended to establish a recipient rights' clause to allow recipients' the option to receive services in-person or via synchronous telehealth. A process is established that can result in a suspension from providing asynchronous telehealth services when a recipient is not accommodated after requesting in-person or synchronous telehealth. Telehealth policy is clarified to state that services are subject to in-person requirements established by state or federal law, a standard set by a professional criteria, a licensing body, or a billing code requirement. The department's general policy is that telehealth services are reimbursable if they are appropriate and safe to be delivered via the technology used and not prohibited by the provider's licensing board. In addition, a new patient may be established and an initial visit may be conducted via the use of synchronous telehealth. The administrative regulation also establishes telephonic service requirements. This is specifically in relation to existing telephonic codes and establishing a policy to reimburse at the lower reimbursement rate between an audio-only encounter and the telephonic code when a discrepancy in reimbursement rates exists. The administrative regulation also expands instances under which a provider may be restricted from providing telehealth services, including if the provider is subject to sanctions under 42 C.F.R. Part 455 or if the provider is physically located outside of the United States at the time of service. Finally, the administrative regulation requires providers to meet the same licensure and accreditation requirements that would be required for the provider to see the same recipient within an in-person setting. The administrative regulation is also amended to allow the department to recover the paid amount of an inappropriately paid telehealth encounter. The administrative regulation also establishes reimbursement for an originating site fee for rural health clinics, federally qualified health centers, and federally qualified health center look-alikes. The administrative regulation also addresses telehealth provided by out-of-state providers by requiring evaluation and monitoring of outcomes for recipients who are receiving healthcare services from out-of-state providers, requiring DMS to implement any participation restrictions established by state licensing boards, and establishing restrictions and limitations for out-of-state providers if there are concerns about healthcare quality and outcomes. Asynchronous telehealth services are expanded to include remote patient monitoring, and the regulation is further clarified to require that asynchronous telehealth services involve timely actual input and responses from the provider. Remote patient monitoring (RPM) is further expanded to include specific conditions, including conditions determined by the department to be appropriate and effective,



require specific risk factors for RPM eligibility, and allow for RPM to be ordered by a physician, advanced practice registered nurse (APRN), or physician's assistant. In addition, recipients are required to meet certain requirements to use RPM, and certain hardware and upgrades are potentially excluded from the RPM benefit. The administrative regulation further establishes requirements relating to telephonic services. Finally, the administrative regulation is amended to allow the department to post an informational listing of codes that are not allowed or that are subject to additional restrictions such as a requirement that services be conducted via both audio and visual connection for all participants.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that policies stated in the administrative regulation are consistent with changes required by 2021's HB 140, Ky. Acts Ch. 67, and to further incorporate best practices learned by the large shift to telehealth that occurred during the COVID-19 public health emergency.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing changes required by 2021's HB 140, Ky. Acts Ch. 67, and further instituting efficiencies and best practices that have been highlighted during the COVID-19 public health emergency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by implementing changes to 2021's HB 140's (Ky. Acts Ch. 67) amendments to KRS Chapter 205. In addition, this amendment will further implement efficiencies and best practices that have been highlighted during the COVID-19 public health emergency.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, MCOs, any enrolled and credentialed provider who could provide appropriate telehealth services, and Medicaid members who may access telehealth services. Over the course of the COVID-19 public health emergency, the number of providers offering telehealth and the number of Medicaid members accessing telehealth services has greatly increased. There are currently over 1.4 million Kentuckians participating in the Medicaid program and 46,000 providers enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To be reimbursed for a telehealth service, a provider will have to comply with the policies and requirements established in this administrative regulation. Participation is optional, not mandatory.

(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 the entities regulated by the administrative regulation as participation is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those who opt to perform telehealth services in compliance with this administrative regulation will be reimbursed for services rendered.

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

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

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing these amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 nor funding will be necessary to implement this administrative regulation.

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

(9) Tiering: Is tiering applied? Tiering was not applied as telehealth service standards are applied equally to all affected individuals.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.030(2), 194A.125, 205.520(3), 205.559, 205.5591

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment 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? The amendment 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? The department anticipates no additional costs in administering these amendments in the first year.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.300-431.307, 440.50.

2. State compliance standards. KRS 205.559, 205.5591, and 205.560 require DMS to expand telehealth services and policies to ensure proper use and security and promote access to health care.

3. Minimum or uniform standards contained in the federal mandate. The federal requirements in 42 C.F.R. 431.300-431.307 establish requirements relating to the safeguarding of electronic health information. 42 C.F.R. 440.50 allow for the provision of telehealth by providers within the Medicaid program.

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.

NEW ADMINISTRATIVE REGULATIONS

Public comment periods ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**DEPARTMENT OF AGRICULTURE**  
**Office of the Consumer and Environmental Protection**  
**(New Administrative Regulation)**

**302 KAR 50:046. Department's reports to USDA; records retention for three (3) years.**

RELATES TO: KRS Chapter 217B, 260.850-260.869; 7 U.S.C. 1739p, 7 C.F.R. Part 990

STATUTORY AUTHORITY: KRS 260.862; 7 U.S.C. 1739p

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation defines certain departmental reporting and record-retention duties.

Section 1. Definitions.

- (1) "Department" or "KDA" is defined by KRS 260.850.
- (2) "GPS" means Global Positioning System.
- (3) "Hemp" or "industrial hemp" is defined by KRS 260.850.
- (4) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

Section 2. Record keeping requirements; three year retention period.

(1) For at least three years, license holders shall retain and make available for inspection by the department (or USDA inspectors, auditors, or their representatives) during reasonable business hours:

- (a) Records regarding acquisition of hemp plants;
- (b) Records regarding production and handling of hemp plants;
- (c) Records regarding storage of hemp plants; and
- (d) Records regarding disposal of all cannabis plants that do not meet the definition of hemp.

Section 3. Monthly Producer Reports.

(1) On or before the first day of each month, the department shall submit a Monthly Producer Report to USDA providing the contact information, and current status, of each licensee that has been issued by the department. If the first day of the month falls on a weekend or a holiday, then the department shall submit its Monthly Producer Report on or before the first business day following the first day of the month. The department shall submit its Monthly Producer Report in a digital format that is compatible with USDA's information sharing system whenever possible, or on USDA Form AMS-23. The department's Monthly Producer Reports shall include the following information:

(a) For each new grower who is an individual, the Monthly Producer Report shall include the full name of the individual, the license number, the business address, the legal description (GPS location) of the land where hemp is produced, the telephone number, and the email address (if available); and the status of each grower's license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

(b) For each new grower that is an entity, the Monthly Producer Report shall include the full name of the entity, the license number, the principal business location address, the legal description (GPS location) of the land where hemp is produced, and the full name, title, and email address (if available) for each employee for whom the entity is required to submit a criminal history record report; and the status of each grower's license, the period covered by the

report, and an indication that there were no changes during the current reporting cycle, if applicable.

(c) For each grower that was included in a previous report, and whose reported information has changed, the Monthly Producer Report shall include the previously reported information and the new information; and the status of each grower's license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

Section 4. Monthly Disposal Reports.

(1) On or before the first day of each month, the department shall submit a Monthly Disposal Report to USDA providing notice to USDA of any occurrence of non-conforming plants or plant material. If the first day of the month falls on a weekend or a holiday, then the department shall submit its Monthly Disposal Report on or before the first business day following the first day of the month. The department shall submit its Monthly Producer Report in a digital format that is compatible with USDA's information sharing system whenever possible or on USDA Form AMS-24. The department's Monthly Disposal Reports shall include:

- (a) Grower's name, address, and license number;
- (b) Location ID, GPS coordinates, and USDA FSA lot description (farm number, tract number, field number, and sub-field number) for the lot that was subject to disposal;
- (c) Date of the disposal,
- (d) Name of the KDA employee who supervised the disposal; and
- (e) Total acreage.

Section 5. Annual Reports.

(1) On or before December 15 of each year, the department shall submit an Annual Report to USDA. The department shall submit its Annual Report in a digital format that is compatible with USDA's information sharing system whenever possible or on USDA Form AMS-25. The department's Annual Reports shall include the following information for each licensee and address:

- (a) Total acreage planted;
- (b) Total acreage disposed or remediated; and
- (c) Total harvested acreage.

Section 6. Laboratory Test Results Reports.

(1) The department shall ensure that the designated testing laboratory's Laboratory Test Results Reports are submitted to USDA in a digital format that is compatible with USDA's information sharing system whenever possible or on USDA Form AMS-22. The Laboratory Test Results Reports shall include the following information:

- (a) The grower's license number, name, and business address;
- (b) The Location ID and USDA FSA lot number (farm number, tract number, field number, and sub-field number) for the lot from which the sample was collected;
- (c) The laboratory's name and DEA registration number;
- (d) The date of the test and date of the report;
- (e) Whether the test was a retest; and
- (f) The test result for total delta-9-THC on a dry weight basis.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 13, 2021 at 1:21 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Hemp Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation hemp program that has been administered by the KDA since the 2014 growing season and creates rules for program use.

(2) If 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 filing.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, 970 growers, 12 Universities and 170 processors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 1739p.

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1739p. establishes requirements for hemp programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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, additional, or different requirements or responsibilities 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? Kentucky Department of Agriculture, and any agency that might concern hemp shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.682

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Income for the entire hemp program for 2021 was approximately \$482,000

(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? Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2020 were \$947,712.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): 2020=\$1,067,000, 2021=\$482,000

Expenditures (+/-): 2020=\$119,000, 2021 no estimate yet

Other Explanation:

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

**605 KAR 1:051. Dealer and salesman.**

RELATES TO: KRS 190.010, 190.030

STATUTORY AUTHORITY: KRS 190.010, 190.030, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 requires that a salesman's license shall indicate for whom the salesman works and to be displayed upon request. This administrative regulation establishes the relationship between the dealership and salesman and implements statutory requirements to facilitate accurate recordkeeping by the Motor Vehicle Commission.

Section 1. (1) All activity of a licensed motor vehicle salesman shall be pursuant to the salesman's employment by the licensee whose name appears on the salesman's license.

(2) A salesman shall not establish a place of business separate from the location for which his employer holds a license.

(3) A salesman shall not hold himself out to be a licensed dealer or conduct himself in any manner which would lead a prospective purchaser to believe he is a licensed dealer.

(4) A salesman shall not advertise the sale or purchase of a motor vehicle. This subsection shall not prohibit licensed motor vehicle dealers from identifying or including salesmen in advertisements of the dealership.

Section 2. In the event a salesman changes his place of employment to another dealership, he shall return his license to the commission.

Section 3. Every dealer licensee shall display in a conspicuous place in the dealership office a copy of the license of each salesman employed by the dealership. Upon the termination of employment of a salesman, the licensee shall, within ten (10) days, notify the commission of the termination and return to the commission the dealer's copy of the salesman's license.

Section 4. (1) A dealer shall apply for a motor vehicle salesman license for each person acting or intending to act as a salesman. The application shall be submitted by completing a salesman application through the dealer's on-line account at Ky.gov Login. The dealer shall provide the name, home address, social security number, date of birth of the salesman, and the employment history of the salesman in the motor vehicle industry identifying the name and address of any previous motor vehicle dealerships at which the salesman was employed. If the salesman does not have prior experience in the motor vehicle industry, the dealer shall so state.

(2) The employing dealer shall furnish a current photograph of the salesman for identification purposes.

(3) The employing dealer shall require the salesman to authorize the commission to make inquiries or investigations concerning the salesman's employment and criminal records. The employing dealership shall remit the required fee for a criminal background check if requested by the commission.

Section 5. The following individuals shall be required to obtain a salesman's license:

Each natural person holding a motor vehicle dealer license.

Each general partner actively involved in the day-to-day operation of a general or limited partnership holding a motor vehicle dealer license;

The president, chief executive officer, chief operating officer, or equivalent of a corporation holding a motor vehicle dealer license; and

Each manager, or, if member-managed, each member actively involved in the day-to-day operation of a limited liability company holding a motor vehicle dealer license.

All motor vehicle dealers shall have at least one (1) salesperson per licensed location.

Section 6. If any of the individuals in Section 5(1-4) are physically located and conduct business at more than one location, the individual shall procure a salesman's license for each location. Otherwise, the individual shall procure a license for the location in Kentucky where he is located or a primary location in Kentucky if he is located outside the state.

Section 7. Incorporation by Reference. Dealer on-line account, salesman license application available at Ky.gov Login.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 20, 2021 at 12:06 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event that in-person meetings are not available, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensing of motor vehicle salesmen.

(b) The necessity of this administrative regulation: KRS 190.030 requires that a salesman's license shall indicate for whom the salesman works and to be displayed upon request.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the requirements to be met by licensees with regard to licensing of salesmen.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the requirements to be met by licensees with regard to licensing of salesmen.

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

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

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

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

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

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all licensees

that employ salesmen. The number of such entities is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes the application process for salesman's licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as the number and turnover of sales staff varies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to employ salesmen.

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

(a) Initially: No known costs.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 and 605 KAR 1:215 establish the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all motor vehicle dealers affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.030, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable licenses.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew for the applicable licenses.

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

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of

applicants and the issues which arise with regard to applicants and licensees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### TRANSPORTATION CABINET Motor Vehicle Commission (New Administrative Regulation)

##### 605 KAR 1:071. Change of ownership.

RELATES TO: KRS 190.030

STATUTORY AUTHORITY: KRS 190.030, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the Motor Vehicle Commission. This administrative regulation establishes requirements for change of ownership of dealer licenses, particularly if a sale or transfer occurs, so that the commission can be on notice of who actually holds a license.

Section 1. (1) All licenses issued by the commission are non-transferable.

(2) A complete change of ownership of a licensee shall require a new Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030 and the appropriate fee.

Section 2. Upon the sale or transfer of a licensee's business or the operating assets of a business to a new individual or entity, the new owner shall secure a new license for each location acquired, unless the acquirer has a valid motor vehicle dealer license for the locations.

Section 3. (1) If the licensee is a corporation or limited liability company, the transfer of the controlling stock or controlling membership interest shall be reported to the commission within fifteen (15) days of the transfer.

(2) The commission may require a new license application based on the reported transfer.

Section 4. The commission shall be notified on a timely basis of the following:

(1) the death of a licensee who is a sole proprietor;

(2) the death or dissolution of a general partner of a partnership or limited partnership licensee; or

(3) the death or dissolution of an owner of the controlling interest of a corporate or limited liability company licensee.

Section 5. In the case of the death of a sole proprietor, the commission may, if the executor or administrator alone, or in conjunction with dealership employees, is capable of operating the business in compliance with KRS Chapter 190, allow a duly qualified executor or administrator to operate the business for the remainder of the calendar year. In the case of the death or dissolution of a partner, or the controlling owner of corporation or limited liability company, the commission shall require a new Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030 and the appropriate fee if the death or dissolution results in a material change to the financial, moral, or operational fitness of the licensee.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 20, 2021 at 12:06 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2021 at 9 a.m. local time at the Motor Vehicle

Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event that in-person meetings are not available, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensee when a change of ownership occurs.

(b) The necessity of this administrative regulation: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the Motor Vehicle Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the reporting and application requirements upon change of ownership.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the reporting and application requirements upon change of ownership.

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

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

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

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

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

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all existing dealers upon change of ownership. The number of such entities is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes notification and application steps required upon change of ownership.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as there are many scenarios under which ownership may change.

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

regulation will be allowed to continue to operate as motor vehicle dealers in Kentucky.

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

(a) Initially: No known costs.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 and 605 KAR 1:215 establish the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all nonprofit motor vehicle dealers affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.035, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew for the applicable license.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**605 KAR 1:091. Motor vehicle dealership names.**

RELATES TO: KRS 190.040

STATUTORY AUTHORITY: KRS 190.030, 040, 073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) authorizes a license to be denied, suspended, or revoked for false or misleading advertising. This administrative regulation establishes provisions against false or misleading advertising that prohibit the use of the name of a make of motor vehicle in the business name of a used motor vehicle dealer and the use of a dealership name that is so similar to the name of an existing dealership that it would confuse or mislead the public.

Section 1. The trade name of a licensee shall incorporate the words used cars, auto sales, auto mart, or other similar wording clearly identifiable as a motor vehicle dealer.

(1) A licensee, other than a franchised new motor vehicle dealer, shall not use the name of any make of motor vehicle as a part of the dealership business name.

(2) The adoption of the name of a make of motor vehicle in a trade name or advertising in this manner shall constitute false or misleading advertising within the meaning of KRS 190.040 and shall be considered grounds for the denial, suspension, or revocation of a license.

Section 2. The commission shall deny an Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030, if the name or proposed trade name of the licensee is the same or so similar to the name or trade name of an existing, unrelated licensee that the proposed name would confuse or otherwise mislead the public into believing that the two (2) licensees are the same or related.

(1) If no other grounds are cited for the denial of the Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030, the applicant may reapply.

(2) Reapplication with a new trade name shall be submitted within ten (10) days of denial without remitting an additional application fee.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 20, 2021 at 12:06 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event that in-person meetings are not available, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-

8082, email Suzanne.Baskett@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for motor vehicle dealership names.

(b) The necessity of this administrative regulation: KRS 190.040(1)(i) authorizes a license to be denied, suspended, or revoked for false or misleading advertising. This administrative regulation establishes provisions against false or misleading advertising that prohibit the use of the name of a make of motor vehicle in the business name of a used motor vehicle dealer and the use of a dealership name that is so similar to the name of an existing dealership that it would confuse or mislead the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the requirements to be met by licensees in choosing a dealership name.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the requirements to be met by licensees in choosing a dealership name.

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

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

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

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

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

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who are retail motor vehicle dealers in Kentucky. The number of such entities is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation requires licensees to pick unique or distinguishable dealership names.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as there are many options for compliant names.

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

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

(a) Initially: No known costs.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 and 605 KAR 1:215 establish the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this

regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all motor vehicle dealers affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.040, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew for the applicable license.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### TRANSPORTATION CABINET Motor Vehicle Commission (New Administrative Regulation)

##### 605 KAR 1:131. Procedures.

RELATES TO: KRS 190.058, 190.062

STATUTORY AUTHORITY: KRS 190.020, 190.058, 190.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.058 authorizes the Motor Vehicle Commission to adopt procedures to carry out the functions and duties conferred upon it by KRS Chapter 190. This administrative regulation establishes the proper form of procedure and practice before the Motor Vehicle Commission.

Section 1. Hearings. Hearings shall be conducted as established in this administrative regulation and KRS Chapter 13B. All testimony shall be transcribed.

Section 2. Appearances. A licensee who is a natural person may appear and be heard in person, or with or by a duly appointed attorney. A licensee that is an artificial entity shall be represented only by an attorney licensed or authorized to practice in Kentucky.

Section 3. Additional Hearings. The commission may, on its own motion, prior to its determination, require an additional hearing. Notice to all interested parties establishing the date of the hearing shall be given in writing by the executive director.

Section 4. Briefs. Briefs may be filed as a matter of right. All briefs shall be concise and shall be typewritten or printed. The time allowed for filing briefs shall be designated by the hearing officer.

Section 5. Continuances. Continuances shall be granted if a continuance is in the interest of justice and if requested at least forty-eight (48) hours in advance of the hearing date.

Section 6. Depositions. Depositions may be taken only when authorized by the hearing officer. The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 7. Except as otherwise provided by KRS Chapter 13B, the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission, unless the hearing officer relaxes the rules if the ends of justice will be better served by so doing.

(1) Judicial notice.

(a) If called to the attention of the hearing officer, judicial notice may be taken of any matter situated in the files of the commission, the Department of Revenue or the Transportation Cabinet, any action pending that involves the commission or other matters of which a court of Kentucky may take judicial notice.

(b) A brief statement recognizing the matter shall be made in the transcript by the hearing officer.

Section 8. Ex Parte Contacts. A person shall not have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. A person in violation of this Section shall be identified on the record to the commission and any information provided through the ex parte contact shall be stricken from the commission's records and disregarded.

Section 9. Service of Motions, Pleadings. Copies of all motions and pleadings shall be served upon all interested parties, in addition to filing the required copies before the commission.

Section 10. Notices. A notice of a hearing sent by certified mail to the business address of the licensee shown on the latest application for a license shall be sufficient notice.

Section 11. Subpoenas and Subpoena Duces Tecum. (1) The party desiring a subpoena shall make application at least five (5) days before the hearing date with the executive director of the commission.

(2) The application shall be in writing, and shall state the name and address of each witness required.

(3) If evidence other than oral testimony is required, such as documents or written data, the application shall establish the specific matter to be produced and sufficient facts to indicate that the matter is reasonably necessary to establish the cause of action or defense of the applicant.

Section 12. Costs of Hearing. (1) If the commission, by issuance of a final order, finds that a violation has been committed by a licensee, or upholds the recommendation of the hearing officer in a matter involving an applicant for a motor vehicle dealer license, the commission may assess to the licensee or the applicant the fee charged to the commission for the transcription of the record and the fee charged by the hearing officer.

(2) If the hearing officer or the commission finds that the hearing has been held as a result of an allegation or charge lacking substantial merit, or if the hearing officer or commission finds that a party to the hearing has materially delayed or increased the cost of the hearing through its actions, the commission shall assess to the party bringing the allegation or causing the delay, the fee charged



## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

to the commission for transcription of the record and the fee charged by the hearing officer.

(3) The fee assessed for the transcription of the record and for the hearing officer shall be the actual costs charged to the commission for that particular hearing, and may be assessed in addition to any fine levied by the commission.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 20, 2021 at 12:06 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event that in-person meetings are not available, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the practice and procedures used by the Commission in administrative hearings.

(b) The necessity of this administrative regulation: KRS 190.058 requires the Motor Vehicle Commission to conduct hearings on certain matters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the practice and procedures to be used in administrative hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the practice and procedures to be used in administrative hearings.

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

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

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

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

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

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who participate in administrative hearings before the Commission.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees or other entities involved in administrative hearings before the Commission will be required to follow the procedures contained in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained because each administrative hearing varies depending on the issues presented.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to participate in administrative hearings before the Commission.

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

(a) Initially: No known costs.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 605 KAR 1:215 establishes the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.058, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the Commission cannot determine how many administrative hearings it will conduct.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the Commission cannot determine how many administrative hearings it will conduct.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**605 KAR 1:191. Motor vehicle advertising.**

RELATES TO: KRS 190.010-190.990

STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030, 190.040, 190.058, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) requires that a motor vehicle dealer shall not engage in "false or misleading advertising." KRS 190.073 authorizes the Motor Vehicle Commission to "promulgate administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190. This administrative regulation establishes examples of what constitutes "false or misleading advertising."

Section 1. Definitions. (1) "Advertising" means any oral, written or graphic statement, whether physical or electronic, which offers vehicles for sale or lease or that indicates the availability of vehicles, including any statements or representation made in a newspaper, pamphlet, circular, other publication, in radio or television, social media, on the internet or contained in any notice, handbill, sign, billboard poster, bill catalog, letter, or business card.

(2) "Bait advertising" means:

(a) An alluring but insincere offer to sell or lease a product, to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from the advertised product to another product for a higher price or on a basis more advantageous to the dealer; or

(b) Advertising a new motor vehicle at a price that does not include all equipment listed as standard equipment by the manufacturer without disclosing that fact, or failing to disclose any of that equipment for the purpose of advertising a low price and "baiting" the customer into charges above the advertised price.

(3) "Clear and conspicuous" means a statement, representation or term differing from other statements, representations, or terms being made so as to be readily noticeable to the person to whom it is being disclosed either by its size, sound, length of time, color, placement in the ad, or other features.

(4) "Demonstrator" means a vehicle of the current or preceding model year that has never been the subject of a retail sale, and that has been used by dealership personnel for demonstrating performance ability.

(5) "Executive vehicle" and "official vehicle" mean, if so advertised, a vehicle that has been used exclusively by an executive or executives of the dealer franchisee.

Section 2. A licensee shall not use misleading or bait advertising. A practice shall not be pursued by an advertiser if the practice will discourage the sale of the advertised product with the intent and purpose of selling other merchandise instead.

Section 3. (1) An advertisement for the sale or lease of new and used vehicles placed by or on behalf of a licensee shall clearly and conspicuously identify the dealership by including in the text of the advertisement the business name as it appears on the dealer's license. In a classified newspaper or similar on-line advertisements, the licensee may, as an alternative, use the word "dealer" in the text of the advertisement.

(2) The advertisement of any dealership inventory on a non-company social media account shall be considered an advertisement placed on behalf of the dealership subject to these regulations and the provisions of KRS Chapter 190.

(3) A new or used motor vehicle dealer advertising the sale or lease of new or used motor vehicles at more than one (1) licensed location shall use in the text of the advertisement the business name for each advertised location as the name appears on the dealer's license for the locations where the advertised vehicles are

located.

(4) A new motor vehicle dealer advertising the sale or lease of new motor vehicles at more than one (1) licensed location shall specifically identify the makes of vehicles available at each advertised location.

Section 4. (1) Except as established in subsection (2) of this section, if a specific new motor vehicle is advertised by a dealer as being for sale, that vehicle shall be:

(a) In the possession of the dealer;

(b) Shown; and

(c) Sold as advertised, illustrated, or described at the advertised price and terms, at the advertised address.

(2) The advertisement for the sale or lease of a specific new motor vehicle that is not in stock on the date of the advertisement shall:

(a) State:

1. "Not in stock";

2. "Order yours now"; or

3. Other phrases of similar import that clearly indicate the vehicle is not available for immediate delivery; and

(b) Disclose a reasonable estimate of the period of time in which delivery will be made.

(3) If an advertisement pertains to one (1) specific vehicle only, this fact shall be disclosed in the advertisement. Listing a stock number shall be adequate disclosure.

Section 5. The following statements shall not be used in advertising by a dealer, unless the statements are absolutely true with no qualifications:

(1) Statements such as:

(a) "Write your own deal";

(b) "Name your own price";

(c) "Name your own monthly payments";

(d) "Appraise your own car"; or

(e) Statements with similar meaning;

(2) Statements such as:

(a) "Everybody financed";

(b) "No credit rejected";

(c) "We finance anyone"; or

(d) Other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit;

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated; and

(4) Statements implying that because of its large sales volume, a new vehicle dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles.

(5)(a) Claims such as "first", "largest", "biggest", shall not be used unless they are valid at the time such claims are made.

(b) If such claims are qualified with regard to area, location, time, or other limitations, upon the direction of the commission, the dealer shall incorporate within the advertisement the terms of such qualification.

Section 6. Retail advertising shall not state or imply that the dealer:

(1) Is selling vehicles in a manner other than through normal retail channels, including use of terms including such as "wholesale", "factory sale", "factory discount"; or

(2) Has a special relationship or connection to the manufacturer that other dealers do not have, including use of terms such as "factory outlet", "factory branch", and similar terms used in connection with the manufacturer's name.

Section 7. It shall be false or misleading advertising to advertise the sale of a vehicle having only a Kentucky salvage title unless the advertisement conspicuously discloses that the vehicle has a salvage title and that the vehicle cannot be registered and operated on the roadways in Kentucky unless the vehicle is repaired and issued a rebuilt title.

Section 8. Since the amount of trade-in allowance will vary

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

depending on the condition, model, and age of a buyer's vehicle, no specific trade-in amount or range of amounts shall be used in advertising.

Section 9. (1) An asterisk (\*) may be used to give additional information about a word or term.

(2) Use of one (1) or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify, or unreasonably limit a principal message of the advertisement shall not be used.

Section 10. (1) Any disclosure appearing in advertisements shall clearly and conspicuously feature all necessary information in a manner that can be read and understood or that can be heard and understood.

(2) The minimum duration of printed language in a television advertisement shall be five (5) seconds for every three (3) lines.

Section 11. If an advertisement contains an offer of a discount on a new vehicle, the amount of the discount shall be stated by reference to the actual dollar figure of the manufacturer's suggested retail price of the vehicle plus the retail price of dealer-added options.

Section 12. The words "free", "gift", or words of similar import may be used in advertising only if the advertiser is offering an unconditional gift.

Section 13. The manufacturer's suggested retail price (MSRP) dollar figure of a new motor vehicle if advertised in local media by a manufacturer, distributor, or regional advertisement council or association shall include all costs and charges for the vehicle advertised including destination charges if those charges are uniform regardless of destination throughout the state; destination charges subject to variance within the state and dealer preparation charges may be excluded from the price, if the advertisement conspicuously states that the costs and charges are excluded.

(1) If the price of a vehicle is advertised in local media by a licensee, the vehicle shall be fully identified as to year, make, model, and if new or used.

(2) The stated price shall include all charges that the customer is required to pay for the vehicle, including "freight" or "destination charges", "dealer preparation", "dealer handling", "additional dealer profit", "additional dealer margin", and "undercoating or rustproofing" if the vehicle is already so equipped.

(3) The advertised price at which the dealer is advertising a particular motor vehicle shall be the price before consideration for a down-payment, a trade-in allowance, or other similar allowances.

Section 14. If the words "list" or "sticker" or words of similar import are used in a new motor vehicle advertisement, the words shall only refer to the actual dollar figure of the manufacturer's suggested retail price (MSRP) plus the retail price of dealer-added options.

Section 15. If any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle.

Section 16. A dealer offering to sell a demonstrator, program, official, or executive vehicle shall clearly and conspicuously identify former use.

(1) A demonstrator shall be offered for sale as such only by a dealer who holds a valid sales agreement or franchise for the sale of the same line make of motor vehicle.

(2) A vehicle advertised as official or executive vehicles shall not have been sold or leased to a retail customer prior to the appearance of the advertisement.

Section 17. Motor vehicle financing shall not be advertised at a reduced interest rate if the cost thereof would be directly or indirectly borne by the buyer unless the advertisement discloses that rate shall affect the negotiated price of the vehicle to the

buyer.

Section 18. In any action pursuant to this administrative regulation, truth shall be an absolute defense.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 20, 2021 at 12:06 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event that in-person meetings are not available, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensee advertising in the sale and lease of motor vehicles.

(b) The necessity of this administrative regulation: KRS 190.040(1)(i) requires that a motor vehicle dealer shall not engage in "false or misleading advertising." KRS 190.073 authorizes the Motor Vehicle Commission to "promulgate administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth advertising guidelines for the sale and lease of motor vehicles by licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth advertising guidelines used by the commission in enforcing KRS 190.040.

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

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

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

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

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

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all motor vehicle dealers in Kentucky advertising the sale or lease of motor vehicles. The number of such entities is unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes guidelines licensees shall follow in their advertising for the sale and lease of motor vehicles.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as there are many options for advertising.

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

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

(a) Initially: No known costs.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 and 605 KAR 1:215 establishes the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all motor vehicle dealers affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.040, 190.073.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew for the applicable license.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### TRANSPORTATION CABINET Motor Vehicle Commission (New Administrative Regulation)

#### 605 KAR 1:211. Nonprofit motor vehicle dealer requirements and licensing.

RELATES TO: KRS 190.010 (29), (30); 190.032

STATUTORY AUTHORITY: KRS 190.032; 190.073

NECESSITY, FUNCTION AND CONFORMITY: KRS 190.032 requires the Motor Vehicle Commission to establish requirements for initial application for and renewal of a license to be a nonprofit motor vehicle dealer and directs the commission to establish relevant requirements that shall include standards for disability or disadvantaging conditions concerning the clients served by nonprofit motor vehicle dealers. This administrative regulation establishes requirements and standards for nonprofit motor vehicle dealer requirements and licensing.

Section 1. In addition to KRS 190.010(29) and the application requirements established in 605 KAR 1:030, Sections 1 and 3, a nonprofit motor vehicle dealer applicant shall certify that it is an organization exempt from taxation pursuant to 26 U.S.C. Section 501(c)(3) of the Internal Revenue Code and that it has made all required filings with the Internal Revenue Service.

Section 2. In addition to KRS 190.010(30), an applicant shall demonstrate to the commission that the applicant's sales program serves only clients meeting two (2) or more of the following disability or disadvantaging conditions:

(1) The client's household income is at or below the current federal Poverty Guidelines as established by the United States Department of Health and Human Services;

(2) The client has been designated as physically disabled by any state or federal agency;

(3) The client has an actual need for a motor vehicle in order to meet work, educational, or medical needs and the client cannot obtain a reliable vehicle without the dealer's assistance;

(4) The client has received state or federal funding specifically designed to allow the purchase of a vehicle for personal or household use; or

(5) The client has experienced the loss of a functioning vehicle as a result of an event certified as a natural disaster by any applicable state or federal agency.

Section 3. Upon the submission of its initial application and each renewal application thereafter, the applicant or licensee shall submit the current IRS Form 990 filed by the organization. If the applicant or licensee files a short form version of IRS Form 990, the commission may require the applicant or licensee to submit additional information which would be contained on IRS Form 990 if the commission has reasonable cause to doubt the financial responsibility of the applicant to comply with the provisions of KRS Chapter 190.

Section 4. A nonprofit motor vehicle dealer that is not also licensed as either a new motor vehicle dealer or a used motor vehicle dealer shall not sell any vehicles except as allowed by KRS 190.032(3).

DOUG DOTSON, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 20, 2021 at 12:06 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

December 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event that in-person meetings are not available, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensee facilities and renewal of the license to be a nonprofit motor vehicle dealer in Kentucky.

(b) The necessity of this administrative regulation: KRS 190.032 requires the Motor Vehicle Commission to establish requirements for initial application for and renewal of a license to be a nonprofit motor vehicle dealer and directs the commission to establish relevant requirements that shall include standards for disability or disadvantaging conditions concerning the clients served by nonprofit motor vehicle dealers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the requirements to be met by non-profit motor vehicle dealer licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the information required to be submitted to the Commission.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effect of administration of the statutes:

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who wish to become retail motor vehicle dealers in Kentucky. The number of such entities is unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes information that shall be submitted by applicants for non-profit motor vehicle dealer licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as there are many options for compliant facilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as nonprofit motor vehicle dealers in Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 and 605 KAR 1:215 establish the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. It does not establish or increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because all nonprofit motor vehicle dealers affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.035, 190.073.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew for the applicable license.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(New Administrative Regulation)**

**806 KAR 17:590. Annual report on providers prescribing medication for addiction treatment.**

RELATES TO: KRS 304.1-050(1) 304.9-020, 304.9-055, 304.17A-005(29), 304.17A-700, 304.17A-732

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-732

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-732 requires insurers to annually report to the commissioner the number and type of providers that have prescribed medication for addiction treatment to its insureds in conjunction with behavioral therapy and not in conjunction with behavioral therapy. This administrative regulation sets forth the format and submission time frame for the data reporting requirements in KRS 304.17A-732.

**Section 1. Definitions.**

- (1) "Commissioner" is defined by KRS 304.1-050(1).
- (2) "Department" is defined in KRS 304.1-050(2).
- (3) "Insurer" is defined by KRS 304.17A-005(29).
- (4) "Medication for addiction treatment" means a prescription drug that:
  - (a) 1. Is prescribed for use in the treatment of alcohol or opioid addiction; and
  2. Contains methadone, buprenorphine, or naltrexone; or
  3. Was approved before January 1, 2022 by the United States Food and Drug Administration for the mitigation of opioid withdrawal symptoms.
- (5) "Pharmacy Benefit Manager" is defined by KRS 304.9-020(15).

**Section 2. Data Reporting Requirements.**

- (1) (a) An insurer authorized to write health insurance in this state shall submit the data required by the Pharmacy Claims Standardized Data Request to the commissioner by March 31st of each year. A pharmacy benefit manager paying pharmacy claims on behalf of an insurer may submit the data required by the Pharmacy Claims Standardized Data request to the commissioner on behalf of the insurer.
- (b) The data required by the Pharmacy Claims Standardized Data Request shall:
  1. Be submitted in an electronic format prescribed by the Commissioner;
  2. Contain the prescribed data elements and information in the order prescribed; and
  3. Contain data for claims received in the prior calendar year for prescriptions for medication for addiction treatment.
- (2) (a) The Department shall generate and provide a Medical Claims Standardized Data Request to each insurer based on the data submitted pursuant to subsection (1) of this section.
- (b) An insurer shall submit the data required by the Medical Claims Standardized Data Request within sixty (60) days of the date it is provided to the insurer, as described in paragraph (a) of this Section.
- (c) The data required by the Medical Claims Standardized Data Request shall:
  1. Be submitted in an electronic format;
  2. Contain the prescribed data elements and information in the order prescribed; and
  3. Contain data for claims of identified insureds, as requested by the commissioner, that were received in the prior calendar year.

**Section 3. Material Incorporated by Reference.**

- (1) The following material is incorporated by reference:

- (a) "Pharmacy Claims Standardized Data Request", 10/2021
- (b) "Medical Claims Standardized Data Request", 10/2021
- (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 pm.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 14, 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 AM on December 21, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 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.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Abigail Gall

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This new administrative regulation sets forth the format and submission timeframe for the data reporting requirements in KRS 304.17A-732.
  - (b) The necessity of this administrative regulation: This administrative regulation is needed to adhere to the reporting requirements set forth in KRS 304.17A-732, which requires insurers to annually report to the commissioner the number and type of providers that have prescribed medication for addiction treatment to its insureds in conjunction with behavioral therapy and not in conjunction with behavioral therapy.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations relative to the Kentucky Insurance Code. In addition, KRS 304.17A-732 requires insurers to report this information to the Commissioner, and this regulation sets out the manner in which that reporting should be done, in an effort to provide clarity and promote efficiency.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effectuation of KRS 304.17A-732, which was passed as Senate Bill 51 during the 2021 Regular 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 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: All insurers offering/transacting in health insurance in the state of Kentucky, as well as any Pharmacy Benefit Managers (PBMs) who manage pharmaceutical claims for health insurers offering pharmacy benefits.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Health Insurers/PBMs will need to provide the Commissioner with any pharmacy claims that include prescription codes for methadone, buprenorphine, or naltrexone by March 31<sup>st</sup> of each year. The insurer is then required, within 60 days of receipt of a request from the Commissioner, to provide medical claims data for the requested claims and member IDs identified by the Department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no associated cost with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Insurers and PBMs will be in compliance with statutory reporting requirements.

(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 ongoing cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding to implement this new administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees that will be established.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation requires all insurers licensed to transact health insurance to report the same information to the department.

subsequent years? No cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer of this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of October 12, 2021

**Call to Order and Roll Call**

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 12, 2021 at 1 p.m. in Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken.

**Present were:**

**Members:** Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, 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:** Todd Allen, Cassie Trueblood, Education Professional Standards Board; Marc Manley, Office of the Attorney General; Bethany Atkins-Rice, Richard Dobson, Jessica Johnston, Department of Revenue; Cary B. Bishop, Brian Thomas, Finance and Administration Cabinet; Jeffrey Prather, Board of Nursing; August Pozgay, Board of Chiropractic Examiners, Board of Licensure for Professional Art Therapists, Board of Durable Medical Equipment; Keith Poynter, Board of Physical Therapy; Mike Denney, Jennifer Luhrs, Ellen Benzing, Kentucky Lottery Corporation; Amy Barker, Kristie Willard, Department of Corrections; Erin Bravo, Anthony Hudgins, Department of Workforce Investment; Chuck Stribling, Robin Maples, Sam Flynn, Erin Bravo, Kim Perry, Department of Workplace Standards; Abigail Gall, Chad Thompson, Shaun Orme, Department of Insurance; Linda Bridwell, J.E.B. Pinney, Ben Bellamy, Public Service Commission; Jason Keller, Charter Company; Dan Reinhart, AT&T Kentucky; Eric B. Langley, LG&E, Kentucky Utilities, Kentucky Power; Marc Guilfoil, Jennifer Wolsing, Shan Dutta, Kentucky Horse Racing Commission; Julie Brooks, Jennifer Burt, Amber Agee, Brian Short, Department for Public Health; Jonathan Scott, Veronica Judy-Cecil, Fatima Ali, Department for Medicaid Services; Steve Veno, Maria Lewis, Department of Income Support; Laura Begin, Rachael Ratliff, Dr. Sarah Vanover, Department for Community Based Services.

**The Administrative Regulation Review Subcommittee met on Tuesday, October 12, 2021, and submits this report:**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:  
Education Professional Standards Board: Administrative  
Certificates**

16 KAR 2:180. One (1) year conditional certificate. Cassie Trueblood, counsel, represented the board.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

16 KAR 2:220. Emeritus certificate.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

16 KAR 2:230. Exception certificate.

16 KAR 3:070. Endorsement for individual intellectual assessment.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 4:050. Dating of certifications.

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 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 5:010. Standards for accreditation of educator preparation providers and approval of programs.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 7, 9 through 11, 15, 16, 18 through 21, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**DEPARTMENT OF LAW: Office of Civil and Environmental  
Law: Attorney General**

40 KAR 1:040E. Standardized Open Records Request Form. Marc Manley, assistant attorney general, represented the office.

40 KAR 1:040. Standardized Open Records Request Form.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO 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.

**FINANCE AND ADMINISTRATION CABINET: Department of  
Revenue: Income Tax; Corporations**

103 KAR 16:320. Claim of right doctrine. Bethany Atkins-Rice, counsel; Richard Dobson, executive director, Sales and Miscellaneous Taxes; and Jessica Johnston, executive director, Income Taxation, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs 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.

103 KAR 16:352. Corporation income taxes policies and circulars.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO 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.

**Income Tax; Withholding**

103 KAR 18:020. Withholding return adjustment.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY 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.

103 KAR 18:090. Payroll records.

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.

**Sales and Use Tax; Miscellaneous Retailer Occupations**

103 KAR 27:050. Sourcing of retail sales by florists.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 27:150. Repairers and reconditioners of tangible personal property.

In response to questions by Co-Chair Hale, Mr. Dobson stated that this administrative regulation was being amended in response to legislation from 2018. Sales tax was now being expanded to include extended warranties, which affected the repair industry.

A motion was made and seconded to approve the following amendments: to amend Sections 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 27:230. Motor vehicle body shops.

**Sales and Use Tax; General Exemptions**

103 KAR 30:091. Sales to farmers.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 10 through 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 30:120. Machinery for new and expanded industry.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 30:140. Energy and energy-producing fields.

In response to a question by Co-Chair West, Mr. Dobson stated that this administrative regulation affected sales and use practices, while previously only addressed authorization and eligibility.

103 KAR 30:190. Interstate and foreign commerce.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 30:250. Property used in the publication of newspapers.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: State-owned Buildings and Grounds**

200 KAR 3:020. Use of state-owned facilities and grounds.

Cary Bishop, assistant general counsel, and Brian Thomas, general counsel, represented the cabinet.

In response to questions by Co-Chair West, Mr. Bishop stated that the previous version of this administrative regulation, which was effective prior to the coronavirus (COVID-19) pandemic, prohibited masks except in certain situations. Due to the pandemic, this administrative regulation was being amended to allow, but not require masks. Prohibitions against livestock at state facilities did not include facilities specifically designed for livestock, such as the

state fair site. Livestock would be allowed for specific events if a request was submitted. Firearm safety provisions were established, including that long guns shall be carried with the muzzle point up and that handguns shall be holstered with at least two (2) steps of safety. Those with firearms shall not keep a finger on the trigger. Law enforcement already had at least two (2) steps of safety regarding firearms. Bringing livestock, such as a horse, to state property would require a request. Requests were granted from a policy neutral standpoint.

In response to questions by Representative Bridges, Mr. Thomas stated that those who used horses or horse and buggies for transportation generally used public roads, which were not considered part of state facilities. If a horse were on, for example, the capitol lawn, a request would be required and the owner would need to clean up after the animal and would be responsible for repairs to any damaged state property.

In response to questions by Senator Alvarado, Mr. Thomas stated that this administrative regulation did not have procedures to impound livestock in situations of noncompliance. This administrative regulation required a request for livestock to be on state-owned property unless otherwise exempted. Livestock used for transportation would be differentiated from others. Because this administrative regulation established provisions for state facility visitation, a clarification of this matter would more appropriately be made in 200 KAR 3:010, which established transportation provisions.

In response to a question by Representative Marzian, Mr. Thomas stated that a request to bring livestock to a state facility would include a review of necessary measures, such as cleaning up after an animal. Mr. Bishop stated that this administrative regulation addressed damage related to visiting a state facility.

In response to questions by Co-Chair West, Mr. Bishop stated that Section 3(1)(q) of this administrative regulation established criteria for the approval of a request to bring livestock to state property. Co-Chair West stated that he hoped that this livestock provisions was not directed at any specific person.

A motion was made and seconded to approve the following amendments: to amend (1) Section 1 to add a definition for "face covering"; (2) Sections 1 and 2 to: (a) clarify that the Application to Use State Facilities and Grounds shall be for all state property, not just historic, and that it shall be maintained by the Department for Facilities and Support Services; (b) allow state agencies to individualize the form if it is substantially similar and approved by the department; (c) allow the department to delegate authority to review and approve use applications for specific facilities and grounds to a tenant agency of the facility or grounds; (d) specify the Division of Historic Properties shall continue to oversee use of historic properties; and (e) require any delegation to be posted on the department's Web site; (3) Section 2 to authorize similar delegation for the Rental Application and Lease Agreement; (4) Section 3 to remove the requirement that face coverings worn to prevent disease shall be department provided if they satisfy the components of the new definition; and (5) Sections 1 through 4 and 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.

**BOARDS AND COMMISSIONS: Board of Nursing**

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses. Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 6, 7, 9, and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Chiropractic Examiners**

201 KAR 21:035. Seal. August Pozgay, executive advisor, represented the board.

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.

201 KAR 21:054. Emergency orders.

A motion was made and seconded to approve the following amendment: to amend NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 21:070. Licensing examination requirements.

201 KAR 21:090. Pre-chiropractic education requirements.

201 KAR 21:100. Minimum standards for recordkeeping or itemized statement.

#### **Board of Physical Therapy**

201 KAR 22:045. Continued competency requirements and procedures. Keith Poynter, general counsel, represented the board.

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.

#### **Board of Licensure for Professional Art Therapists**

201 KAR 34:070. Inactive status. August Pozgay, executive advisor, represented the board.

A motion was made and seconded to approve the following amendments: to amend (1) Section 1 to: (a) clarify that the board shall notify a licensee that the licensee is relieved of the obligation to pay the license renewal fee if the board has granted a request for inactive status; and (b) add language that a licensee shall have thirty (30) days from inactive status denial to pay the license renewal fee; (2) Section 2 to clarify that the two (2) year inactive status period shall begin when the board notifies a licensee that it has granted inactive status; (3) Section 3 to add a provision that: (a) a two (2) year extension shall be automatically granted if the required paperwork is received; and (b) the licensee shall have thirty (30) days to resubmit a request for inactive status if the extension is denied; (4) Section 5 to clarify that the reactivation of a license shall be effective upon the date listed in the written notification from the board; and (5) Sections 1 through 3, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Durable Medical Equipment**

201 KAR 47:010. Home medical equipment and supplier licenses, requirements, and fees. August Pozgay, executive advisor, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 4 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 47:030. Compliant and disciplinary process.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **KENTUCKY LOTTERY CORPORATION: Kentucky Lottery Corporation**

202 KAR 3:020. Procurement procedures. Ellen Benzing, staff attorney; Mike Denney, assistant general counsel; and Jennifer Luhrs, general counsel, represented the corporation.

In response to questions by Co-Chair West, Mr. Denney

stated that the corporation was statutorily authorized to establish independent procurement procedures, which were generally structured in accordance with the Model Procurement Code but tailored for the needs of the corporation. This administrative regulation increased the small purchase limit, pursuant to inflation, from \$20,000 to \$30,000. The corporation was not a direct state agency and operated under the authority of a board of directors.

#### **JUSTICE AND PUBLIC SAFETY CABINET: Office of Medical Examiner**

500 KAR 12:010. Duplicate records request fee schedule. Amy Barker, assistant general counsel, and Kirstie Willard, division director, represented the cabinet.

In response to questions by Senator Alvarado, Ms. Barker stated that duplicate records were typically related to litigation and media needs. Government agencies received free copies of duplicate records. The fees had not been raised for many years, and copying costs had risen. Senator Alvarado stated that this situation was similar to copying costs for medical providers and that he hoped that the General Assembly would consider for future legislation, fee needs for medical provider copying.

#### **Department of Corrections**

501 KAR 2:050. Transfer requests.

501 KAR 2:070. Work release.

#### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department Of Workforce Investment: Unemployment Insurance**

787 KAR 1:010. Application for employer account; reports. Erin Bravo, deputy general counsel, and Anthony Hudgins, deputy executive director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct the link to the Unemployment Self Service Web Portal; and (2) to amend Sections 3 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:020. Change of status; discontinuance of business.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (a) correct the link to the Unemployment Self Service Web Portal; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:060. Separation for cause; reports.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:080. Labor dispute or strike; notification.

787 KAR 1:090. Unemployed worker's reporting requirements.

In response to a question by Co-Chair West, Mr. Hudgins stated that Form UI-480 was being deleted in order to make fraud alerts easier to submit. An email or online claim could now be submitted.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:110. Appeals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 through 5 to comply with the drafting and formatting

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:140. Unemployment insurance fund payments.

787 KAR 1:150. Interstate claimants.

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, 2, 4, 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.

787 KAR 1:210. Employer contribution rates.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY 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.

787 KAR 1:220. Required reports and due dates.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:260. Voluntary election of coverage.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 1:290. Contract construction rates.

787 KAR 1:300. Successorship.

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.

787 KAR 1:310. Claimant profiling.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY 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.

### **LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health**

803 KAR 2:325. General industry standards. Robin Maples, occupational safety and health standards specialist, and Chuck Stribling, federal – state coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 3(3) to remove standards relating to brakes because they are outdated and no longer publicly available; and (2) to amend the RELATES TO paragraph and Sections 2 through 4 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: Health Insurance Contracts**

806 KAR 17:240. Data reporting requirements. Abigail Gall, regulation coordinator; Shaun Orme, executive advisor; and Chad Thompson, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1

through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:270. Telehealth claim forms and records.

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, 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.

806 KAR 17:280. Registration, utilization review, and internal appeal.

In response to a question by Co-Chair West, Ms. Gall stated that this administrative regulation was unrelated to 803 KAR 25:190. This administrative regulation only applied to health benefit plans.

A motion was made and seconded to approve the following amendments: to amend (1) Section 1 to: (a) add a definition for "health benefit plan"; and (b) use a broader definition for "insurer"; and (2) the RELATES TO paragraph and Sections 1, 2, 4, 6 through 8, 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 17:470. Data reporting to an employer-organized association health benefit plan.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO 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.

### **ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities**

807 KAR 5:015. Access and attachments to utility poles and facilities. Ben Bellamy, staff attorney; Linda Birdwell, executive director; and Jeb Pinney, executive advisor, represented the commission. Jason Keller, Charter Company and cable providers, and Eric Langley, utilities companies, appeared in support of this administrative regulation. Daniel Rhinehart, director AT&T National Regulatory Organization, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Pinney stated that, as it pertains to issues of pole attachments, Kentucky preempted the Federal Communications Commission (FCC) in 1983. This administrative regulation establishes a comprehensive, uniform system for pole attachments by streamlining processes, establishing deadlines, and providing for cost equity. Pole replacement and overflashing, which is the doubling up of lines, were issues of particular interest to many stakeholders.

In response to a question by Co-Chair West, Mr. Rhinehart stated that this administrative regulation was discriminatory against Incumbent Local Exchange Carriers (ILECs), such as AT&T, and represented as disincentive for the expansion of broadband. This administrative regulation defined "broadband internet provider" so that a provider with a joint use agreement with a utility would not be considered a broadband internet provider and would be governed by less advantageous requirements. AT&T requested two (2) amendments to rectify the problem. AT&T requested that the definition for "new attacher" be amended to make clarifications and remove the exclusion of joint use agreements, and to amend Section 3(7) to correlate rates in the case of joint use agreements with tariff terms.

In response to a question by Co-Chair West, Mr. Langley stated that he represented a group of utility providers that supported this administrative regulation. The Public Service Commission had historically treated parties of joint use agreements differently pertaining to pole attachments, and it was necessary to treat them differently because terms varied significantly, agreements would become unmanageable, and other types of

providers might be put at a disadvantage.

In response to a question by Co-Chair West, Mr. Keller stated that, in his capacity with representing many cable providers, Charter Company supported this administrative regulation. Pole attachment provisions were vital in efforts to expand broadband access in Kentucky. Uniform provisions would help the process of expanding broadband be more timely and efficient.

In response to a question by Senator Alvarado, Mr. Pinney stated that it was probably not necessary to define “overlashing” because it was a common term in the industry; however, the commission would take the matter under advisement.

In response to questions by Co-Chair West, Mr. Rhinehart stated that time frames for joint use agreements varied and were often valid for one (1) to five (5) years with automatic renewal options. New rates were developed on a case-by-case basis. Mr. Pinney stated that twenty-one (21) other states had established pole attachment requirements independently of the FCC. ILECs had been established in Kentucky for many years with successful agreements reached. Mr. Rhinehart stated that addressing pole attachment complaints was a tedious, expensive, and complex process. ILECs should have just and reasonable rates, as statutorily required.

In response to a question by Co-Chair Hale, Mr. Rhinehart stated that AT&T requested two (2) amendments, including that the definition for “new attacher” be amended to make clarifications and remove the exclusion of joint use agreements, and to amend Section 3(7) to correlate rates in the case of joint use agreements with tariff terms.

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 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Flat and Steeplechase Racing**

810 KAR 4:040. Running of the race. Shaun Dutta, deputy general counsel; Marc Guilfoil, executive director; and Jennifer Wolsing, general counsel, represented the commission.

In response to a question by Co-Chair West, Mr. Wolsing stated that this administrative regulation represented a compromise between the jockey’s guild and legislators regarding the use of riding crops. Specific requirements for how and when a riding crop could be used were established, along with fines and suspension provisions. Riding crops were allowed in the event of an emergency.

A motion was made and seconded to approve the following amendments: to amend Section 15 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: Lead Abatement**

902 KAR 48:010. Definitions for 902 KAR Chapter 48. Amber Agee, compliance and accreditation coordinator; Julie Brooks, regulation coordinator; and Jennifer Burt, branch manager, represented the cabinet.

In response to a question by Senator Alvarado, Ms. Agee stated that lead was a legal product, including in paint if the paint was not intended to be used in areas that children frequented.

902 KAR 48:020. Training and certification requirements for persons who perform lead-hazard detection or abatement.

902 KAR 48:030. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

902 KAR 48:040. 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 23:020E. Reimbursement for outpatient drugs. Fatima Ali, assistant pharmacy director; Veronica Judy – Cecil, deputy commissioner; and Jonathan Scott, regulation coordinator, represented the department.

In response to questions by Co-Chair West, Ms. Judy – Cecil stated that copays would no longer be assessed in accordance with recent legislation.

#### **Department for Community Based Services: Family Support**

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders. Maria Lewis, assistant director, and Steve Veno, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability. Laura Begin, regulation coordinator; Rachael Ratliff, social services specialist; Dr. Sarah Vanover, division director, represented the program.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Supplemental Nutrition Assistance Program**

921 KAR 3:060. Administrative disqualification hearings and penalties.

#### **Energy Assistance Program/Weatherization**

921 KAR 4:116. Low Income Home Energy Assistance Program or “LIHEAP”.

#### **Child Welfare**

922 KAR 1:300. Standards for child-caring facilities.

In response to a question by Co-Chair West, Ms. Begin stated that the cabinet received one (1) public comment from the Children’s Alliance. Additionally, the Children’s Alliance requested the changes made by the agency amendment.

A motion was made and seconded to approve the following amendments: to amend (1) Section 3 to: (a) provide an exception to the age requirement for employees of a child-caring facility if there is an agreement between the agency and a college or university to employ students; and (b) delete language that had been added in the Amended After Comments version related to how long an employee shall be removed from direct contact with all children if being investigated for child abuse or neglect, and retaining the original language that the employee removal shall be for the duration of the investigation; and (2) Section 5 to: (a) allow a licensed, qualified health care professional to be consulted by the facility if there is evidence that the child might require medical attention and to provide for a child’s medical needs; and (b) to make clarifications. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:380. Standards for emergency shelter child-caring facilities.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to comply with the drafting and formatting requirements of KRS

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:390. Standards for residential child-caring facilities.

### **Division of Child Care**

922 KAR 2:160E. Child Care Assistance Program.

**The following administrative regulations were deferred or removed from the October 12, 2021, subcommittee agenda:**

### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Administrative Certificates**

16 KAR 6:010. Assessment prerequisites for teacher certification.

### **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 4:195. Consolidation of precincts and precinct election officers.

31 KAR 004:200E. Chain of custody for records during an election contest.

31 KAR 4:200. Chain of custody for records during an election contest.

### **Voting**

31 KAR 5:025E. Ballot standards and election security.

31 KAR 5:025. Ballot standards and election security.

### **FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; State Assessment**

103 KAR 8:090. Classification of property; public service corporations.

### **Income Tax; Corporations**

103 KAR 16:270. Apportionment; receipts factor.

### **Kentucky Infrastructure Authority**

200 KAR 17:110. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

### **BOARDS AND COMMISSIONS: Board of Licensure for Long-Term Care Administrators**

201 KAR 6:020. Other requirements for licensure.

### **Board of Dentistry**

201 KAR 8:520. Fees and fines.

### **Board of Embalmers and Funeral Directors**

201 KAR 15:030E. Fees.

201 KAR 15:030. Fees.

201 KAR 15:040. Examination.

201 KAR 15:050. Apprenticeship and supervision requirements.

201 KAR 15:110. Funeral establishment criteria.

201 KAR 15:125. Surface transportation permit.

### **Board of Nursing**

201 KAR 20:215. Continuing competency requirements.

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

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.

### **TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 2:015. Feeding of wildlife.

### **JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections**

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

501 KAR 2:060. Procedures for housing of Class C and D felons.

### **TRANSPORTATION CABINET: Department of Highways: Billboards**

603 KAR 10:011E. Repeal of 603 KAR 010:002, 010:010, and 010:021.

603 KAR 10:040E. Advertising devices.

### **EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: General Administration**

702 KAR 1:191E. District employee quarantine leave.

### **School Terms, Attendance, and Operation**

702 KAR 7:125E. Pupil attendance.

702 KAR 7:150. Home or hospital instruction.

### **Office of Learning Support Services**

704 KAR 7:121. Repeal of 704 KAR 007:120.

### **Department for Libraries and Archives: Archives**

725 KAR 1:010. Records officers; duties.

725 KAR 1:020. Recording and reproducing public records.

725 KAR 1:025. Transfer of public records.

725 KAR 1:030. Scheduling public records for retention and disposal; procedures.

725 KAR 1:040. Collection and distribution of reports and publications.

725 KAR 1:050. Records management program.

725 KAR 1:061. Records retention schedules; authorized schedules.

### **Libraries**

725 KAR 2:015. Public library facilities construction.

725 KAR 2:080. Interstate Library Compact.

## VOLUME 48, NUMBER 5 – NOVEMBER 1, 2021

### **KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEMS: Commission on Fire Protection Personnel Standards and Education**

739 KAR 2:060. Certification and qualifications of fire and emergency services instructors.

### **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.

### **Department of Workplace Standards: Occupational Safety and Health**

803 KAR 2:330E. Occupational exposure to COVID-19.

### **Department of Workers' Claims**

803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions.

### **PUBLIC PROTECTION CABINET: Department of Insurance: Unauthorized Insurers' Prohibitions, Process and Advertising**

806 KAR 11:020. Multiple employer welfare arrangements.

### **Health Insurance Contracts**

806 KAR 17:350. Guaranteed Acceptance Program (GAP) reporting requirements.

### **Motor Vehicle Repairs (No-fault)**

806 KAR 39:070. Proof of motor vehicle insurance.

### **Department of Housing, Buildings and Construction: Elevator Safety**

815 KAR 4:010. Annual inspection of elevators, chairlifts, fixed guideway systems, and platform lifts.

815 KAR 4:025. Permit and inspection fees for new and altered elevators, chairlifts, fixed guideway systems, and platform lifts.

815 KAR 4:027. Reporting incidents involving personal injury or death.

### **Kentucky Building Code**

815 KAR 7:080. Licensing of fire protection sprinkler contractors.

815 KAR 7:110. Criteria for expanded local jurisdiction.

### **Standards of Safety**

815 KAR 10:060. Kentucky standards of safety.

815 KAR 10:070. Consumer fireworks retailer registration and fees.

### **Plumbing**

815 KAR 20:050. Installation permits.

815 KAR 20:195. Medical gas piping installations.

### **Hazardous Materials**

815 KAR 30:010. LP gas license; financial responsibility required.

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

### **CABINET FOR HEALTH AND FAMILY SERVICES: Office of Telehealth Services: Telehealth**

900 KAR 12:005E. Telehealth terminology and requirements.

### **Sanitation**

902 KAR 10:120. Kentucky public swimming and bathing facilities.

902 KAR 10:190. Splash pads operated by local governments.

### **Department for Medicaid Services: Outpatient Pharmacy Program**

907 KAR 23:020. Reimbursement for outpatient drugs.

### **Department for Community Based Services: Division of Child Care**

922 KAR 2:160. Child Care Assistance Program.

**The subcommittee adjourned at 3:10 p.m. The next meeting of this subcommittee was tentatively scheduled for November 9, 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 TRANSPORTATION**  
**Meeting of August 3, 2021**

The Interim Joint Committee on Transportation met on August 3, 2021 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on June 8, 2021, pursuant to KRS 13A.290(6):

601 KAR 001:005

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 3, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY**  
**Meeting of August 5, 2021**

The Interim Joint Committee on Natural Resources and Energy met on August 5, 2021, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on July 7, 2021, pursuant to KRS 13A.290(6):

401 KAR 039:060  
301 KAR 001:400  
301 KAR 002:228

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 26, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY**  
**Meeting of September 15, 2021**

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 12, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The Interim Joint Committee on Natural Resources and Energy met on September 15, 2021 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on September 1, 2021, pursuant to KRS 13A.290(6):

301 KAR 001:201  
301 KAR 002:132  
301 KAR 002:251  
301 KAR 002:300

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 September 15, 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

E - 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

E - 15

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

E - 28

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

### Technical Amendment Index

E - 29

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

E - 30

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 48. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in 46 Ky.R. or 47 Ky.R., please visit our online [Administrative Registers of Kentucky](#).

### SYMBOL KEY:

- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- \*\*\* Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

### EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates; however, expiration dates may be impacted by 2021 Regular Session legislation, including: [House Joint Resolution 77](#); KRS Chapter 39A, as amended by [Senate Bill 1](#); and by KRS Chapters 13A and 214, as amended by [Senate Bill 2](#).

016 KAR 002:220E	48 Ky.R.	253	6-25-2021	Am Comments	2542	5-13-2021
016 KAR 002:230E	48 Ky.R.	255	6-25-2021	Replaced	338	8-26-2021
030 KAR 006:011E	48 Ky.R.	1093	9-15-2021	201 KAR 035:040E	47 Ky.R. 1880	3-5-2021
031 KAR 004:195E	48 Ky.R.	256	6-23-2021	Am Comments	2544	5-13-2021
031 KAR 004:200E	48 Ky.R.	258	6-23-2021	Replaced	340	8-26-2021
031 KAR 005:025E	48 Ky.R.	259	6-23-2021	201 KAR 035:050E	47 Ky.R. 1884	3-5-2021
040 KAR 001:040E	48 Ky.R.	262	6-28-2021	Am Comments	2547	5-13-2021
101 KAR 002:095E	47 Ky.R.	172	1-29-2021	Replaced	341	8-26-2021
As Amended	2534	5-11-2021	201 KAR 035:055E	47 Ky.R. 1886	3-5-2021	
Replaced	2573	8-31-2021	Replaced	48 Ky.R. 341	8-26-2021	
101 KAR 002:210E	48 Ky.R.	1095	9-15-2021	201 KAR 035:070E	47 Ky.R. 1889	3-5-2021
200 KAR 002:006E	47 Ky.R.	1730	1-29-2021	Am Comments	2550	5-13-2021
Replaced	1811	8-31-2021	201 KAR 035:075E	Replaced	342	8-26-2021
200 KAR 003:020E	48 Ky.R.	263	7-1-2021	Am Comments	1893	3-5-2021
Impacted by 2021 legislation			201 KAR 035:080E	2554	5-13-2021	
200 KAR 008:505E	47 Ky.R.	1735	1-27-2021	Replaced	345	8-26-2021
Impacted by 2021 legislation			301 KAR 002:221E	47 Ky.R. 1895	3-5-2021	
200 KAR 017:110E	48 Ky.R.	5	6-2-2021	Am Comments	2556	5-13-2021
201 KAR 002:410E	47 Ky.R.	1343	11-23-2020	Replaced	346	8-26-2021
As Amended	1871	2-22-2021	501 KAR 006:080E	47 Ky.R. 1184	10-30-2020	
Withdrawn		8-10-2021	Replaced	1937	6-3-2021	
201 KAR 002:411E	48 Ky.R.	734	8-10-2021	501 KAR 006:080E	47 Ky.R. 1186	11-2-2020
Withdrawn		10-11-2021	Replaced	1748	7-6-2021	
201 KAR 002:412E	48 Ky.R.	1466	10-11-2021	601 KAR 002:233E	47 Ky.R. 2335	4-12-2021
As Amended	1098	9-14-2021	603 KAR 010:011E	48 Ky.R. 736	7-30-2021	
201 KAR 002:411E	48 Ky.R.	734	8-10-2021	603 KAR 010:040E	48 Ky.R. 737	7-30-2021
201 KAR 012:082E	48 Ky.R.	1468	10-1-2021	Am Comments	1483	
201 KAR 015:030E	48 Ky.R.	268	6-30-2021	605 KAR 001:215E	47 Ky.R. 2526	5-12-2021
201 KAR 015:040E	48 Ky.R.	270	6-30-2021	702 KAR 001:190E	47 Ky.R. 503	8-12-2020
201 KAR 015:050E	48 Ky.R.	272	6-30-2021	702 KAR 001:191E	48 Ky.R. 744	8-11-2021
201 KAR 015:110E	48 Ky.R.	276	6-30-2021	702 KAR 001:195E	48 Ky.R. 746	8-12-2021
201 KAR 015:125E	48 Ky.R.	279	6-30-2021	As Amended	760	8-17-2021
201 KAR 035:010E	47 Ky.R.	1872	3-5-2021	Impacted by 2021 legislation		
Am Comments	2536	5-13-2021	702 KAR 007:125E	48 Ky.R. 748	8-11-2021	
As Amended	48 Ky.R. 15	6-8-2021	787 KAR 001:360E	47 Ky.R. 2527	5-4-2021	
Replaced	334	8-26-2021	803 KAR 002:181E	47 Ky.R. 2529	5-13-2021	
201 KAR 035:020E	47 Ky.R.	1874	3-5-2021	803 KAR 002:182E(r)	47 Ky.R. 2531	5-13-2021
Am Comments	2538	5-13-2021	803 KAR 002:320E	47 Ky.R. 1527	1-13-2021	
As Amended	48 Ky.R. 16	6-8-2021	Replaced	2376	8-3-2021	
Replaced	68	8-26-2021	803 KAR 002:330E	48 Ky.R. 753	7-20-2021	
201 KAR 035:025E	47 Ky.R.	1878	3-5-2021	803 KAR 025:305E	48 Ky.R. 1473	9-28-2021
				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
				Expired		10-5-2021
				900 KAR 012:005E	48 Ky.R. 755	7-28-2021
				Am Comments	1489	
				902 KAR 002:211E	47 Ky.R. 1533	1-5-2021
				Am Comments	2558	4-28-2021
				As Amended	48 Ky.R. 18	6-8-2021
				Withdrawn		6-11-2021
				902 KAR 002:212E	48 Ky.R. 281	6-16-2021

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Impacted by 2021 legislation			016 KAR 002:220	48 Ky.R. 704	
902 KAR 002:213E	48 Ky.R. 757	8-12-2021	As Amended	1492	
As Amended	760	8-17-2021	016 KAR 002:230	48 Ky.R. 705	
Impacted by 2021 legislation			As Amended		
902 KAR 002:221E	48 Ky.R. 7	6-4-2021	016 KAR 003:060		
902 KAR 002:230E	48 Ky.R. 1474	10-1-2021	Amended	47 Ky.R. 2614	
902 KAR 002:240E	48 Ky.R. 1476	10-1-2021	As Amended	48 Ky.R. 763	
902 KAR 002:250E	48 Ky.R. 1477	10-1-2021	016 KAR 002:040		
902 KAR 004:150E	47 Ky.R. 1925	3-5-2021	Amended	48 Ky.R. 1207	
902 KAR 020:160E	47 Ky.R. 897	10-13-2020	016 KAR 002:050		
Replaced	1980	6-16-2021	Amended	48 Ky.R. 1210	
902 KAR 020:440E	47 Ky.R. 908	10-13-2020	016 KAR 003:070		
Replaced	1989	6-16-2021	Amended	48 Ky.R. 445	
902 KAR 020:460E	48 Ky.R. 1479	10-1-2021	As Amended	1493	
902 KAR 030:210E	47 Ky.R. 1926	3-5-2021	016 KAR 004:020		
907 KAR 015:070E	47 Ky.R. 915	10-13-2020	Amended	48 Ky.R. 1213	
Replaced	1996	6-16-2021	016 KAR 004:050		
907 KAR 015:080E	47 Ky.R. 922	10-13-2020	Amended	48 Ky.R. 447	
Replaced	2001	6-16-2021	As Amended	1494	
907 KAR 023:020E	48 Ky.R. 283	6-29-2021	016 KAR 005:010		
Am Comments	1099	9-15-2021	Amended	48 Ky.R. 449	
921 KAR 001:400E	48 Ky.R. 286	6-29-2021	As Amended	1494	
921 KAR 002:0115E	48 Ky.R. 289	7-1-2021	016 KAR 005:020		
921 KAR 003:025E			Amended	47 Ky.R. 2616	
Resubmitted	47 Ky.R. 1535	1-15-2021	As Amended	48 Ky.R. 764	
As Amended	2342	4-13-2021	016 KAR 006:010		
921 KAR 003:026	48 Ky.R. 9	6-11-2021	Amended	48 Ky.R. 462	
921 KAR 003:027E	48 Ky.R. 10	6-11-2021	Am Comments	1581	
921 KAR 004:116E	48 Ky.R. 295	7-1-2021	016 KAR 009:090		
922 KAR 001:490E			Amended	47 Ky.R. 2619	
Resubmitted	47 Ky.R. 1737	2-8-2021	As Amended	48 Ky.R. 766	
Am Comments	2344	4-12-2021	030 KAR 001:011	48 Ky.R. 1431	
As Amended	2560	5-11-2021	030 KAR 003:010		
Replaced	48 Ky.R. 377	8-26-2021	Amended	48 Ky.R. 1215	
922 KAR 002:160E	48 Ky.R. 299	7-1-2021	030 KAR 003:020		
Am Comments	1102	9-14-2021	Amended	48 Ky.R. 1217	
922 KAR 002:415E	47 Ky.R. 1928	3-15-2021	030 KAR 003:030		
As Amended	2523	4-13-2021	Amended	48 Ky.R. 1218	
Withdrawn		5-10-2021	030 KAR 006:011	48 Ky.R. 1432	
<hr/>			031 KAR 003:010		
<b>ORDINARY ADMINISTRATIVE REGULATIONS</b>			Amended	47 Ky.R. 2621	
011 KAR 016:001			031 KAR 004:195	48 Ky.R. 707	
Amended	48 Ky.R. 1203		031 KAR 004:200	48 Ky.R. 708	
011 KAR 016:010			031 KAR 005:025	48 Ky.R. 709	
Amended	48 Ky.R. 1205		040 KAR 001:040	48 Ky.R. 712	
013 KAR 001:020			As Amended	1506	
Amended	47 Ky.R. 1797		040 KAR 003:020		
As Amended	2565	8-31-2021	Amended	48 Ky.R. 850	
013 KAR 003:010			040 KAR 006:010		
Amended	48 Ky.R. 842		Amended	48 Ky.R. 852	
013 KAR 003:020			040 KAR 006:020		
Amended	48 Ky.R. 843		Amended	48 Ky.R. 856	
013 KAR 003:030			040 KAR 006:030	48 Ky.R. 1062	
Amended	48 Ky.R. 844		101 KAR 001:335		
013 KAR 003:040			Amended	48 Ky.R. 1220	
Amended	48 Ky.R. 846		101 KAR 001:345		
013 KAR 003:050			Amended	48 Ky.R. 1223	
Amended	48 Ky.R. 847		101 KAR 001:365		
013 KAR 003:060			Amended	48 Ky.R. 1224	
Amended	48 Ky.R. 849		101 KAR 001:367		
013 KAR 004:010			Amended	48 Ky.R. 1226	
Amended	47 Ky.R. 1805		101 KAR 001:375		
As Amended	2572	8-31-2021	Amended	48 Ky.R. 1229	
016 KAR 001:030			101 KAR 001:395		
Amended	48 Ky.R. 1624		Amended	48 Ky.R. 1230	
016 KAR 002:180			101 KAR 001:400		
Amended	48 Ky.R. 444		Amended	48 Ky.R. 1232	
As Amended	1492		101 KAR 002:095		
			Amended	47 Ky.R. 1807	
			As Amended	2573	8-31-2021

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
101 KAR 002:210			Amended	47 Ky.R. 2029	
Amended	48 Ky.R. 1233		As Amended	48 Ky.R. 22	7-21-2021
103 KAR 001:160	47 Ky.R. 1710		201 KAR 002:050		
As Amended	2356	8-3-2021	Amended	48 Ky.R. 877	
103 KAR 008:090			201 KAR 002:061		
Amended	48 Ky.R. 465		Amended	47 Ky.R. 2421	
Am Comments	1584		As Amended	48 Ky.R. 310	8-26-2021
103 KAR 016:270			201 KAR 002:074		
Amended	48 Ky.R. 466		Amended	48 Ky.R. 1237	
Am Comments	1585		201 KAR 002:076		
103 KAR 016:320			Amended	48 Ky.R. 879	
Amended	48 Ky.R. 484		201 KAR 002:171	47 Ky.R. 2179	
As Amended	1506		As Amended	48 Ky.R. 23	7-21-2021
103 KAR 016:352			201 KAR 002:205		
Amended	48 Ky.R. 486		Amended	47 Ky.R. 2031	
As Amended	1507		As Amended	48 Ky.R. 23	7-21-2021
103 KAR 018:020			201 KAR 002:270		
Amended	48 Ky.R. 488		Amended	48 Ky.R. 100	
As Amended	1508		As Amended	1112	
103 KAR 018:090			201 KAR 002:360		
Amended	48 Ky.R. 490		Amended	48 Ky.R. 101	
As Amended	1509		As Amended	1112	
103 KAR 026:100			201 KAR 002:380		
Amended	47 Ky.R. 1610		Amended	47 Ky.R. 1422	
As Amended	2357	8-3-2021	Am Comments	2404	
103 KAR 026:131	47 Ky.R. 1857		As Amended	2577	6-16-2021
As Amended	48 Ky.R. 20	10-5-2021	201 KAR 002:390		
103 KAR 027:050			Amended	47 Ky.R. 2032	
Amended	48 Ky.R. 491		As Amended	48 Ky.R. 24	
As Amended	1509		201 KAR 002:420	48 Ky.R. 217	7-21-2021
103 KAR 027:150			As Amended	1113	
Amended	48 Ky.R. 492		201 KAR 002:430	48 Ky.R. 1063	
As Amended	1510		201 KAR 006:020		
103 KAR 027:230			Amended	48 Ky.R. 515	
Amended	48 Ky.R. 495		201 KAR 008:520		
103 KAR 030:091			Amended	48 Ky.R. 103	
Amended	48 Ky.R. 497		Am Comments	1603	
As Amended	1511		201 KAR 009:270		
103 KAR 030:120			Amended	47 Ky.R. 2424	
Amended	48 Ky.R. 501		Am Comments	48 Ky.R. 833	
As Amended	1514		As Amended	1113	
103 KAR 030:140			201 KAR 009:290	47 Ky.R. 2495	
Amended	48 Ky.R. 504		As Amended	48 Ky.R. 770	
103 KAR 030:190			201 KAR 012:082		
Amended	48 Ky.R. 506		Amended	48 Ky.R. 1627	
As Amended	1515		201 KAR 015:030		
103 KAR 030:250			Amended	48 Ky.R. 517	
Amended	48 Ky.R. 509		201 KAR 015:040		
As Amended	1517		Amended	48 Ky.R. 519	
105 KAR 001:210			201 KAR 015:050		
Amended	48 Ky.R. 858		Amended	48 Ky.R. 521	
105 KAR 001:270			201 KAR 015:110		
Amended	47 Ky.R. 2623		Amended	48 Ky.R. 524	
As Amended	48 Ky.R. 767		201 KAR 015:125		
105 KAR 001:310			Amended	48 Ky.R. 527	
Amended	48 Ky.R. 866		201 KAR 020:057		
105 KAR 001:330			Amended	48 Ky.R. 529	
Amended	48 Ky.R. 873		As Amended	1521	
200 KAR 002:006			201 KAR 020:065		
Amended	47 Ky.R. 1811	8-31-2021	Amended	47 Ky.R. 1819	
200 KAR 003:020			As Amended	2578	6-16-2021
Amended	48 Ky.R. 510		201 KAR 020:215		
As Amended	1517		Amended	48 Ky.R. 533	
200 KAR 017:100	48 Ky.R. 215		201 KAR 020:3202		
201 KAR 001:100			Amended	48 Ky.R. 537	
Amended	47 Ky.R. 1816		201 KAR 020:370		
As Amended	2575		Amended	47 Ky.R. 1823	
201 KAR 002:030			As Amended	2581	6-16-2021
Amended	48 Ky.R. 1235		201 KAR 020:411		
201 KAR 002:040			Amended	47 Ky.R. 1824	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
As Amended	2582	6-16-2021	As Amended	48 Ky.R. 326	8-26-2021
201 KAR 020:471	48 Ky.R. 218		201 KAR 026:280		
201 KAR 020:472	48 Ky.R. 220		Amended	47 Ky.R. 2065	
Am Comments	1605		As Amended	48 Ky.R. 327	8-26-2021
201 KAR 020:474	48 Ky.R. 224		201 KAR 026:290		
201 KAR 020:476	48 Ky.R. 227		Amended	47 Ky.R. 2067	
201 KAR 020:478	48 Ky.R. 230		As Amended	48 Ky.R. 328	8-26-2021
201 KAR 020:506			201 KAR 026:301(r)	47 Ky.R. 2180	
Amended	47 Ky.R. 2036	7-21-2021	Withdrawn		6-22-2021
201 KAR 020:660			201 KAR 026:310		
Amended	47 Ky.R. 1827		Amended	47 Ky.R. 2069	
As Amended	2584	6-16-2021	As Amended	48 Ky.R. 328	8-26-2021
201 KAR 021:035			201 KAR 030:040		
Amended	48 Ky.R. 105		Amended	47 Ky.R. 1425	
As Amended	1525		As Amended	1936	7-6-2021
201 KAR 021:054			201 KAR 030:190		
Amended	48 Ky.R. 106		Amended	47 Ky.R. 1428	7-6-2021
As Amended	1525		201 KAR 032:030		
201 KAR 021:070			Amended	47 Ky.R. 1611	
Amended	48 Ky.R. 108		Am Comments	2608	
201 KAR 021:090			As Amended	48 Ky.R. 329	8-26-2021
Amended	48 Ky.R. 109		201 KAR 032:035		
201 KAR 021:100			Amended	47 Ky.R. 1614	
Amended	48 Ky.R. 110		As Amended	48 Ky.R. 330	8-26-2021
201 KAR 022:045			201 KAR 032:060		
Amended	48 Ky.R. 541		Amended	47 Ky.R. 1616	
As Amended	1525		Am Comments	2610	
201 KAR 022:170			As Amended	48 Ky.R. 332	8-26-2021
Amended	47 Ky.R. 1424	6-16-2021	201 KAR 034:070	47 Ky.R. 2497	
201 KAR 023:070			As Amended	48 Ky.R. 1527	
Amended	47 Ky.R. 1247		201 KAR 035:010		
Am Comments	1744		Amended	47 Ky.R. 2071	
As Amended	1933	6-16-2021	Am Comments	48 Ky.R. 62	
201 KAR 023:150	47 Ky.R. 1503		As Amended	334	8-26-2021
Am Comments	2012		201 KAR 035:020		
As Amended	2357	6-16-2021	Amended	47 Ky.R. 2073	
201 KAR 026:115			Am Comments	48 Ky.R. 64	
Amended	47 Ky.R. 2037		As Amended	335	8-26-2021
As Amended	48 Ky.R. 312	8-26-2021	201 KAR 035:025		
201 KAR 026:121			Amended	47 Ky.R. 2077	
Amended	47 Ky.R. 2039		Am Comments	48 Ky.R. 68	8-26-2021
As Amended	48 Ky.R. 313	8-26-2021	201 KAR 035:040		
201 KAR 026:125			Amended	47 Ky.R. 2078	
Amended	47 Ky.R. 2041	8-26-2021	Am Comments	48 Ky.R. 69	
201 KAR 026:130			As Amended	338	8-26-2021
Amended	47 Ky.R. 2042		201 KAR 035:050		
As Amended	48 Ky.R. 313	8-26-2021	Amended	47 Ky.R. 2082	
201 KAR 026:155			Am Comments	48 Ky.R. 73	
Amended	47 Ky.R. 2046		As Amended	340	8-26-2021
As Amended	48 Ky.R. 316	8-26-2021	201 KAR 035:055		
201 KAR 026:171			Amended	47 Ky.R. 2084	
Amended	47 Ky.R. 2048		As Amended	48 Ky.R. 341	8-26-2021
As Amended	48 Ky.R. 317	8-26-2021	201 KAR 035:070		
201 KAR 026:180			Amended	47 Ky.R. 2086	
Amended	47 Ky.R. 2052		Am Comments	48 Ky.R. 76	
As Amended	48 Ky.R. 320	8-26-2021	As Amended	342	8-26-2021
201 KAR 026:185			201 KAR 035:075		
Amended	47 Ky.R. 2054		Amended	47 Ky.R. 2091	
As Amended	48 Ky.R. 320	8-26-2021	Am Comments	48 Ky.R. 80	
201 KAR 026:190			As Amended	345	8-26-2021
Amended	47 Ky.R. 2056		201 KAR 035:080		
As Amended	48 Ky.R. 321	8-26-2021	Amended	47 Ky.R. 2092	
201 KAR 026:200			Am Comments	48 Ky.R. 81	
Amended	47 Ky.R. 2058		As Amended	346	8-26-2021
As Amended	48 Ky.R. 323	8-26-2021	201 KAR 042:010		
201 KAR 026:230			Amended	48 Ky.R. 1241	
Amended	47 Ky.R. 2060		201 KAR 042:020		
As Amended	48 Ky.R. 324	8-26-2021	Amended	48 Ky.R. 1242	
201 KAR 026:250			201 KAR 042:030		
Amended	47 Ky.R. 2063		Amended	48 Ky.R. 1244	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
201 KAR 042:035 Amended	48 Ky.R. 1246		301 KAR 001:152 Amended	48 Ky.R. 130	
201 KAR 042:040 Amended	48 Ky.R. 1248		As Amended	1125	
201 KAR 042:050 Amended	48 Ky.R. 1251		301 KAR 001:201 Amended	47 Ky.R. 2627	
201 KAR 042:060 Amended	48 Ky.R. 1253		As Amended	48 Ky.R. 782	9-15-2021
201 KAR 042:070 Amended	48 Ky.R. 1255		301 KAR 001:210 Amended	48 Ky.R. 132	
201 KAR 042:110 Amended	48 Ky.R. 1258		301 KAR 001:400 Amended	47 Ky.R. 2468	8-5-2021
201 KAR 045:130 Amended	47 Ky.R. 1251	6-16-2021	301 KAR 002:015 Amended	48 Ky.R. 133	
201 KAR 047:010 Amended	48 Ky.R. 543		301 KAR 002:041 Amended	48 Ky.R. 135	
As Amended	1527		301 KAR 002:050 Amended	48 Ky.R. 138	
201 KAR 047:030 As Amended	48 Ky.R. 713 1529		As Amended	1127	
202 KAR 003:020 Amended	48 Ky.R. 546		301 KAR 002:082 Amended	48 Ky.R. 881	
202 KAR 007:201 Amended	47 Ky.R. 2428		301 KAR 002:084 Amended	48 Ky.R. 139	
Am Comments	48 Ky.R. 390	9-22-2021	301 KAR 002:111 Amended	48 Ky.R. 140	
202 KAR 007:301 Amended	47 Ky.R. 2433		301 KAR 002:132 Amended	47 Ky.R. 2632	
Am Comments	48 Ky.R. 394	9-22-2021	As Amended	48 Ky.R. 787	9-15-2021
202 KAR 007:330 Amended	47 Ky.R. 2439		301 KAR 002:142 Amended	48 Ky.R. 886	
Am Comments	48 Ky.R. 400	9-22-2021	301 KAR 002:221 Amended	47 Ky.R. 1253	
202 KAR 007:401 Amended	47 Ky.R. 2445		As Amended	1937	6-3-2021
Am Comments	48 Ky.R. 406	9-22-2021	301 KAR 002:224 Amended	48 Ky.R. 888	
202 KAR 007:540 Amended	47 Ky.R. 2453		301 KAR 002:228 Amended	47 Ky.R. 2469	8-5-2021
Am Comments	48 Ky.R. 414	9-22-2021	301 KAR 002:230 Amended	48 Ky.R. 142	
202 KAR 007:601 Amended	47 Ky.R. 2455	9-22-2021	As Amended	1127	
As Amended			301 KAR 002:251 Amended	47 Ky.R. 2637	
Am Comments	48 Ky.R. 416		As Amended	48 Ky.R. 790	9-15-2021
301 KAR 001:012 Amended	48 Ky.R. 112		301 KAR 002:260 Amended	48 Ky.R. 144	
As Amended	1117		As Amended	1128	
301 KAR 001:016 Amended	48 Ky.R. 113		301 KAR 002:300 Amended	47 Ky.R. 2640	
As Amended	1117		As Amended	48 Ky.R. 792	9-15-2021
301 KAR 001:018 Amended	48 Ky.R. 117		301 KAR 003:010 Amended	48 Ky.R. 889	
As Amended	1120		301 KAR 003:012 Amended	48 Ky.R. 892	
301 KAR 001:019 Amended	48 Ky.R. 119		301 KAR 003:026 Amended	48 Ky.R. 894	
As Amended	1121		301 KAR 003:027 Amended	48 Ky.R. 895	
301 KAR 001:031 Amended	48 Ky.R. 120		301 KAR 003:030 Amended	48 Ky.R. 896	
As Amended	1121		301 KAR 003:110 Amended	48 Ky.R. 898	
301 KAR 001:050 Amended	48 Ky.R. 122		301 KAR 004:001 Amended	48 Ky.R. 899	
As Amended	1122		301 KAR 004:010 Amended	48 Ky.R. 901	
301 KAR 001:082 Amended	48 Ky.R. 123		301 KAR 004:020 Amended	48 Ky.R. 902	
As Amended	1122		301 KAR 004:050 Amended	48 Ky.R. 903	
301 KAR 001:120 Amended	48 Ky.R. 124		301 KAR 004:070 Amended	48 Ky.R. 904	
As Amended	1122		301 KAR 004:100		
301 KAR 001:125 Amended	48 Ky.R. 125				
As Amended	1123				
301 KAR 001:140 Amended	48 Ky.R. 128				
As Amended	1124				

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 906		501 KAR 002:070		
301 KAR 004:110			Amended	48 Ky.R. 555	
Amended	48 Ky.R. 908	9-22-2021	501 KAR 003:110		
301 KAR 005:001			Amended	48 Ky.R. 930	
Amended	48 Ky.R. 910		501 KAR 003:120		
301 KAR 005:030			Amended	48 Ky.R. 931	
Amended	48 Ky.R. 911		501 KAR 003:130		
301 KAR 005:100			Amended	48 Ky.R. 934	
Amended	48 Ky.R. 913		501 KAR 003:150		
301 KAR 006:001			Amended	48 Ky.R. 935	
Amended	48 Ky.R. 915		501 KAR 003:170		
301 KAR 006:070			Amended	48 Ky.R. 938	
Amended	48 Ky.R. 917		501 KAR 003:190		
302 KAR 004:010	47 Ky.R. 1505		Amended	48 Ky.R. 939	
As Amended	1938	7-6-2021	501 KAR 006:070		
302 KAR 022:150			Amended	47 Ky.R. 1620	
Amended	47 Ky.R. 1435		As Amended	2368	8-3-2021
As Amended	1940	7-6-2021	501 KAR 006:080		
302 KAR 050:021			Amended	47 Ky.R. 1255	
Amended	48 Ky.R. 1631		Am Comment	1748	7-6-2021
302 KAR 050:031			501 KAR 006:200		
Amended	48 Ky.R. 1640		Amended	48 Ky.R. 943	
302 KAR 050:046	48 Ky.R. 1672		501 KAR 006:250		
302 KAR 050:056			Amended	48 Ky.R. 946	
Amended	48 Ky.R. 1647		501 KAR 007:040		
302 KAR 050:080			Amended	48 Ky.R. 951	
Amended	48 Ky.R. 1652		501 KAR 007:060		
302 KAR 079:011	47 Ky.R. 1314		Amended	48 Ky.R. 952	
Am Comments	2014		501 KAR 007:090		
As Amended	2360	7-8-2021	Amended	48 Ky.R. 954	
302 KAR 079:012	47 Ky.R. 1321		501 KAR 007:100		
Am Comments	2022		Amended	48 Ky.R. 956	
As Amended	2367	7-8-2021	501 KAR 007:110		
303 KAR 001:005			Amended	48 Ky.R. 957	
Amended	48 Ky.R. 918		501 KAR 007:120		
303 KAR 001:010			Amended	48 Ky.R. 958	
Amended	48 Ky.R. 920		501 KAR 007:130		
303 KAR 001:015			Amended	48 Ky.R. 960	
Amended	48 Ky.R. 921		501 KAR 007:140		
303 KAR 001:075			Amended	48 Ky.R. 962	
Amended	48 Ky.R. 922		501 KAR 007:150		
303 KAR 001:080			Amended	48 Ky.R. 964	
Amended	48 Ky.R. 923		501 KAR 014:010		
303 KAR 001:090			Amended	48 Ky.R. 965	
Amended	48 Ky.R. 925		502 KAR 010:010		
303 KAR 001:100			Amended	48 Ky.R. 1260	
Amended	48 Ky.R. 927		502 KAR 010:020		
303 KAR 001:110	48 Ky.R. 1066		Amended	48 Ky.R. 1262	
401 KAR 039:060			502 KAR 010:030		
Amended	47 Ky.R. 2095	8-5-2021	Amended	48 Ky.R. 1263	
401 KAR 060:005			502 KAR 010:035		
Amended	47 Ky.R. 1443		Amended	48 Ky.R. 1264	
As Amended	1947	6-3-2021	502 KAR 010:040		
401 KAR 061:036			Amended	48 Ky.R. 1266	
Amended	47 Ky.R. 1447		502 KAR 010:050		
Am Comments	2024	6-3-2021	Amended	48 Ky.R. 1268	
401 KAR 063:002			502 KAR 010:060		
Amended	47 Ky.R. 1449		Amended	48 Ky.R. 1269	
As Amended	1950	6-3-2021	502 KAR 010:070		
500 KAR 012:010			Amended	48 Ky.R. 1270	
Amended	48 Ky.R. 548		502 KAR 010:080		
501 KAR 001:050			Amended	48 Ky.R. 1272	
Amended	48 Ky.R. 928		502 KAR 010:090		
501 KAR 002:020			Amended	48 Ky.R. 1273	
Amended	48 Ky.R. 549		502 KAR 010:110		
501 KAR 002:050			Amended	48 Ky.R. 1276	
Amended	48 Ky.R. 551		502 KAR 010:120		
501 KAR 002:060			Amended	48 Ky.R. 1278	
Amended	48 Ky.R. 552		502 KAR 011:010		
Am Comments	1610		Amended	48 Ky.R. 1280	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
502 KAR 011:060 Amended	48 Ky.R. 1282		502 KAR 047:010 Amended	48 Ky.R. 1339	
502 KAR 011:070 Amended	48 Ky.R. 1284		502 KAR 050:010 Amended	48 Ky.R. 1340	
502 KAR 012:010 Amended	48 Ky.R. 1286		503 KAR 001:060 Amended	48 Ky.R. 966	
502 KAR 013:010 Amended	48 Ky.R. 1289		503 KAR 001:080 Amended	48 Ky.R. 968	
502 KAR 013:030 Amended	48 Ky.R. 1291		503 KAR 001:090 Amended	48 Ky.R. 970	
502 KAR 013:040 Amended	48 Ky.R. 1292		503 KAR 001:100 Amended	48 Ky.R. 971	
502 KAR 013:050 Amended	48 Ky.R. 1294		503 KAR 001:110 Amended	48 Ky.R. 973	
502 KAR 013:060 Amended	48 Ky.R. 1295		503 KAR 001:120 Amended	48 Ky.R. 976	
502 KAR 013:080 Amended	48 Ky.R. 1297		503 KAR 001:140 Amended	48 Ky.R. 979	
502 KAR 014:010 Amended	48 Ky.R. 1298		503 KAR 001:170 Amended	48 Ky.R. 986	
502 KAR 015:010 Amended	48 Ky.R. 1300		503 KAR 003:020 Amended	48 Ky.R. 1342	
502 KAR 015:020 Amended	48 Ky.R. 1301		503 KAR 003:030 Amended	48 Ky.R. 1346	
502 KAR 020:020 Amended	48 Ky.R. 1303		503 KAR 003:050 Amended	48 Ky.R. 1348	
502 KAR 030:010 Amended	48 Ky.R. 1306		503 KAR 004:010 Amended	48 Ky.R. 1350	
502 KAR 030:020 Amended	48 Ky.R. 1308		503 KAR 004:040 Amended	48 Ky.R. 1352	
502 KAR 030:030 Amended	48 Ky.R. 1309		503 KAR 004:050 Amended	48 Ky.R. 1353	
502 KAR 030:050 Amended	48 Ky.R. 1310		503 KAR 005:080 Amended	48 Ky.R. 1355	
502 KAR 030:060 Amended	48 Ky.R. 1312		503 KAR 005:100 Amended	48 Ky.R. 1357	
502 KAR 030:070 Amended	48 Ky.R. 1314		601 KAR 001:005 Amended	47 Ky.R. 2101	8-3-2021
502 KAR 031:020 Amended	48 Ky.R. 1316		601 KAR 001:030 Repealed	47 Ky.R. 475	10-5-2021
502 KAR 035:010 Amended	48 Ky.R. 1318		601 KAR 001:113 Amended	47 Ky.R. 1256	
502 KAR 035:020 Amended	48 Ky.R. 1320		As Amended	1954	7-6-2021
502 KAR 035:030 Amended	48 Ky.R. 1321		601 KAR 002:231	47 Ky.R. 475	10-5-2021
502 KAR 035:040 Amended	48 Ky.R. 1322		601 KAR 002:233 Am Comments	47 Ky.R. 2499	
502 KAR 035:050 Amended	48 Ky.R. 1324		601 KAR 023:030 As Amended	47 Ky.R. 1324	7-6-2021
502 KAR 040:010 Amended	48 Ky.R. 1325		603 KAR 003:100	48 Ky.R. 1434	
502 KAR 045:005 Amended	48 Ky.R. 1326		603 KAR 004:035 Amended	48 Ky.R. 1359	
502 KAR 045:015 Amended	48 Ky.R. 1328		603 KAR 005:360	48 Ky.R. 1067	
502 KAR 045:035 Amended	48 Ky.R. 1329		603 KAR 010:040	48 Ky.R. 1069	
502 KAR 045:045 Amended	48 Ky.R. 1331		605 KAR 001:030 Amended	47 Ky.R. 2643	
502 KAR 045:075 Amended	48 Ky.R. 1332		As Amended	48 Ky.R. 1128	
502 KAR 045:085 Amended	48 Ky.R. 1334		605 KAR 001:035 As Amended	47 Ky.R. 2765	
502 KAR 045:105 Amended	48 Ky.R. 1335		605 KAR 001:051	48 Ky.R. 1128	
502 KAR 045:115 Amended	48 Ky.R. 1336		605 KAR 001:071	48 Ky.R. 1647	
502 KAR 045:150 Amended	48 Ky.R. 1338		605 KAR 001:091	48 Ky.R. 1675	
			605 KAR 001:130 Amended	48 Ky.R. 1677	
			605 KAR 001:131	47 Ky.R. 2646	
			605 KAR 001:191	48 Ky.R. 1678	
			605 KAR 001:211	48 Ky.R. 1680	
			605 KAR 001:215 As Amended	48 Ky.R. 1682	
			701 KAR 005:081	47 Ky.R. 2766	
			701 KAR 005:100	48 Ky.R. 1130	
				47 Ky.R. 2505	



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Amended	47 Ky.R. 2471		782 KAR 001:010		
As Amended	48 Ky.R. 795		Amended	48 Ky.R. 1014	
701 KAR 005:160	48 Ky.R. 1075		782 KAR 001:070		
702 KAR 001:191	48 Ky.R. 1078		Amended	48 Ky.R. 1020	
702 KAR 003:060			787 KAR 001:010		
Amended	47 Ky.R. 2474		Amended	48 Ky.R. 578	
As Amended	48 Ky.R. 347		As Amended	1531	
702 KAR 005:080			787 KAR 001:020		
Amended	47 Ky.R. 1454		Amended	48 Ky.R. 579	
As Amended	1957	7-6-2021	As Amended	1531	
702 KAR 007:065			787 KAR 001:060		
Amended	48 Ky.R. 1653		Amended	48 Ky.R. 581	
702 KAR 007:125			As Amended	1532	
Amended	48 Ky.R. 995		787 KAR 001:080		
702 KAR 007:150	48 Ky.R. 233		Amended	48 Ky.R. 582	
Am Comments	1612		787 KAR 001:090		
703 KAR 005:070			Amended	48 Ky.R. 584	
Amended	47 Ky.R. 2476		As Amended	1532	
As Amended	48 Ky.R. 796		787 KAR 001:110		
703 KAR 005:225			Amended	48 Ky.R. 586	
Amended	47 Ky.R. 2478		As Amended	1533	
As Amended	48 Ky.R. 797		787 KAR 001:140		
703 KAR 005:240			Amended	48 Ky.R. 590	
Amended	47 Ky.R. 2480		787 KAR 001:150		
As Amended	48 Ky.R. 798		Amended	48 Ky.R. 592	
703 KAR 005:270			As Amended	1536	
Amended	47 Ky.R. 1829		787 KAR 001:210		
Am Comments	48 Ky.R. 83		Amended	48 Ky.R. 593	
As Amended	348		As Amended	1537	
703 KAR 005:280			787 KAR 001:220		
Amended	47 Ky.R. 1458		Amended	48 Ky.R. 595	
Am Comments	2405		As Amended	1537	
704 KAR 007:121	48 Ky.R. 235		787 KAR 001:260		
704 KAR 008:110	47 Ky.R. 1508		Amended	48 Ky.R. 596	
As Amended	1960	7-6-2021	As Amended	1538	
707 KAR 001:340			787 KAR 001:290		
Amended	47 Ky.R. 2648		Amended	48 Ky.R. 598	
As Amended	48 Ky.R. 1131		787 KAR 001:300		
725 KAR 001:010			Amended	48 Ky.R. 599	
Amended	48 Ky.R. 556		As Amended	1538	
725 KAR 001:020			787 KAR 001:310		
Amended	48 Ky.R. 558		Amended	48 Ky.R. 600	
725 KAR 001:025			As Amended	1539	
Amended	48 Ky.R. 559		787 KAR 001:360	47 Ky.R. 2768	
725 KAR 001:030			As Amended	48 Ky.R. 800	
Amended	48 Ky.R. 561		787 KAR 002:040		
725 KAR 001:040			Amended	48 Ky.R. 1023	
Amended	48 Ky.R. 562		791 KAR 001:010		
725 KAR 001:050			Amended	48 Ky.R. 1024	
Amended	48 Ky.R. 564		791 KAR 001:020		
725 KAR 001:061			Amended	48 Ky.R. 1028	
Amended	48 Ky.R. 566		791 KAR 001:025		
725 KAR 002:015			Amended	48 Ky.R. 1032	
Amended	48 Ky.R. 568		791 KAR 001:027		
725 KAR 002:080			Amended	48 Ky.R. 1034	
Amended	48 Ky.R. 573		791 KAR 001:030		
739 KAR 002:060			Amended	48 Ky.R. 1035	
Amended	48 Ky.R. 574		791 KAR 001:035		
745 KAR 001:035			Amended	48 Ky.R. 1037	
Amended	48 Ky.R. 1362		791 KAR 001:040		
781 KAR 001:010			Amended	48 Ky.R. 1039	
Amended	48 Ky.R. 999		791 KAR 001:050		
781 KAR 001:020			Amended	48 Ky.R. 1040	
Amended	48 Ky.R. 1002		791 KAR 001:060		
781 KAR 001:030			Amended	48 Ky.R. 1042	
Amended	48 Ky.R. 1006		791 KAR 001:070		
781 KAR 001:040			Amended	48 Ky.R. 1044	
Amended	48 Ky.R. 1008		791 KAR 001:080		
781 KAR 001:050			Amended	48 Ky.R. 1046	
Amended	48 Ky.R. 1011		791 KAR 001:100		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 1048		803 KAR 002:122		
791 KAR 001:150			Amended	47 Ky.R. 2665	
Amended	48 Ky.R. 1050		As Amended	48 Ky.R. 805	
791 KAR 001:155			803 KAR 002:125		
Amended	48 Ky.R. 1051		Amended	47 Ky.R. 2669	
791 KAR 001:160			As Amended	48 Ky.R. 807	
Amended	48 Ky.R. 1053		803 KAR 002:127		
803 KAR 001:005			Amended	47 Ky.R. 2671	
Amended	48 Ky.R. 145		As Amended	48 Ky.R. 808	
803 KAR 001:025			803 KAR 002:130		
Amended	48 Ky.R. 149		Amended	47 Ky.R. 2673	
803 KAR 001:060			As Amended	48 Ky.R. 809	
Amended	48 Ky.R. 154		803 KAR 002:140		
803 KAR 001:063			Amended	47 Ky.R. 2674	
Amended	48 Ky.R. 160		As Amended	48 Ky.R. 809	
803 KAR 001:065			803 KAR 002:170		
Amended	48 Ky.R. 161		Amended	47 Ky.R. 2670	
803 KAR 001:066			As Amended	48 Ky.R. 810	
Amended	48 Ky.R. 164		803 KAR 002:181	47 Ky.R. 2772	
803 KAR 001:070			803 KAR 002:220		
Amended	48 Ky.R. 166		Amended	47 Ky.R. 2684	
803 KAR 001:075			As Amended	48 Ky.R. 815	
Amended	48 Ky.R. 178		803 KAR 002:230		
803 KAR 001:080			Amended	47 Ky.R. 2685	
Amended	48 Ky.R. 180		803 KAR 002:240		
803 KAR 001:090			Amended	47 Ky.R. 1477	
Amended	48 Ky.R. 184		As Amended	2374	8-3-2021
803 KAR 002:010			803 KAR 002:250		
Amended	47 Ky.R. 1261		Amended	47 Ky.R. 2687	
As Amended	1960	7-6-2021	As Amended	48 Ky.R. 816	
803 KAR 002:011	47 Ky.R. 2769		803 KAR 002:306		
803 KAR 002:019			Amended	47 Ky.R. 2690	
Amended	47 Ky.R. 1622		803 KAR 002:308		
As Amended	2369	8-3-2021	Amended	47 Ky.R. 2692	
803 KAR 002:021			803 KAR 002:309		
Amended	47 Ky.R. 1465		Amended	47 Ky.R. 1626	
803 KAR 002:041	47 Ky.R. 2770	8-3-2021	As Amended	2374	8-3-2021
803 KAR 002:050			803 KAR 002:310		
Amended	47 Ky.R. 1467		Amended	47 Ky.R. 2695	
As Amended	2370	8-3-2021	803 KAR 002:314		
803 KAR 002:060			Amended	47 Ky.R. 1478	
Amended	47 Ky.R. 2655		As Amended	2375	8-3-2021
As Amended	48 Ky.R. 800		803 KAR 002:320		
803 KAR 002:062			Amended	47 Ky.R. 1628	
Amended	47 Ky.R. 2658		As Amended	2376	8-3-2021
As Amended	48 Ky.R. 803		803 KAR 2:325		
803 KAR 002:070			Amended	47 Ky.R. 2697	
Amended	47 Ky.R. 2660		As Amended	1539	
As Amended	48 Ky.R. 803		803 KAR 002:401		
803 KAR 002:080			Amended	47 Ky.R. 1634	
Amended	47 Ky.R. 1469		As Amended	2380	8-3-2021
As Amended	2371	8-3-2021	803 KAR 002:405		
803 KAR 002:090			Amended	47 Ky.R. 1636	
Amended	47 Ky.R. 1471		As Amended	2380	8-3-2021
As Amended	2371	8-3-2021	803 KAR 002:408		
803 KAR 002:095			Amended	47 Ky.R. 1638	
Repealed	47 Ky.R. 1509	8-3-2021	As Amended	2381	8-3-2021
803 KAR 002:096(r)	47 Ky.R. 1509	8-3-2021	803 KAR 002:409		
803 KAR 002:100			Amended	47 Ky.R. 1639	
Amended	47 Ky.R. 1473		As Amended	2381	8-3-2021
As Amended	2372	8-3-2021	803 KAR 002:410		
803 KAR 002:110			Amended	47 Ky.R. 1641	
Amended	47 Ky.R. 2663		As Amended	2381	8-3-2021
As Amended	48 Ky.R. 804		803 KAR 002:413		
803 KAR 002:115			Amended	47 Ky.R. 1480	
Amended	47 Ky.R. 1475		As Amended	2382	8-3-2021
As Amended	2373	8-3-2021	803 KAR 002:414		
803 KAR 002:120			Amended	47 Ky.R. 1643	
Amended	47 Ky.R. 1624		As Amended	2382	8-3-2021
As Amended	2373	8-3-2021	803 KAR 002:415		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
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	48 Ky.R. 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 010:030		
As Amended	2384	8-3-2021	Amended	48 Ky.R. 1657	
803 KAR 002:423			806 KAR 011:020		
Amended	47 Ky.R. 2708		Amended	48 Ky.R. 602	
803 KAR 002:424			806 KAR 012:010		
Amended	47 Ky.R. 1650		Amended	48 Ky.R. 1657	
As Amended	2386	8-3-2021	806 KAR 012:095		
803 KAR 002:430			Amended	47 Ky.R. 2717	
Repealed	47 Ky.R. 1509	8-3-2021	As Amended	48 Ky.R. 827	
803 KAR 2:435			806 KAR 012:120		
Amended	47 Ky.R. 2710		Amended	47 Ky.R. 815	
As Amended	48 Ky.R. 817		Am Comments	1604	
803 KAR 2:440			As Amended	48 Ky.R. 1144	
Amended	47 Ky.R. 2712		806 KAR 013:150		
As Amended	48 Ky.R. 818		Amended	2721	
803 KAR 002:600			As Amended	48 Ky.R. 1148	
Amended	47 Ky.R. 1652		806 KAR 014:005		
As Amended	2386	8-3-2021	Amended	47 Ky.R. 1654	
803 KAR 025:015			As Amended	2387	8-3-2021
Amended	47 Ky.R. 2107		806 KAR 014:007		
As Amended	48 Ky.R. 352		Amended	47 Ky.R. 1656	
803 KAR 025:021			As Amended	2388	8-3-2021
Amended	47 Ky.R. 2109		Amended	48 Ky.R. 1662	
As Amended	48 Ky.R. 818		806 KAR 014:090		
803 KAR 025:091			Amended	47 Ky.R. 1658	
Amended	47 Ky.R. 803		As Amended	2389	8-3-2021
Am Comments	1597		806 KAR 014:110		
As Amended	48 Ky.R. 824		Amended	47 Ky.R. 1659	
803 KAR 025:092			As Amended	2390	8-3-2021
Amended	47 Ky.R. 1264		806 KAR 014:121		
Am Comments	2026		Amended	47 Ky.R. 1661	
As Amended	2585	8-31-2021	As Amended	2586	8-31-2021
803 KAR 025:165			806 KAR 015:050		
Am Comments	47 Ky.R. 2774		Amended	47 Ky.R. 1664	
As Amended	48 Ky.R. 837		Am Comments	2413	
803 KAR 025:170			As Amended	2588	8-31-2021
Amended	47 Ky.R. 1266		806 KAR 015:060		
As Amended	48 Ky.R. 1137		Amended	47 Ky.R. 1668	
803 KAR 025:175			As Amended	2390	8-3-2021
Amended	47 Ky.R. 1268		806 KAR 015:070		
As Amended	48 Ky.R. 1138		Amended	47 Ky.R. 1673	
803 KAR 025:185			As Amended	2394	8-3-2021
Amended	47 Ky.R. 1269		806 KAR 015:090		
As Amended	48 Ky.R. 1138		Amended	47 Ky.R. 2725	
803 KAR 025:190			As Amended	48 Ky.R. 830	
Amended	47 Ky.R. 2116		806 KAR 017:070		
Am Comments	48 Ky.R. 435		Amended	47 Ky.R. 2726	
803 KAR 025:220			As Amended	48 Ky.R. 1151	
Amended	47 Ky.R. 2123		806 KAR 017:085		
As Amended	48 Ky.R. 826		Amended	47 Ky.R. 2729	
803 KAR 025:300			As Amended	48 Ky.R. 1153	
As Amended	1962	7-6-2021	806 KAR 017:100		
804 KAR 004:212	48 Ky.R. 1435		Amended	47 Ky.R. 2734	
804 KAR 004:221	48 Ky.R. 1437		As Amended	48 Ky.R. 1158	
804 KAR 004:251	48 Ky.R. 1439		806 KAR 017:150		
804 KAR 004:480	48 Ky.R. 1441		Amended	47 Ky.R. 2736	
806 KAR 002:060	47 Ky.R. 1714		As Amended	48 Ky.R. 1159	
As Amended	2387	8-3-2021	806 KAR 017:230		
806 KAR 004:010			Amended	47 Ky.R. 2742	
Amended	47 Ky.R. 2714		As Amended	48 Ky.R. 1164	
As Amended	48 Ky.R. 1139		806 KAR 017:240		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 186		810 KAR 004:030		
As Amended	1550		Amended	47 Ky.R. 1277	7-6-2021
806 KAR 017:260			810 KAR 004:040		
Amended	48 Ky.R. 188		Amended	48 Ky.R. 610	
As Amended	1164		As Amended	1561	
806 KAR 017:270			810 KAR 005:001		
Amended	48 Ky.R. 190		Amended	47 Ky.R. 2132	
As Amended	1551		As Amended	48 Ky.R. 357	8-12-2021
806 KAR 017:280			810 KAR 005:030		
Amended	48 Ky.R. 191		Amended	48 Ky.R. 1375	
As Amended	1551		810 KAR 005:060		
806 KAR 017:290			Amended	48 Ky.R. 1378	
Amended	48 Ky.R. 195		810 KAR 005:070		
As Amended	1165		Amended	48 Ky.R. 1383	
806 KAR 017:350			810 KAR 005:080		
Amended	48 Ky.R. 605		Amended	47 Ky.R. 2135	
806 KAR 017:370			As Amended	48 Ky.R. 27	10-5-2021
Amended	48 Ky.R. 200		810 KAR 006:001		
As Amended	1169		Amended	47 Ky.R. 2138	
806 KAR 017:450			As Amended	48 Ky.R. 359	8-12-2021
Amended	48 Ky.R. 202		810 KAR 006:010	47 Ky.R. 2181	
As Amended	1171		As Amended	48 Ky.R. 362	8-12-2021
806 KAR 017:470			810 KAR 006:020		
Amended	48 Ky.R. 205		Amended	47 Ky.R. 2142	
As Amended	1554		As Amended	48 Ky.R. 363	8-12-2021
806 KAR 017:511(r)	47 Ky.R. 2775		810 KAR 006:030	47 Ky.R. 2184	
As Amended	48 Ky.R. 1173		As Amended	48 Ky.R. 372	8-12-2021
806 KAR 017:580	47 Ky.R. 2777		810 KAR 008:010		
As Amended	48 Ky.R. 831		Amended	47 Ky.R. 2152	
806 KAR 017:590	48 Ky.R. 1684		As Amended	48 Ky.R. 29	10-5-2021
806 KAR 019:050			810 KAR 008:020		
Amended	47 Ky.R. 1675		Amended	47 Ky.R. 2159	
As Amended	2396	8-3-2021	810 KAR 008:025	47 Ky.R. 2188	
806 KAR 019:060			As Amended	48 Ky.R. 35	10-5-2021
Amended	47 Ky.R. 1676		810 KAR 008:030		
As Amended	2396	8-3-2021	Amended	47 Ky.R. 2167	
806 KAR 039:050			As Amended	48 Ky.R. 39	10-5-2021
Amended	47 Ky.R. 1678		810 KAR 008:040		
As Amended	2397	8-3-2021	Amended	47 Ky.R. 2174	
806 KAR 039:070			As Amended	48 Ky.R. 44	10-5-2021
Amended	48 Ky.R. 607		810 KAR 008:060		
806 KAR 040:020			Amended	47 Ky.R. 1281	7-6-2021
Amended	47 Ky.R. 1680		811 KAR 001:250		
As Amended	2398	8-3-2021	Repealed	47 Ky.R. 1923	2-25-21
806 KAR 046:050			815 KAR 004:010		
Amended	48 Ky.R. 207		Amended	48 Ky.R. 613	
As Amended	1173		815 KAR 004:025		
806 KAR 052:030			Amended	48 Ky.R. 615	
Amended	47 Ky.R. 2744		815 KAR 004:027		
As Amended	48 Ky.R. 831		Amended	48 Ky.R. 617	
807 KAR 005:015	47 Ky.R. 2778		815 KAR 007:080		
Am Comments	48 Ky.R. 1181		Amended	48 Ky.R. 618	
As Amended	1555		815 KAR 007:110		
807 KAR 005:056			Amended	48 Ky.R. 621	
Amended	47 Ky.R. 1485		815 KAR 010:060		
As Amended	1965	6-3-2021	Amended	48 Ky.R. 623	
810 KAR 002:001			815 KAR 010:070		
Amended	47 Ky.R. 2125		Amended	48 Ky.R. 627	
As Amended	48 Ky.R. 353	8-12-2021	815 KAR 020:050		
810 KAR 002:020			Amended	48 Ky.R. 629	
Amended	47 Ky.R. 1271	7-6-2021	815 KAR 020:150		
810 KAR 3:001			Amended	47 Ky.R. 1098	
Amended	47 Ky.R. 2127		As Amended	1587	
As Amended	48 Ky.R. 354	8-12-2021	As Amended	1967	6-15-2021
810 KAR 004:001			815 KAR 020:195		
Amended	47 Ky.R. 2130		Amended	48 Ky.R. 631	
As Amended	48 Ky.R. 355	8-12-2021	815 KAR 030:010		
810 KAR 004:010			Amended	48 Ky.R. 633	
Amended	47 Ky.R. 1274		815 KAR 030:060		
As Amended	1965	7-6-2021	Amended	48 Ky.R. 635	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
815 KAR 035:020			As Amended	1975	6-16-2021
Amended	48 Ky.R. 1664		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	
As Amended	2599	6-16-2021	902 KAR 048:040		
900 KAR 006:115			Amended	48 Ky.R. 673	
Amended	47 Ky.R. 1704	6-16-2021	902 KAR 95:040		
900 KAR 010:111	47 Ky.R. 2194	7-21-2021	Amended	47 Ky.R. 1493	
900 KAR 010:115	47 Ky.R. 2197	7-21-2021	As Amended	2599	6-16-2021
900 KAR 010:120	47 Ky.R. 2203		906 KAR 001:180		
As Amended	48 Ky.R. 48	7-21-2021	Amended	48 Ky.R. 1403	
900 KAR 010:125	47 Ky.R. 2211		907 KAR 001:005		
As Amended	48 Ky.R. 54	7-21-2021	Amended	48 Ky.R. 1409	
900 KAR 010:130	47 Ky.R. 2214		907 KAR 001:030		
As Amended	48 Ky.R. 56	7-21-2021	Amended	48 Ky.R. 1411	
900 KAR 011:010			907 KAR 001:038		
Repealed	47 Ky.R. 1325	6-16-2021	Amended	47 Ky.R. 2483	
900 KAR 011:011	47 Ky.R. 1325	6-16-2021	As Amended	48 Ky.R. 374	8-26-2021
900 KAR 012:005	48 Ky.R. 1079		907 KAR 001:604		
902 KAR 002:020			Amended	48 Ky.R. 1414	
Amended	48 Ky.R. 1389		907 KAR 003:005		
902 KAR 004:150	47 Ky.R. 2219		Amended	47 Ky.R. 1834	
As Amended	48 Ky.R. 59	7-21-2021	Am Comments	48 Ky.R. 838	
902 KAR 010:010			907 KAR 003:010		
Amended	47 Ky.R. 1283	6-16-2021	Amended	47 Ky.R. 1839	
902 KAR 010:060			Am Comments	48 Ky.R. 89	
Repealed	47 Ky.R. 1969	6-16-2021	As Amended	1174	
902 KAR 010:110			907 KAR 003:060	47 Ky.R. 2507	
Amended	47 Ky.R. 1285	6-16-2021	907 KAR 003:170		
902 KAR 010:120			Amended	48 Ky.R. 1667	
Amended	48 Ky.R. 638		907 KAR 007:020	47 Ky.R. 1859	
902 KAR 010:121			As Amended	2602	6-16-2021
Amended	48 Ky.R. 1396		907 KAR 010:815		
902 KAR 010:130			Amended	48 Ky.R. 1055	
Repealed	47 Ky.R. 1969	6-16-2021	907 KAR 010:830		
902 KAR 010:131(r)	47 Ky.R. 1326		Amended	48 Ky.R. 1417	
As Amended	1969	6-16-2021	907 KAR 015:070		
902 KAR 010:140			Amended	47 Ky.R. 1121	
Amended	47 Ky.R. 1288		Am Comments	1769	
As Amended	1970	6-16-2021	As Amended	1996	6-16-2021
902 KAR 010:150			907 KAR 015:080		
Amended	47 Ky.R. 1292		Amended	47 Ky.R. 1127	
As Amended	1973	6-16-2021	Am Comments	1776	
902 KAR 010:160			As Amended	2001	6-16-2021
Amended	47 Ky.R. 1295		907 KAR 023:020		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 678		As Amended	48 Ky.R. 380	8-26-2021
908 KAR 001:390	47 Ky.R. 2222		922 KAR 005:020		
Am Comments	48 Ky.R. 441		Amended	47 Ky.R. 2486	
908 KAR 002:270	47 Ky.R. 1328		As Amended	48 Ky.R. 382	8-26-2021
As Amended	2011	6-16-2021	923 KAR 002:470		
910 KAR 004:010	48 Ky.R. 1442		Amended	48 Ky.R. 1059	
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				
As Amended	1563				
921 KAR 002:015					
Amended	48 Ky.R. 684				
As Amended	1564				
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			
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					
Amended	47 Ky.R. 2746				
Am Comments	48 Ky.R. 1188				
921 KAR 004:116					
Amended	48 Ky.R. 689				
922 KAR 001:300					
Amended	47 Ky.R. 2749				
Am Comments	48 Ky.R. 1191				
As Amended	1569				
922 KAR 001:380					
Amended	47 Ky.R. 2759				
As Amended	48 Ky.R. 1579				
922 KAR 001:390					
Amended	47 Ky.R. 2760				
922 KAR 001:490					
Amended	47 Ky.R. 1844				
Am Comments	48 Ky.R. 94				
As Amended	377	8-26-2021			
922 KAR 001:540					
Amended	47 Ky.R. 1849				
As Amended	2603	6-16-2021			
922 KAR 001:565					
Amended	48 Ky.R. 1426				
922 KAR 001:580					
Amended	47 Ky.R. 1851				
As Amended	2604	6-16-2021			
922 KAR 002:120					
Amended	47 Ky.R. 1145				
Am Comments	1787	6-16-2021			
922 KAR 002:160					
Amended	48 Ky.R. 693				
Am Comments	1614				
922 KAR 002:230					
Amended	47 Ky.R. 1303	6-16-2021			
922 KAR 002:240					
Amended	47 Ky.R. 1304	6-16-2021			
922 KAR 002:250					
Amended	47 Ky.R. 1310				
922 KAR 002:300	47 Ky.R. 2509				

## 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		503 KAR 001:140
12.355	201 KAR 022:045	15.396	503 KAR 001:060
13A.010	902 KAR 010:190		503 KAR 001:140
13A.310	921 KAR 003:026E	15.3971	503 KAR 001:060
13B	016 KAR 001:030		503 KAR 001:140
	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	61.552	105 KAR 001:330
	502 KAR 030:060	61.592	105 KAR 001:330
17.147	502 KAR 030:070	61.685	105 KAR 001:330
17.150	502 KAR 030:060	61.805-61.850	702 KAR 007:065
	502 KAR 030:030	61.870	725 KAR 001:020
	502 KAR 030:070	61.870-61.884	302 KAR 050:021
17.151	502 KAR 030:060		302 KAR 050:031
17.152	502 KAR 030:060		782 KAR 001:010
17.160	502 KAR 030:060		791 KAR 001:155
17.167	502 KAR 030:060	61.872	502 KAR 030:070
17.180	502 KAR 014:010	61.876	040 KAR 001:040E
17.450	502 KAR 035:010		040 KAR 001:040
	502 KAR 035:020	61.878	502 KAR 030:070
	502 KAR 035:030		725 KAR 001:025
	502 KAR 035:040		791 KAR 001:155
	502 KAR 035:050	61.884	502 KAR 030:070
17.460	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
17.500-17.540	502 KAR 031:020	75.400	739 KAR 002:060
17.550-17.991	501 KAR 006:190	78.510-78.852	105 KAR 001:210
18A.020	101 KAR 001:345		105 KAR 001:310
18A.030	101 KAR 002:210E	78.545	105 KAR 001:330
	101 KAR 002:210	78.5520	105 KAR 001:330
18A.075	101 KAR 001:335	78.610	105 KAR 001:330
	101 KAR 001:345	82.105	815 KAR 007:110
	101 KAR 001:365	83	815 KAR 007:110
	101 KAR 001:367	83A	815 KAR 007:110
	101 KAR 001:375	95.010	739 KAR 002:060
	101 KAR 001:400	95A.040	739 KAR 002:060
18A.0751	101 KAR 001:335	95A.210	739 KAR 002:060
	101 KAR 001:345	117.001	031 KAR 005:025E
	101 KAR 001:365		031 KAR 005:025
	101 KAR 001:367	117.015	031 KAR 004:195
	101 KAR 001:375	117.066	031 KAR 004:195E
	101 KAR 001:400	117.085	031 KAR 005:025E
18A.095	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
18A.115	101 KAR 001:400	117.087	031 KAR 005:025E
18A.225	101 KAR 002:210E		031 KAR 005:025
	101 KAR 002:210	117.145	031 KAR 005:025E
18A.2254	101 KAR 002:210E		031 KAR 005:025
	101 KAR 002:210	117.225	031 KAR 005:025E
39A.180	201 KAR 002:411E		031 KAR 005:025
	201 KAR 002:412E	117.228	031 KAR 005:025E
39A.350-39A.366	902 KAR 002:230E		031 KAR 005:025
39F.180	603 KAR 005:360	120.205	031 KAR 004:200E
39F.200	603 KAR 005:360		031 KAR 004:200
41.400	040 KAR 006:020	120.215	031 KAR 004:200E
42.019	200 KAR 003:020E	131.130	103 KAR 016:352
	200 KAR 003:020		103 KAR 018:090
42.425	200 KAR 003:020E	131.570	787 KAR 001:110
	200 KAR 003:020	136.120	103 KAR 008:090
45.031	200 KAR 017:110E		103 KAR 008:090
	200 KAR 017:110	139.010	103 KAR 027:050
45.237-45.241	922 KAR 001:565		103 KAR 027:150
45.357	921 KAR 004:116E		103 KAR 027:230
	921 KAR 004:116		103 KAR 030:091
45A	603 KAR 004:035		103 KAR 030:120
	921 KAR 001:020		103 KAR 030:140
49	502 KAR 012:010		103 KAR 030:190
56.010	200 KAR 003:020E		103 KAR 030:250
	200 KAR 003:020	139.105	103 KAR 027:050
56.463	200 KAR 003:020E		103 KAR 030:190
	200 KAR 003:020	139.200	103 KAR 027:050
61.365	502 KAR 013:010		103 KAR 027:150
61.371-61.379	101 KAR 001:395		103 KAR 027:230
61.505	105 KAR 001:330		103 KAR 030:250
61.505-61.705	105 KAR 001:210	139.215	103 KAR 027:150
	105 KAR 001:310		103 KAR 027:230
61.543	105 KAR 001:330	139.240	103 KAR 027:230



KRS SECTION	REGULATION	KRS SECTION	REGULATION
139.250	103 KAR 027:230		301 KAR 004:020
139.260	103 KAR 027:150		301 KAR 004:050
	103 KAR 027:230		301 KAR 004:070
	103 KAR 030:091	150.015	301 KAR 002:015
	103 KAR 030:190		301 KAR 002:082
	103 KAR 030:250		301 KAR 002:260
139.270	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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
150.305	301 KAR 002:142	151B.020	787 KAR 002:040
	301 KAR 002:224	151B.185	781 KAR 001:020
150.320	301 KAR 002:082	151B.190	781 KAR 001:010
150.330	301 KAR 002:082		781 KAR 001:020
	301 KAR 002:224		781 KAR 001:030
	301 KAR 002:230		781 KAR 001:040
	301 KAR 002:260		781 KAR 001:050
150.340	301 KAR 001:031	151B.200	781 KAR 001:010
	301 KAR 001:050		781 KAR 001:020
	301 KAR 002:224	151B.402	013 KAR 003:040
	301 KAR 002:260	151B.403	013 KAR 003:010
150.360	301 KAR 001:031		013 KAR 003:030
	301 KAR 001:082		013 KAR 003:050
	301 KAR 002:050		013 KAR 003:060
	301 KAR 003:027	151B.408	013 KAR 003:020
	301 KAR 003:030		013 KAR 003:030
	301 KAR 003:110		013 KAR 003:040
150.362	301 KAR 003:110		013 KAR 003:060
150.365	301 KAR 003:110	154A.060	202 KAR 003:020
150.370	301 KAR 001:031	154A.120	202 KAR 003:020
	301 KAR 002:111	156.029	701 KAR 005:160
	301 KAR 003:030	156.070	702 KAR 001:191E
	301 KAR 003:110		702 KAR 001:195E
150.390	301 KAR 002:111		702 KAR 007:065
	301 KAR 003:027	156.160	702 KAR 001:191E
	301 KAR 003:110		701 KAR 001:191
150.445	301 KAR 001:152	156.496	922 KAR 001:565
150.450	301 KAR 001:140	157.200	016 KAR 004:020
	301 KAR 001:152	157.250	016 KAR 004:020
150.470	301 KAR 001:031	157.3175	016 KAR 002:040
150.485	301 KAR 001:120	157.320	702 KAR 007:125E
	301 KAR 001:125		702 KAR 007:125
150.600	301 KAR 002:224	157.350	702 KAR 007:125E
	301 KAR 002:260		702 KAR 007:125
	301 KAR 004:020	157.360	702 KAR 007:125E
	301 KAR 004:050		702 KAR 007:125
150.620	301 KAR 001:012	158.030	702 KAR 007:125E
	301 KAR 001:018		702 KAR 007:125
	301 KAR 001:019	158.070	702 KAR 007:125E
	301 KAR 001:050		702 KAR 007:125
	301 KAR 003:010	158.100	702 KAR 007:125E
	301 KAR 003:012		702 KAR 007:125
	301 KAR 003:026	158.135	013 KAR 003:050
	301 KAR 003:027	158.143	013 KAR 003:050
	301 KAR 004:100	158.160	902 KAR 002:221E
150.625	301 KAR 001:012	158.240	702 KAR 007:125E
	301 KAR 001:016		702 KAR 007:125
	301 KAR 001:019	158.6645	013 KAR 003:050
150.630	301 KAR 002:041	159.010	702 KAR 007:125E
	301 KAR 002:260		702 KAR 007:125
150.640	301 KAR 001:012	159.030	702 KAR 007:125E
	301 KAR 001:016		702 KAR 007:125
	301 KAR 001:019		704 KAR 007:121
	301 KAR 002:050	159.035	702 KAR 007:125E
	301 KAR 003:010		702 KAR 007:125
	301 KAR 003:012	159.140	702 KAR 007:125E
150.680	301 KAR 002:050		702 KAR 007:125
150.990	301 KAR 001:050	159.170	702 KAR 007:125E
	301 KAR 001:152		702 KAR 007:125
	301 KAR 002:041	160.290	702 KAR 001:191E
	301 KAR 002:142		702 KAR 001:191
	301 KAR 002:082		702 KAR 007:150
	301 KAR 002:224		704 KAR 007:121
	301 KAR 002:260	160.380	016 KAR 001:030
	301 KAR 003:012		702 KAR 007:065
	301 KAR 003:030	160.445	702 KAR 007:065
	301 KAR 003:110	160.613	103 KAR 030:140
	301 KAR 004:070	161.010-161.100	016 KAR 001:030
	301 KAR 004:100	161.011	013 KAR 003:030
	301 KAR 005:030	161.020	016 KAR 002:040
151.601	200 KAR 017:110E		016 KAR 002:050
	200 KAR 017:110		016 KAR 002:180
151.605	200 KAR 017:110E		016 KAR 002:220E
	200 KAR 017:110		016 KAR 002:220

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	016 KAR 002:230E		791 KAR 001:060
	016 KAR 002:230		791 KAR 001:070
	016 KAR 002:180		791 KAR 001:080
	016 KAR 003:070		791 KAR 001:100
	016 KAR 004:020		791 KAR 001:155
	016 KAR 004:050		791 KAR 001:160
	016 KAR 005:010	165A.380	791 KAR 001:025
	016 KAR 006:010		791 KAR 001:070
161.028	016 KAR 002:050	165A.390	791 KAR 001:020
	016 KAR 002:220E		791 KAR 001:030
	016 KAR 002:220		791 KAR 001:155
	016 KAR 002:230E	165A.420	791 KAR 001:025
	016 KAR 002:230	165A.450	791 KAR 001:020
	016 KAR 003:070		791 KAR 001:035
	016 KAR 004:020		791 KAR 001:050
	016 KAR 004:050	165A.460	502 KAR 010:070
	016 KAR 005:010		502 KAR 010:090
	016 KAR 006:010		791 KAR 001:040
161.030	016 KAR 002:040		791 KAR 001:070
	016 KAR 002:050	165A.460-165A.515	791 KAR 001:060
	016 KAR 002:180	165A.465	791 KAR 001:050
	016 KAR 002:220E		791 KAR 001:070
	016 KAR 002:220	165A.470	791 KAR 001:050
	016 KAR 002:230E		791 KAR 001:070
	016 KAR 002:230	165A.475	791 KAR 001:050
	016 KAR 003:070		791 KAR 001:070
	016 KAR 004:020	165A.480	791 KAR 001:050
	016 KAR 004:050		791 KAR 001:070
	016 KAR 005:010	165A.485	791 KAR 001:070
	016 KAR 006:010	165A.500	791 KAR 001:080
161.053	016 KAR 002:050	165A.510	791 KAR 001:080
161.120	016 KAR 001:030		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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
186.577	782 KAR 001:070	199.899	922 KAR 002:160E
186.578	782 KAR 001:070		922 KAR 002:160
186.579	782 KAR 001:070	202A.011	702 KAR 007:150
186A.040	806 KAR 039:070		921 KAR 002:015E
186A.042	806 KAR 039:070		921 KAR 002:015
186A.095	806 KAR 039:070	202A.410	501 KAR 014:010
189A.010	782 KAR 001:070	205.175	921 KAR 001:020
189.450	502 KAR 015:020	205.177	921 KAR 001:020
189.635	502 KAR 015:010	205.2005	921 KAR 003:026E
189.751	502 KAR 015:020		921 KAR 003:027E
189.752	502 KAR 015:020		921 KAR 003:027
189.753	502 KAR 015:020	205.211	922 KAR 001:565
190.010	605 KAR 001:051	205.245	921 KAR 002:015E
	605 KAR 001:211		921 KAR 002:015
190.010-190.990	605 KAR 001:191		923 KAR 002:470
190.030	605 KAR 001:051	205.510	900 KAR 012:005E
	605 KAR 001:071		900 KAR 012:005
190.032	605 KAR 001:211		907 KAR 003:170
190.040	605 KAR 001:091		907 KAR 010:815
190.058	605 KAR 001:131		907 KAR 010:830
190.062	605 KAR 001:131	205.5510-205.5520	907 KAR 023:020E
194.010	921 KAR 004:116E		907 KAR 023:020
	921 KAR 004:116	205.559	900 KAR 012:005E
194.030	787 KAR 001:310		900 KAR 012:005
194.060	921 KAR 004:116E		907 KAR 003:170
	921 KAR 004:116	205.5591	900 KAR 012:005E
	922 KAR 002:160E		900 KAR 012:005
	922 KAR 002:160		907 KAR 003:170
194.070	921 KAR 004:116E	205.560	907 KAR 001:604
	921 KAR 004:116		907 KAR 003:170
194A	921 KAR 002:015E		907 KAR 023:020E
	921 KAR 002:015		907 KAR 023:020
194A.005	922 KAR 001:565	205.561	907 KAR 023:020E
194A.050	902 KAR 002:230E		907 KAR 023:020
	902 KAR 002:240E	205.5631	907 KAR 023:020E
	902 KAR 002:250E		907 KAR 023:020
194A.060	907 KAR 003:170	205.5632	907 KAR 023:020E
194A.540	201 KAR 020:320		907 KAR 023:020
196.035	501 KAR 002:060	205.5634	907 KAR 023:020E
196.020	501 KAR 002:060		907 KAR 023:020
196.030	501 KAR 006:250	205.5636	907 KAR 023:020E
197.045	501 KAR 002:060		907 KAR 023:020
	725 KAR 002:015	205.5638	907 KAR 023:020E
198B.032	725 KAR 002:015		907 KAR 023:020
198B.040	815 KAR 007:110	205.5639	907 KAR 023:020E
198B.050	725 KAR 002:015		907 KAR 023:020
	815 KAR 004:025	205.565	907 KAR 010:830
	815 KAR 007:110	205.624	907 KAR 001:005
	815 KAR 010:060	205.6312	907 KAR 001:005
	815 KAR 020:195		907 KAR 001:604
	815 KAR 035:020	205.6316	907 KAR 023:020E
198B.060	815 KAR 007:110		907 KAR 023:020
198B.070	815 KAR 007:110	205.637	907 KAR 010:815
198B.400	815 KAR 004:010		907 KAR 010:830
	815 KAR 004:027	205.638	907 KAR 010:830
198B.400-198B.0540	815 KAR 004:025	205.639	907 KAR 010:815
198B.470	815 KAR 004:010		907 KAR 010:830
198B.480	815 KAR 004:010	205.640	907 KAR 010:815
198B.490	815 KAR 004:027		907 KAR 010:830
198B.500	815 KAR 004:010	205.6405	907 KAR 010:815
198B.510	815 KAR 004:010	205.6406	907 KAR 010:815
198B.540	815 KAR 004:010	205.6407	907 KAR 010:815
198B.550-198B.630	815 KAR 007:080	205.6408	907 KAR 010:815
199.011	922 KAR 001:565	204.6485	907 KAR 001:604
199.462	922 KAR 001:565	205.710	921 KAR 001:020
199.470-199.590	922 KAR 001:565		921 KAR 001:390
199.894	922 KAR 002:160E		921 KAR 001:400E
	922 KAR 002:160		921 KAR 001:400
199.896	922 KAR 002:160E	205.712	921 KAR 001:020
	922 KAR 002:160		921 KAR 001:390
199.898	922 KAR 002:160E	205.721	921 KAR 001:390
	922 KAR 002:160	205.730	921 KAR 001:020
199.8982	922 KAR 002:160E		921 KAR 001:390
	922 KAR 002:160	205.735	921 KAR 001:020

KRS SECTION	REGULATION	KRS SECTION	REGULATION
205.7685	921 KAR 001:020		902 KAR 002:212E
205.772	921 KAR 001:020		902 KAR 002:213E
205.774	921 KAR 001:020	214.990	902 KAR 002:020
205.776	921 KAR 001:020	215.520	902 KAR 002:020
205.800	921 KAR 001:020	216.380	907 KAR 010:815
205.802	921 KAR 001:400E		907 KAR 010:830
	921 KAR 001:400	216A.070	201 KAR 006:020
205.8451	907 KAR 001:604	216A.080	201 KAR 006:020
205.990	921 KAR 001:020	216.510	902 KAR 020:460E
	921 KAR 001:400E	216.530	921 KAR 002:015E
	921 KAR 001:400		921 KAR 002:015
209.020	502 KAR 012:010	216.557	921 KAR 002:015E
	921 KAR 002:015E		921 KAR 002:015
	921 KAR 002:015	216.710-216.716	906 KAR 001:180
209.030	502 KAR 012:010		910 KAR 004:010
	906 KAR 001:180	216.765	921 KAR 002:015E
209.032	902 KAR 020:081		921 KAR 002:015
	906 KAR 001:180	216.935	902 KAR 020:081
209A.020	502 KAR 012:010		907 KAR 001:030
209A.030	502 KAR 012:010	216.936	907 KAR 001:030
209A.100	502 KAR 012:010	216.937	902 KAR 020:081
209A.110	502 KAR 012:010		907 KAR 001:030
209A.130	502 KAR 012:010	216.9375	902 KAR 020:081
211.015	902 KAR 010:120		907 KAR 001:030
	902 KAR 010:190	216.935-216.939	910 KAR 004:010
211.090	902 KAR 010:120	216.939	907 KAR 001:030
211.180	902 KAR 002:212E	216B	921 KAR 002:015E
	902 KAR 002:213E		921 KAR 002:015
	902 KAR 002:230E	216B.010-216B.130	902 KAR 020:081
	902 KAR 002:240E	216B.015	502 KAR 012:010
	902 KAR 002:250E		902 KAR 002:020
	902 KAR 010:190		902 KAR 002:230E
	902 KAR 048:010		906 KAR 001:180
	902 KAR 048:020	216B.400	502 KAR 012:010
	902 KAR 048:030	216B.990	502 KAR 012:010
	902 KAR 048:040		902 KAR 020:081
211.185	902 KAR 010:121	217.015	907 KAR 023:020E
211.332	900 KAR 012:005E		907 KAR 023:020
	900 KAR 012:005	217.055	201 KAR 002:076
211.600	502 KAR 012:010	217.065	201 KAR 002:076
211.990	902 KAR 010:120	217.186	201 KAR 002:360
	902 KAR 010:121	217.211	806 KAR 017:280
211.994	902 KAR 048:010	217.660	902 KAR 048:010
	902 KAR 048:010	217.801	902 KAR 048:010
211.210	902 KAR 010:120		902 KAR 048:010
211.220	902 KAR 010:120		902 KAR 048:040
211.350	815 KAR 035:020	217B	302 KAR 050:021
211.900-211.905	902 KAR 048:010		302 KAR 050:046
	902 KAR 048:010		302 KAR 050:056
211.990	902 KAR 010:120	218A.010	016 KAR 001:030
	902 KAR 048:010	218A.1431	502 KAR 047:010
211.994	902 KAR 048:010	218A.172	201 KAR 020:057
	902 KAR 048:010	218A.205	201 KAR 002:050
211.9061-200.9079	902 KAR 048:010		201 KAR 002:430
211.9063	902 KAR 048:030		201 KAR 008:520
	902 KAR 048:040		201 KAR 020:057
211.9069	902 KAR 048:030		201 KAR 020:215
211.9071	902 KAR 048:030	224A.011	200 KAR 017:110E
	902 KAR 048:040		200 KAR 017:110
211.9075	902 KAR 048:030	224A.020	200 KAR 017:110E
212.626	815 KAR 007:110		200 KAR 017:110
213.036	921 KAR 001:390	224A.035	200 KAR 017:110E
213.046	921 KAR 001:390		200 KAR 017:110
	921 KAR 001:400E	224A.040	200 KAR 017:110E
	921 KAR 001:400		200 KAR 017:110
213.071	921 KAR 001:390	224A.050-224A.314	200 KAR 017:110E
214.010	902 KAR 002:212E		200 KAR 017:110
	902 KAR 002:213E	224.1-010-410	502 KAR 047:010
	902 KAR 002:221E	224.60-105	815 KAR 030:060
214.020	902 KAR 002:221E	224.60-135	815 KAR 030:060
214.036	922 KAR 002:160E	224.99-010	502 KAR 047:010
	922 KAR 002:160	227.300	725 KAR 002:015
214.623	902 KAR 002:020		815 KAR 010:060
214.645	902 KAR 002:020		815 KAR 030:060

KRS SECTION	REGULATION	KRS SECTION	REGULATION
227.320	815 KAR 010:060	243.100	804 KAR 004:480
227.330	815 KAR 010:060	243.220	804 KAR 004:221
227.460	815 KAR 035:020	243.260	804 KAR 004:251
227.480	815 KAR 035:020	243.520	804 KAR 004:480
227.487	815 KAR 035:020	247.100	303 KAR 001:110
227.489	815 KAR 007:110	247.145	303 KAR 001:005
227.491	815 KAR 035:020		303 KAR 001:010
227.700	815 KAR 010:070		303 KAR 001:015
227.702	815 KAR 010:070		303 KAR 001:075
227.704	815 KAR 010:070		303 KAR 001:080
227.708	815 KAR 010:070		303 KAR 001:090
227.710	815 KAR 010:070		303 KAR 001:100
227.715	815 KAR 010:070	217.147	303 KAR 001:110
227.750	815 KAR 010:070	247.153	303 KAR 001:005
227.752	815 KAR 010:070	247.154	303 KAR 001:005
227.990	815 KAR 010:060		303 KAR 001:010
230.215	810 KAR 004:040		303 KAR 001:015
	810 KAR 005:030	247.160	303 KAR 001:075
	810 KAR 005:060	258.065	902 KAR 002:020
	810 KAR 005:070	258.990	902 KAR 002:020
230.260	810 KAR 004:040	260.850-260.869	302 KAR 050:021
	810 KAR 005:030		302 KAR 050:031
	810 KAR 005:060		302 KAR 050:046
	810 KAR 005:070		302 KAR 050:056
230.280	810 KAR 005:070		302 KAR 050:080
230.290	810 KAR 005:070	281A.120	502 KAR 010:120
230.300	810 KAR 005:070	281A.130	502 KAR 010:120
230.310	810 KAR 005:070	281A.150	502 KAR 010:120
230.320	810 KAR 005:070	281A.160	502 KAR 010:035
234.120	815 KAR 030:010		502 KAR 010:110
234.130	815 KAR 030:010		502 KAR 010:120
234.140	815 KAR 010:060	281A.170	502 KAR 010:120
235	301 KAR 006:001	285.065	301 KAR 002:082
235.40	301 KAR 006:070	285.085	301 KAR 002:082
235.220	301 KAR 006:070	302.31	921 KAR 001:390
235.315	301 KAR 001:018	302.33	921 KAR 001:390
237.110	502 KAR 011:010	302.34	921 KAR 001:020
	502 KAR 011:060	302.50	921 KAR 001:400E
	502 KAR 011:070		921 KAR 001:400
	502 KAR 013:030	302.56	921 KAR 001:400E
	502 KAR 013:040		921 KAR 001:400
	502 KAR 013:050	302.80	921 KAR 001:400E
	502 KAR 013:060		921 KAR 001:400
	502 KAR 013:080	303.107	921 KAR 001:020
	502 KAR 030:060	303.21	921 KAR 001:020
	503 KAR 004:010	303.4	921 KAR 001:400E
	503 KAR 004:040		921 KAR 001:400
	503 KAR 004:050	303.5	921 KAR 001:390
	921 KAR 001:390	303.70	921 KAR 001:020
237.120	503 KAR 004:040	303.8	921 KAR 001:400E
237.122	503 KAR 004:040		921 KAR 001:400
237.124	503 KAR 004:040	303.30-303.32	921 KAR 001:400E
	503 KAR 004:050		921 KAR 001:400
237.126	503 KAR 004:040	304	806 KAR 011:020
237.138	502 KAR 013:030		921 KAR 001:020
	502 KAR 013:040		921 KAR 001:390
	502 KAR 013:050	304.1-010	806 KAR 014:007
	502 KAR 013:060	304.1-050	806 KAR 011:020
	502 KAR 013:080		806 KAR 014:007
237.140	502 KAR 013:030		806 KAR 017:590
	502 KAR 013:040		806 KAR 046:050
	502 KAR 013:050	304.1-070	806 KAR 010:030
	502 KAR 013:060	304.1-120	806 KAR 011:020
	502 KAR 013:080	304.2-100	806 KAR 017:290
237.142	502 KAR 013:030		806 KAR 017:350
	502 KAR 013:040	304.2-110	806 KAR 017:470
	502 KAR 013:050	304.2-140	806 KAR 017:280
	502 KAR 013:060	304.2-160	806 KAR 011:020
	502 KAR 013:080	304.2-165	806 KAR 011:020
237.138-237.142	502 KAR 013:010	304.2-230	806 KAR 017:290
241.010	103 KAR 030:120	304.2-310	806 KAR 017:290
243.030	103 KAR 030:120		806 KAR 017:450
	804 KAR 004:212	304.3-240	806 KAR 012:010
243.040	103 KAR 030:120	304.3-270	806 KAR 014:007

KRS SECTION	REGULATION	KRS SECTION	REGULATION
304.4-010	806 KAR 014:007	304.38-240	907 KAR 003:170
304.5-040	806 KAR 011:020	304.39-010	806 KAR 017:370
304.5-140	806 KAR 005:025	304.39-080	806 KAR 039:070
304.9-020	806 KAR 011:020	304.39-083	806 KAR 039:070
	806 KAR 017:590	304.39-085	806 KAR 039:070
304.9-051	806 KAR 011:020	304.39-087	806 KAR 039:070
304.9-052	806 KAR 017:450	304.39-090	806 KAR 039:070
304.9-055	806 KAR 017:590	304.39-117	806 KAR 039:070
304.10-030	806 KAR 010:030	304.39-340	806 KAR 017:370
304.10-040	806 KAR 010:030	304.40-320	900 KAR 012:005E
304.10-050	806 KAR 010:030		900 KAR 012:005
304.10-170	806 KAR 010:030	304.47-020	806 KAR 017:450
304.10-180	806 KAR 010:030	304.48-020	806 KAR 046:050
304.11-030	806 KAR 011:020	304.48-180	806 KAR 046:050
304.11-045	806 KAR 011:020	304.99-020	806 KAR 011:020
304.12-010	806 KAR 012:010	304.99-085	806 KAR 010:030
304.12-020	806 KAR 012:010	307.13	921 KAR 001:020
304.12-060	806 KAR 012:010	309.350	201 KAR 042:010
304.12-120	806 KAR 012:010	309.351	201 KAR 042:050
304.12.130	806 KAR 012:010		201 KAR 042:110
304.13-011	806 KAR 046:050	309.355	201 KAR 042:010
304.13-051	806 KAR 046:050		201 KAR 042:030
304.14-120	806 KAR 014:007		201 KAR 042:050
	806 KAR 046:050		201 KAR 042:060
304.14-190	806 KAR 014:007		201 KAR 042:110
304.17-380	806 KAR 014:007	309.357	201 KAR 042:010
304.17-412	806 KAR 017:280		201 KAR 042:040
304.17A	806 KAR 017:260	309.358	201 KAR 042:035
304.17A-005	806 KAR 011:020	309.359	201 KAR 042:035
	806 KAR 017:370		201 KAR 042:070
	806 KAR 017:470	309.361	201 KAR 042:040
	806 KAR 017:590		201 KAR 042:110
304.17A-095	806 KAR 014:007	309.362	201 KAR 042:035
304.17A-096	806 KAR 014:007		201 KAR 042:040
304.17A-138	806 KAR 017:270		201 KAR 042:050
	900 KAR 012:005E		201 KAR 042:060
	900 KAR 012:005	309.363	201 KAR 042:035
304.17A-200	806 KAR 017:450	309.404	201 KAR 047:010
304.17A-230	806 KAR 017:240	309.406	201 KAR 047:010
304.17A-330	806 KAR 017:240		201 KAR 047:030
304.17A-410	806 KAR 011:020	309.412	201 KAR 047:010
304.17A-600	806 KAR 011:020		201 KAR 047:030
	806 KAR 017:280	309.414	201 KAR 047:010
	806 KAR 017:290		201 KAR 047:030
304.17A-607	806 KAR 017:370	309.416	201 KAR 047:010
304.17A-619	806 KAR 017:280		201 KAR 047:030
304.17A-621	806 KAR 017:290	309.418	201 KAR 047:010
304.17A-623	806 KAR 017:280		201 KAR 047:030
304.17A-631	806 KAR 017:290	309.420	201 KAR 047:010
304.17A-633	806 KAR 011:020		201 KAR 047:030
304.17A-700	806 KAR 017:370	311.282	902 KAR 002:020
	806 KAR 017:470	311.571	902 KAR 002:020
	806 KAR 017:590	311.5975	900 KAR 012:005E
	806 KAR 017:370		900 KAR 012:005
304.17A-730	806 KAR 017:590	311.621	906 KAR 001:180
304.17A-732	806 KAR 017:450	311.840	902 KAR 020:081
304.17A-750	806 KAR 017:450	311A.100	502 KAR 030:060
304.17A-770	806 KAR 011:020	312.019	201 KAR 021:035
304.17A-802	806 KAR 011:020		201 KAR 021:054
304.17A-812	806 KAR 017:470		201 KAR 021:070
304.17A-846	806 KAR 017:350		201 KAR 021:090
304.17B-001	806 KAR 017:350		201 KAR 021:100
304.17B-021	806 KAR 017:350		201 KAR 021:090
304.17B-023	806 KAR 017:350	312.085	201 KAR 021:070
304.17C-010	806 KAR 014:007	312.115	201 KAR 008:520
	806 KAR 017:280	313.022	201 KAR 008:520
	806 KAR 017:370	313.030	201 KAR 008:520
	806 KAR 017:280	313.100	201 KAR 008:520
304.17C-030	806 KAR 017:370	314.011	201 KAR 020:057
304.17C-090	806 KAR 017:280		201 KAR 020:215
304.18-045	806 KAR 017:260		201 KAR 020:320
304.18-114	806 KAR 017:260		502 KAR 012:010
304.18-120	806 KAR 017:280		702 KAR 007:150
304.32-147	806 KAR 017:280		902 KAR 020:081
304.32-330	806 KAR 017:280		922 KAR 002:160E
304.38-225	806 KAR 017:280		

KRS SECTION	REGULATION	KRS SECTION	REGULATION
314.021	922 KAR 002:160		201 KAR 015:050E
	201 KAR 020:320		201 KAR 015:050
	201 KAR 020:478		201 KAR 015:110E
314.035	201 KAR 020:472		201 KAR 015:110
	201 KAR 020:474	316.125	201 KAR 015:030E
	201 KAR 020:476		201 KAR 015:030
	201 KAR 020:478		201 KAR 015:110E
314.041	201 KAR 020:320		201 KAR 015:110
314.042	201 KAR 020:057	316.127	201 KAR 015:110E
	902 KAR 020:081		201 KAR 015:110
314.073	201 KAR 020:215	316.130	201 KAR 015:030E
314.089	201 KAR 020:478		201 KAR 015:030
314.091	201 KAR 020:478		201 KAR 015:110E
314.111	201 KAR 020:320		201 KAR 015:110
314.103	201 KAR 020:476	316.132	201 KAR 015:030E
	201 KAR 020:478		201 KAR 015:030
314.131	201 KAR 020:320	316.140	201 KAR 015:030E
	201 KAR 020:472		201 KAR 015:030
	201 KAR 020:474	316.165	201 KAR 015:125E
	201 KAR 020:476		201 KAR 015:125
314.137	201 KAR 020:470	316.260	201 KAR 015:110E
	201 KAR 020:472		201 KAR 015:110
	201 KAR 020:474	317A.020	201 KAR 012:082E
	201 KAR 020:476		201 KAR 012:082
	201 KAR 020:478	317A.050	201 KAR 012:082E
314.193	201 KAR 020:057		201 KAR 012:082
314.195	201 KAR 020:057	317A.090	201 KAR 012:082E
314.991	201 KAR 020:215		201 KAR 012:082
	201 KAR 020:478	318.010	815 KAR 020:195
315.010	201 KAR 002:074	318.030	815 KAR 020:050
	201 KAR 002:411E	318.134	815 KAR 020:050
	201 KAR 002:412E		815 KAR 020:195
	201 KAR 002:420	318.160	815 KAR 020:050
	902 KAR 002:020	319A.010	902 KAR 020:081
315.020	201 KAR 002:074		907 KAR 001:604
	201 KAR 002:076	321.181	902 KAR 002:020
	201 KAR 002:411E	322.010	725 KAR 002:015
	201 KAR 002:412E	323.010	725 KAR 002:015
315.030	201 KAR 002:074	323.020	725 KAR 002:015
315.035	201 KAR 002:050	324B.030	201 KAR 047:010
	201 KAR 002:076	324B.040	201 KAR 047:010
315.0351	201 KAR 002:050	327.010	201 KAR 022:045
	201 KAR 002:076		902 KAR 020:081
315.036	201 KAR 002:050		907 KAR 001:604
315.050	201 KAR 002:050	327.070	201 KAR 022:045
	201 KAR 002:411E	329.010-329.030	502 KAR 020:020
	201 KAR 002:412E	322.110	902 KAR 010:120
	201 KAR 002:420	323.020	902 KAR 010:120
315.060	201 KAR 002:050	332.015	502 KAR 010:010
315.065	201 KAR 002:411E	332.095	791 KAR 001:070
	201 KAR 002:412E	332.204	502 KAR 010:030
315.110	201 KAR 002:050		502 KAR 010:035
315.120	201 KAR 002:050	332.216	502 KAR 010:020
315.121	201 KAR 002:074		502 KAR 010:050
	201 KAR 002:270		502 KAR 010:060
	201 KAR 002:430		502 KAR 010:080
315.131	201 KAR 002:430	333.020	902 KAR 002:020
315.135	201 KAR 002:411E	333.130	902 KAR 002:020
	201 KAR 002:412E		902 KAR 002:212E
315.136	201 KAR 002:420		902 KAR 002:213E
315.191	201 KAR 002:030	334A.020	016 KAR 002:050
	201 KAR 002:050		902 KAR 020:081
	201 KAR 002:076		907 KAR 001:604
	201 KAR 002:270	334A.033	016 KAR 002:050
315.205	201 KAR 002:411E	334A.035	016 KAR 002:050
	201 KAR 002:412E	334A.060	016 KAR 002:050
315.210	201 KAR 002:030	334A.190	016 KAR 002:050
315.402	201 KAR 002:050	337.275	803 KAR 001:063
315.500	201 KAR 002:411E		803 KAR 001:065
	201 KAR 002:412E		803 KAR 001:066
316.010	201 KAR 015:110E		803 KAR 001:070
	201 KAR 015:110		803 KAR 001:075
316.030	201 KAR 015:040E		803 KAR 001:080
	201 KAR 015:040		803 KAR 001:090



KRS SECTION	REGULATION	KRS SECTION	REGULATION
337.275-337.325 337.285	922 KAR 002:160E	400.203	907 KAR 003:170
	922 KAR 002:160	403.160	921 KAR 001:400E
	803 KAR 001:005		921 KAR 001:400
	803 KAR 001:060	403.210-403.240	921 KAR 001:400E
	803 KAR 001:063		921 KAR 001:400
	803 KAR 001:065	403.211	921 KAR 001:020
	803 KAR 001:066	403.270-403.355	922 KAR 001:565
	803 KAR 001:070	403.707	502 KAR 012:010
	803 KAR 001:075	405.024	922 KAR 001:565
	803 KAR 001:080	405.430	921 KAR 001:020
337.345 337.385-337.405 337.420-337.433 338.015 341 341.070	803 KAR 001:090		921 KAR 001:390
	803 KAR 001:005		921 KAR 001:400E
	803 KAR 001:005		921 KAR 001:400
	803 KAR 001:025	405.440	921 KAR 001:400E
	803 KAR 002:330E		921 KAR 001:400
	725 KAR 002:015	405.991	921 KAR 001:400E
	787 KAR 001:010		921 KAR 001:400
	787 KAR 001:020	406.011	921 KAR 001:390
	787 KAR 001:220	406.021	921 KAR 001:390
	787 KAR 001:260		921 KAR 001:400E
341.115 341.145 341.190	787 KAR 001:290		921 KAR 001:400
	787 KAR 001:300	406.025	921 KAR 001:390
	787 KAR 001:020		921 KAR 001:400E
	787 KAR 001:150		921 KAR 001:400
	787 KAR 001:010	406.035	921 KAR 001:020
	787 KAR 001:020	406.180	921 KAR 001:390
	787 KAR 001:060	411.32	806 KAR 017:370
	787 KAR 001:220	415.174	907 KAR 003:170
	787 KAR 001:010	415.184	907 KAR 003:170
	787 KAR 001:010	416.120	921 KAR 002:015E
341.243 341.250	787 KAR 001:220		921 KAR 002:015
	787 KAR 001:260	416.212	921 KAR 002:015E
	787 KAR 001:010		921 KAR 002:015
	787 KAR 001:220	416.2030	921 KAR 002:015E
	787 KAR 001:210		921 KAR 002:015
	787 KAR 001:210	416.2095	921 KAR 002:015E
	787 KAR 001:290		921 KAR 002:015
	787 KAR 001:090	416.2096	921 KAR 002:015E
	787 KAR 001:150		921 KAR 002:015
	787 KAR 001:310	416.2099	921 KAR 002:015E
341.262	787 KAR 001:060		921 KAR 002:015
	787 KAR 001:080	421.570	502 KAR 012:010
	787 KAR 001:090	422.317	907 KAR 003:170
	787 KAR 001:150	431.215	501 KAR 002:060
	787 KAR 001:060	431.300-431.307	907 KAR 003:170
	787 KAR 001:090	431.600-431.660	040 KAR 003:020
	787 KAR 001:150	434.757	301 KAR 001:018
	787 KAR 001:090	434.840-434.860	907 KAR 003:170
	787 KAR 001:150	434.845	921 KAR 001:020
	787 KAR 001:110	438.310	782 KAR 001:010
341.360	787 KAR 001:110	439.179	501 KAR 003:130
	787 KAR 001:110	439.250	501 KAR 006:250
	787 KAR 001:110	439.352	501 KAR 001:050
	787 KAR 001:140	439.356	501 KAR 001:050
	787 KAR 001:300	439.358	501 KAR 001:050
	787 KAR 001:140	439.551	501 KAR 006:250
	787 KAR 001:060	439.553	501 KAR 006:250
	725 KAR 002:015	439.3105-439.3108	501 KAR 006:250
	803 KAR 025:305E	440.050	907 KAR 003:170
	803 KAR 025:305E	440.120	907 KAR 023:020E
341.370	803 KAR 025:305E		907 KAR 023:020
	803 KAR 025:305E	441	501 KAR 003:150
	803 KAR 025:305E	441.045	501 KAR 002:060
	725 KAR 002:015		501 KAR 003:110
	101 KAR 001:365		501 KAR 003:120
	105 KAR 001:210		501 KAR 003:170
	501 KAR 014:010		501 KAR 007:040
	030 KAR 003:010		501 KAR 007:060
	030 KAR 003:010		501 KAR 007:090
	030 KAR 003:020		501 KAR 007:120
341.380	030 KAR 003:010		501 KAR 007:140
	030 KAR 003:030		501 KAR 007:150
	791 KAR 001:010	441.046	502 KAR 014:010
	922 KAR 001:565	441.055	501 KAR 003:110
341.420 341.430 341.440 341.450 341.500 341.540 341.510 341.530 342 342.0011 342.020 342.040 342.270 342.730 344 344.030			
349.3401 365.571 365.573 365.581 365.593			
367.110-367-360 387			

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	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.	302 KAR 050:021
	501 KAR 007:100		302 KAR 050:046
	501 KAR 007:110		302 KAR 050:056
	501 KAR 007:120		921 KAR 003:026E
	501 KAR 007:130		921 KAR 003:027E
	501 KAR 007:140		921 KAR 003:027
	501 KAR 007:150		922 KAR 002:160E
441.075	501 KAR 002:060		922 KAR 002:160
441.115	501 KAR 007:120	16 C.F.R.	201 KAR 015:110E
441.125	501 KAR 003:130		201 KAR 015:110
	501 KAR 007:120	20 C.F.R.	921 KAR 002:015E
441.203	806 KAR 017:370		921 KAR 002:015
441.206	806 KAR 017:370		922 KAR 002:160E
441.207	806 KAR 017:370		922 KAR 002:160
441.208	806 KAR 017:370		923 KAR 002:470
441.250	806 KAR 017:370	23 C.F.R.	603 KAR 010:011E
441.255	806 KAR 017:370		603 KAR 010:040E
441.256	806 KAR 017:370		603 KAR 010:040
441.258	806 KAR 017:370	29 C.F.R.	105 KAR 001:210
441.510	501 KAR 002:060		803 KAR 002:330E
441.560	501 KAR 007:090		806 KAR 017:260
446.010	501 KAR 006:250		902 KAR 010:120
	502 KAR 013:010	34 C.F.R.	016 KAR 004:020
447.500-447.520	907 KAR 023:020E		781 KAR 001:010
	907 KAR 023:020		781 KAR 001:020
454.220	921 KAR 001:400E		781 KAR 001:030
	921 KAR 001:400		781 KAR 001:040
510.010-510.140	502 KAR 012:010		781 KAR 001:050
514	921 KAR 002:015E		782 KAR 001:010
	921 KAR 002:015		922 KAR 002:160E
524.140	502 KAR 012:010		922 KAR 002:160
527.100	922 KAR 001:565	40 C.F.R.	902 KAR 048:010
527.110	922 KAR 001:565		902 KAR 048:040
529.010	040 KAR 006:030	42 C.F.R.	907 KAR 001:005
	502 KAR 012:010		907 KAR 001:030
529.100	502 KAR 012:010		907 KAR 001:604
529.130	040 KAR 006:030		907 KAR 003:170
529.140	040 KAR 006:030		907 KAR 010:815
529.150	040 KAR 006:030		907 KAR 010:830
530.020	502 KAR 012:010		907 KAR 023:020E
530.064	502 KAR 012:010		907 KAR 023:020
531.310	502 KAR 012:010	45 C.F.R.	502 KAR 012:010
532.043	501 KAR 001:050		806 KAR 017:470
532.060	501 KAR 002:020		902 KAR 020:081
	501 KAR 001:050		907 KAR 001:030
532.100	501 KAR 002:020		921 KAR 001:020
	501 KAR 002:050		921 KAR 001:390
	501 KAR 002:060		921 KAR 001:400E
	501 KAR 002:070		921 KAR 001:400
	501 KAR 003:130		921 KAR 003:026E
	501 KAR 007:120		921 KAR 003:027E
533.010	501 KAR 002:070		921 KAR 003:027
533.025	501 KAR 002:070		921 KAR 004:116E
533.200	013 KAR 003:020		921 KAR 004:116
533.210	013 KAR 003:020		922 KAR 002:160E
600.020	502 KAR 012:010		922 KAR 002:160
	922 KAR 001:565	49 C.F.R.	502 KAR 010:035
	922 KAR 002:160E		502 KAR 010:110
	922 KAR 002:160		502 KAR 010:120
605.120	922 KAR 001:565		791 KAR 001:060
	922 KAR 002:160E	59 C.F.R.	301 KAR 002:224
	922 KAR 002:160	7 U.S.C.	302 KAR 050:021
610.110	922 KAR 001:565		302 KAR 050:031
620.020	201 KAR 020:320		302 KAR 050:046
	922 KAR 001:565		302 KAR 050:056
	922 KAR 002:160E		302 KAR 050:080
620.020-620.050	040 KAR 003:020		921 KAR 003:026E
	922 KAR 002:160		921 KAR 003:027E
620.030	502 KAR 012:010		921 KAR 003:027

KRS SECTION	REGULATION	KRS SECTION	REGULATION
8 U.S.C.	922 KAR 002:160E 922 KAR 002:160 921 KAR 002:015E 921 KAR 002:015	45 U.S.C.	922 KAR 002:160 803 KAR 001:063 907 KAR 003:170 502 KAR 010:120
15 U.S.C.	902 KAR 010:120	49 U.S.C.	
18 U.S.C.	502 KAR 013:010 502 KAR 013:030 502 KAR 013:040 502 KAR 013:050 502 KAR 013:060 502 KAR 013:080	EXAMPLES:	
	016 KAR 004:020 016 KAR 005:010 702 KAR 007:065 782 KAR 001:010 921 KAR 003:026E 921 KAR 003:027E 921 KAR 003:027 302 KAR 050:031 902 KAR 002:230E 603 KAR 010:011E 603 KAR 010:040E 922 KAR 002:160E 922 KAR 002:160 103 KAR 016:320 105 KAR 001:330 921 KAR 001:020 101 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 002:160 900 KAR 012:005E 900 KAR 012:005 921 KAR 001:020 502 KAR 012:010 922 KAR 002:160E 922 KAR 002:160 922 KAR 002:160E 922 KAR 002:160 105 KAR 001:210 201 KAR 002:411E 201 KAR 002:412E 502 KAR 031:020 725 KAR 002:015 787 KAR 001:310 806 KAR 017:370 900 KAR 012:005E 900 KAR 012:005 902 KAR 020:081 907 KAR 001:005 907 KAR 001:604 907 KAR 003:170 907 KAR 010:815 907 KAR 010:830 907 KAR 023:020E 907 KAR 023:020 921 KAR 001:020 921 KAR 001:390 921 KAR 001:400E 921 KAR 001:400 921 KAR 002:015E 921 KAR 002:015 921 KAR 004:116E 921 KAR 004:116 922 KAR 001:565 922 KAR 002:160E	45.237 - 45.241 45A 44 C.F.R. 31 U.S.C. Pub.L. 104-191 EO 2020-253	922 KAR 001:565 601 KAR 002:030E 702 KAR 003:130 201 KAR 011:121 045 KAR 001:050 902 KAR 030:010E 920 KAR 001:070 800 KAR 001:010
20 U.S.C.			
21 U.S.C.			
23 U.S.C.			
25 U.S.C.			
26 U.S.C.			
29 U.S.C.			
31 U.S.C.			
34 U.S.C.			
38 U.S.C.			
42 U.S.C.			

## 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 005:055	10-18-2021	To be amended, filing deadline 4-18-2023
201 KAR 045:180	09-22-2021	Remain in Effect without Amendment
201 KAR 046:015	03-05-2021	Remain in Effect without Amendment
503 KAR 003:010	10-02-2021	Remain in Effect without Amendment
503 KAR 003:110	10-02-2021	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
401 KAR 048:320	8-4-2021		
806 KAR 006:070	10-6-2021		
806 KAR 009:360	10-6-2021		
806 KAR 017:480	10-6-2021		
810 KAR 008:060	10-11-2021		
921 KAR 003:020	6-24-2021		
921 KAR 003:030	6-24-2021		
921 KAR 003:035	6-24-2021		
921 KAR 003:042	6-24-2021		
921 KAR 003:090	6-24-2021		
921 KAR 002:090	6-24-2021		
922 KAR 002:190	6-24-2021		

## SUBJECT INDEX

### AGRICULTURE

#### Industrial Hemp

- Department's reports to the USDA; records retention for three years; 302 KAR 050:046
- Materials incorporated by reference; 302 KAR 050:080
- Procedures and policies for hemp growers; 302 KAR 050:021
- Procedures and policies for hemp processors and handlers; 302 KAR 050:031
- Sampling and THC testing; disposal of non-compliant harvests; post-testing actions; 302 KAR 050:056

### 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

### COSMETOLOGY

- Education requirements and school administration; 201 KAR 012:082

### 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

## SUBJECT INDEX

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

### 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  
Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 007:065  
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  
General Administration  
Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial; 016 KAR 001:030  
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

## SUBJECT INDEX

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  
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

Electrical  
Electrical inspections; 815 KAR 035:020  
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  
Annual report on providers prescribing medication for addiction treatment; 806 KAR 017:590  
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  
Surplus Lines  
Surplus lines reporting and tax payment structure; 806 KAR 010:030  
Trade Practices and Frauds  
Advertising of accident and sickness benefits; 806 KAR 012:010  
Unauthorized Insurers' Prohibitions, Process and Advertising  
Multiple employer welfare arrangements; 806 KAR 011:020

### 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



## SUBJECT INDEX

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  
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.  
Outpatient Pharmacy Program  
Reimbursement for outpatient drugs; 907 KAR 023:020  
Payments and Services  
Telehealth service coverage and reimbursement; 907 KAR 003:170

### 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 002:412E  
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  
COVID-19 antibody administration center; 902 KAR 002:230E  
COVID-19 test acquisition and distribution; 902 KAR 002:240E  
COVID-19 vaccine storage; 902 KAR 002:250E  
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

## SUBJECT INDEX

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  
Repairs 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  
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

## SUBJECT INDEX

("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  
Change of ownership; 605 KAR 001:071  
Dealer and salesman; 605 KAR 001:051  
Facilities requirements; 605 KAR 001:035  
Licensing fees; 605 KAR 001:215  
Motor vehicle dealership names; 605 KAR 001:091  
Motor vehicle advertising; 605 KAR 001:191  
Nonprofit motor vehicle dealer requirements and licensing; 605 KAR 001:211  
Procedures; 605 KAR 001:131  
Right-of-way  
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  
Workers' compensation expedited hearings pursuant to occupational exposure to COVID-19; 803 KAR 025:305E

### 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

