



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, February 15, 2022.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on March 7, 2022, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 2360 [Online agenda updated as needed](#)

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

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

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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
MONDAY, March 7, 2022 at 1 p.m.
Annex Room 149



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

SECRETARY OF STATE

Certifications

030 KAR 002:010. Certification of vacancy in nominations.

DEPARTMENT OF LAW

Medical Examination of Sexual Abuse Victims

040 KAR 003:020. Protocol for operation of local multidisciplinary teams on child sexual abuse. (Deferred from November)

FINANCE AND ADMINISTRATION CABINET

Teachers' Retirement System

General Rules

102 KAR 01:360E. Disability benefits for members who enter on, or after January 1, 2022. (Emergency Only) ("E" expires 09-24-2022)

BOARDS AND COMMISSIONS

State Board of Accountancy

201 KAR 001:190. Examination sections, applications, and procedures.

Board of Pharmacy

201 KAR 002:106E. Licensed or permitted facility closures. (Filed with Ordinary) ("E" expires 09-10-2022) (Deferred from February)

201 KAR 002:106. Licensed or permitted facility closures. (Filed with Emergency)

201 KAR 002:430. Emergency orders and hearings. (Amended After Comments) (Deferred from February)

201 KAR 002:440. Legend drug repository.

Board of Barbering

201 KAR 014:015. Retaking of examination. (Deferred from February)

201 KAR 014:030. Five (5) year expiration of license. (Deferred from February)

201 KAR 014:040. Inspection of shops and schools. (Deferred from February)

201 KAR 014:050. Apprenticeship; qualifications. (Deferred from February)

201 KAR 014:065. Place of business requirements. (Deferred from February)

201 KAR 014:085. Sanitation requirements. (Deferred from February)

201 KAR 014:105. Barbering school enrollment and postgraduate requirements. (Deferred from February)

201 KAR 014:110. School equipment; plant layout. (Deferred from February)

201 KAR 014:115. Examinations; school and board. (Deferred from February)

201 KAR 014:125. Instructor requirements. (Deferred from February)

201 KAR 014:150. School records. (Deferred from February)

201 KAR 014:180. Fees. (Deferred from February)

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 020:260E. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing. (Emergency Only) ("E" expires 10-08-2022)

Board of Examiners of Psychology

201 KAR 026:115. Definition of psychological testing. (Deferred from February)

201 KAR 026:125. Health service provider designation. (Deferred from February)

201 KAR 026:130. Grievances and administrative complaints. (Deferred from February)

201 KAR 026:155. Licensed psychologist: application and temporary license. (Deferred from February)

201 KAR 026:160. Fee schedule. (Deferred from February)

201 KAR 026:175. Continuing education. (Deferred from February)

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- 201 KAR 026:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state. (Deferred from February)
- 201 KAR 026:190. Requirements for supervised professional experience. (Deferred from February)
- 201 KAR 026:215. Nonresident status. (Deferred from February)
- 201 KAR 026:225. Renewal and reinstatement. (Deferred from February)
- 201 KAR 026:230. Examinations and applications. (Deferred from February)
- 201 KAR 026:250. Employment of a psychological associate, a temporarily licensed psychological associate, or temporarily licensed psychologist. (Deferred from February)
- 201 KAR 026:270. Change of license status. (Deferred from February)
- 201 KAR 026:310. Telehealth and telepsychology. (Amended After Comments)

Board of Licensure for Massage Therapy

- 201 KAR 042:010. Goals for massage therapy sessions. (Not Amended After Comments) (Deferred from February)
- 201 KAR 042:020. Fees. (Not Amended After Comments) (Deferred from February)
- 201 KAR 042:030. Licensee's change of name, home address, or place of business. (Not Amended After Comments) (Deferred from February)
- 201 KAR 042:035. Application process, exam, and curriculum requirements. (Not Amended After Comments) (Deferred from February)
- 201 KAR 042:040. Renewal and reinstatement. (Not Amended After Comments) (Deferred from February)
- 201 KAR 042:050. Complaint procedure and disciplinary action. (Not Amended After Comments) (Deferred from February)
- 201 KAR 042:061. Code of ethics and standards of practice for massage therapists. (Deferred from February)
- 201 KAR 042:070. Endorsement. (Not Amended After Comments) (Deferred from February)
- 201 KAR 042:080. Programs of massage therapy instruction. (Deferred from February)
- 201 KAR 042:110. Continuing education requirements. (Not Amended After Comments) (Deferred from February)

Applied Behavior Analysis Licensing Board

- 201 KAR 043:010. Application procedures for licensure. (Deferred from February)
- 201 KAR 043:030. Fees. (Deferred from February)
- 201 KAR 043:060. Complaint and disciplinary process. (Deferred from February)
- 201 KAR 043:071. Repeal of 201 KAR 043:070. (Deferred from February)
- 201 KAR 043:080. Renewals. (Comments Received; SOC ext. due 03-15-2022)
- 201 KAR 043:090. Voluntary inactive and retired status. (Deferred from February)
- 201 KAR 043:100. Telehealth and telepractice. (Deferred from February)

Board for Medical Imaging and Radiation Therapy

- 201 KAR 046:020E. Fees. (Filed with Ordinary) ("E" expires 09-17-2022)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Wildlife

- 301 KAR 004:001. Selection of Fish and Wildlife Resources Commission nominees. (Deferred from November)
- 301 KAR 004:010. Districts. (Deferred from November)
- 301 KAR 004:020. Ballard Wildlife Management Area restrictions. (Deferred from November)
- 301 KAR 004:100. Peabody Wildlife Management Area use requirements and restrictions. (Deferred from November)
- 301 KAR 004:110. Administration of drugs to wildlife. (Deferred from November)

Licensing

- 301 KAR 005:001. Definitions for 301 KAR Chapter 5. (Deferred from November)
- 301 KAR 005:030. Purchasing licenses and permits. (Deferred from November)
- 301 KAR 005:100. Interstate Wildlife Violators Compact. (Deferred from November)

DEPARTMENT OF AGRICULTURE

Industrial Hemp

- 302 KAR 050:021. Procedures and policies for hemp growers. (Amended After Comments)
- 302 KAR 050:031. Procedures and policies for hemp processors and handlers. (Amended After Comments)
- 302 KAR 050:046. Department's reports to the USDA; records retention for three years. (Amended After Comments)
- 302 KAR 050:056. Sampling and THC testing; disposal of non-compliant harvests; post-testing actions. (Amended After Comments)
- 302 KAR 050:080. Materials incorporated by reference. (Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Office of the Secretary

- 501 KAR 006:030. Kentucky State Reformatory.
- 501 KAR 006:290. Southeast State Correctional Complex. (Amended After Comments)

Department of State Police

General Traffic

- 502 KAR 015:010. Traffic collision. (Deferred from December)

Criminal History Record Information System

- 502 KAR 030:010. Criminal History Record Information System. (Amended After Comments) (Deferred from February)
- 502 KAR 030:020. Arrest and disposition reporting procedure. (Amended After Comments) (Deferred from February)
- 502 KAR 030:030. Audit of Criminal History Record Information System. (Amended After Comments) (Deferred from February)

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502 KAR 030:050. Security of centralized criminal history record information. (Amended After Comments) (Deferred from February)
502 KAR 030:060. Dissemination of criminal history record information. (Deferred from December)
502 KAR 030:070. Inspection of criminal history record information by record subject. (Amended After Comments) (Deferred from

February)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

General Administration

702 KAR 001:116. Annual in-service training of district board members.
702 KAR 001:192E. District employee quarantine leave. (Amended After Comments)

Office of Instruction

704 KAR 003:395. Extended school services.

Office of Learning Support Services

704 KAR 007:170. Corporal punishment.

Alternative Education Programs

704 KAR 019:002. Alternative education programs.

Department of Workforce Investment

Office of Vocational Rehabilitation

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

Office for the Blind

782 KAR 001:010. Kentucky Business Enterprises. (Deferred from November)
782 KAR 001:070. Certified driver training program. (Deferred from November)

PUBLIC PROTECTION CABINET

General

800 KAR 001:020E. Team Western Kentucky Tornado Relief Fund. (Emergency Only)

LABOR CABINET

Department of Workplace Standards

Occupational Safety and Health

803 KAR 002:321. Occupational health and environmental control. (Filed with Emergency)
803 KAR 002:426. Stairways and ladders. (Filed with Emergency)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Data and Analytics

Kentucky Health Benefit Exchange

900 KAR 010:201. Repeal of 900 KAR 010:200.

Office of Inspector General

Health Services and Facilities

902 KAR 020:018. Operation and services; end-stage renal disease facilities.

Department for Medicaid Services

Payments and Services

907 KAR 003:170. Telehealth service coverage and reimbursement. (Amended After Comments)

Outpatient Pharmacy Program

907 KAR 023:020. Reimbursement for outpatient drugs. (Filed with Emergency) (Amended After Comments) (Deferred from December)

Department for Aging and Independent Living

Aging Services

910 KAR 001:190. Nutrition program for older persons. (Amended After Comments)

Department for Community Based Services

Energy Assistance Program/Weatherization

921 KAR 004:122. Assistance for low-income households with water or wastewater utility arrears.

Child Welfare

922 KAR 001:360E. Private child care placement, levels of care, and payment. (Filed with Ordinary) ("E" expires 09-24-2022)
922 KAR 001:470. Central registry.

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

BOARDS AND COMMISSIONS

Board of Licensure for Long-Term Care Administrators

201 KAR 006:040. Renewal, reinstatement, and reactivation of license. (Deferred from February)

Board of Nursing

201 KAR 020:220. Nursing continuing education provider approval. (Comments Received; SOC ext. due 03-15-2022)

201 KAR 020:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs. (Comments Received; SOC ext. due 03-15-2022)

201 KAR 020:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs. (Comments Received; SOC ext. due 03-15-2022)

Applied Behavior Analysis Licensing Board

201 KAR 043:020. Application procedures for temporary licensure. (Comments Received; SOC ext. due 03-15-2022)

201 KAR 043:040. Code of ethical standards and standards of practice. (Comments Received; SOC ext. due 03-15-2022)

201 KAR 043:050. Requirement for supervision. (Comments Received; SOC ext. due 03-15-2022)

JUSTICE AND PUBLIC SAFETY CABINET

Department of State Police

Driver Training

502 KAR 010:010. Definitions. (Deferred from December)

502 KAR 010:020. Department facilities; facility inspection; conflict of interest. (Deferred from December)

502 KAR 010:030. Instructor's license. (Amended After Comments) (Deferred from February)

502 KAR 010:035. Commercial driver's license skill testing. (Deferred from December)

502 KAR 010:040. Training school facilities. (Amended After Comments) (Deferred from February)

502 KAR 010:050. Contracts and agreements. (Deferred from December)

502 KAR 010:060. School advertising. (Deferred from December)

502 KAR 010:070. Training vehicle, annual inspection. (Amended After Comments) (Deferred from February)

502 KAR 010:080. License suspension, revocation, denial. (Deferred from December)

502 KAR 010:090. Procedure for denial, suspension, nonrenewal or revocation hearings. (Deferred from December)

502 KAR 010:110. Third-party CDL skills test examiner standards. (Deferred from December)

502 KAR 010:120. Hazardous materials endorsement requirements. (Deferred from December)

Concealed Deadly Weapons

502 KAR 011:010. Application for license to carry concealed deadly weapon. (Deferred from December)

502 KAR 011:060. License denial and reconsideration process. (Deferred from December)

502 KAR 011:070. License revocation and suspension notice and reinstatement process. (Deferred from December)

Law Enforcement Officers Safety Act of 2004

502 KAR 013:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Amended After Comments) (Deferred from February)

502 KAR 013:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)

502 KAR 013:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)

502 KAR 013:050. Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)

502 KAR 013:060. Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)

502 KAR 013:080. Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Commission on Proprietary Education

791 KAR 001:010. Applications, permits, and renewals. (Deferred from November)

791 KAR 001:020. Standards for licensure. (Deferred from November)

791 KAR 001:025. Fees. (Deferred from November)

791 KAR 001:027. School record keeping requirements (Deferred from November)

791 KAR 001:030. Procedures for hearings. (Deferred from November)

791 KAR 001:035. Student protection fund. (Deferred from November)

791 KAR 001:040. Commercial driver license training school curriculum and refresher course. (Deferred from November)

791 KAR 001:050. Application for license for commercial driver license training school. (Deferred from November)

791 KAR 001:060. Application for renewal of license for commercial driver license training school. (Deferred from November)

791 KAR 001:070. Commercial driver license training school instructor and agency application and renewal procedures. (Deferred from November)

791 KAR 001:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools. (Deferred from November)

791 KAR 001:100. Standards for Kentucky resident commercial driver training school facilities. (Deferred from November)

791 KAR 001:150. Bond requirements for agents and schools. (Deferred from November)

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791 KAR 001:155. School closing process. (Deferred from November)

791 KAR 001:160. Transfer of ownership, change of location, change of name, revision of existing programs. (Deferred from November)

Department of Workforce Investment Apprenticeship Standards

787 KAR 003:020. Confidentiality of records of the Office of Employer and Apprenticeship Services. (Comments Received; SOC ext. due 03-15-2022)

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) (Deferred from November)

PUBLIC PROTECTION CABINET

Department of Insurance Health Insurance Contracts

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health Sanitation

902 KAR 010:120. Kentucky public swimming and bathing facilities. (Amended After Comments) (Deferred from December)

902 KAR 010:121. Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments. (Amended After Comments)

902 KAR 010:190. Splash pads operated by local governments. (Amended After Comments) (Deferred from December)

**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.*

STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed under KRS Chapter 13A As Amended by 2021 Legislation

(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

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 legislation including: 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 20:480E

This emergency amendment to an existing administrative regulation is being promulgated to meet an imminent threat to public health and welfare. The Commonwealth of Kentucky is experiencing a critical nursing shortage, as evidenced by the Governor declaring a state of emergency under Executive Order 2021-913. This emergency administrative regulation is being filed on an emergency basis under KRS 13A.190, 314.011, 314.041, 314.051, 314.131(1), and Section 1.(13) of 2020 RS SB 150, 2020 Ky. Acts ch. 73, to meet an imminent threat to public health, safety and welfare and to address the nursing shortage by easing licensing for nurses from foreign programs of nursing (PON). Under this emergency amendment, the existing administrative regulation will be different because the emergency amendment replaces the VisaScreen requirement with a requirement for the Commission on Graduates of Foreign Nursing Schools Credentials Evaluation Service (CGFNS CES) report. The VisaScreen does not provide a comparison of foreign PONs to Kentucky PONs; the CGFNS CES does. In addition, this emergency amendment includes a list of the accepted English Language Proficiency examinations and their passing scores. This administrative regulation with the emergency amendment will be replaced by an identical amendment to the ordinary administrative regulation.

ANDY BESHEAR, Governor
JESSICA WILSON, Board President

BOARDS AND COMMISSIONS
Board of Nursing
(Emergency Amendment)

201 KAR 20:480E. Licensure of graduates of foreign nursing schools.

EFFECTIVE: February 2, 2022

RELATES TO: KRS 314.041, 314.051

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 and 314.991. KRS 314.041 and 314.051 authorize the board to issue a license to a graduate of a foreign nursing school. This administrative regulation establishes the requirements for the licensure of graduates of foreign nursing schools. This Emergency Amendment is promulgated pursuant to KRS 39A.190, and Section 1(13)(d) of 2020 RS SB 150, 2020 Ky. Acts ch. 73.

Section 1. [Applicants for Licensure by Examination.]

(1)(a) An applicant for licensure by examination who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:070, Section 1, except for Section 1(3) of that administrative regulation.

(b) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:110.

(2) If licensed in another country evidence shall be submitted by the applicant or an organization on behalf of the applicant that the license has not been revoked, suspended, probated, or otherwise disciplined in the licensing country.

(3) An applicant shall maintain proof of legal permanent or temporary residency under the laws and regulations of the United States.

(4)(a) An applicant for licensure as a registered nursing or a

licensed practical nurse shall obtain a full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service. The report shall state whether the applicant's program of nursing is comparable to an approved program in the state.[nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.

~~(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen Certificate have been met.]~~

(b) An applicant shall also complete an English Language Proficiency examination pursuant to section 2 of this administrative regulation.

(5) An applicant for licensure by examination may be made eligible to take the NCLEX examination prior to obtaining a Social Security number. However, the applicant shall not be licensed until the applicant[he] provides a Social Security number.

Section 2. English Language Proficiency examinations.

(1) An applicant for licensure shall complete English Language Proficiency examination unless the language of instruction and the textbooks of the applicant's program of nursing were entirely in English.

(2) The following English Language Proficiency examinations are recognized with the minimum passing standard:

(a) International English Language Testing System (IELTS), 6.5 overall, 6.0 speaking; and

(b) Test of English as a Foreign Language (TOEFL), 84 overall, 26 speaking.

(3) The applicant shall cause the scores on the English Language Proficiency examination to be sent to the board by CGFNS. [Applicants for Licensure by Endorsement.

~~(1) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements established in 201 KAR 20:110.~~

~~(2) A graduate of a foreign nursing school who is not a citizen of the United States shall maintain evidence of legal permanent or temporary residency in the United States.~~

~~(3)(a) An applicant for licensure as a registered nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.~~

~~(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen have been met.]~~

JESSICA WILSON, Board President

APPROVED BY AGENCY: January 31, 2022

FILED WITH LRC: February 2, 2022 at 9:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, March 21, 2022, at 10:00 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, March 14, 2022, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing

will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m. EDT) Thursday, March 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets certain requirements for applicants for licensure who graduated from a foreign nursing school.

(b) The necessity of this administrative regulation: It is necessary to assure that the foreign nursing program is comparable to a Kentucky program and that the applicant can speak, read, and understand English.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting these requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting these requirements.

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

(a) How the amendment will change the existing administrative regulation: It replaces the requirement of obtaining a VisaScreen with a Commission on Graduates of Foreign Nursing Schools Credentials Evaluation Service (CGFNS CES) report. The VisaScreen does not determine the comparability of the foreign nursing program; the CGFNS CES does. In addition, the accepted English Language Proficiency examinations and the passing scores are listed.

(b) The necessity of the amendment to the administrative regulation: Since the VisaScreen is no longer a useful tool, there must be an evaluative tool to be used by the Board. The CGFNS is such a tool. Also since the VisaScreen will no longer be used, it is necessary to list the English Language Proficiency examinations that are acceptable.

(c) How the amendment conforms to the content of the authorizing statutes: By adopting the CGFNS CES and the English examinations.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: By adopting the CGFNS CES and the English examinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure who graduated from a foreign nursing school, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to obtain a CGFNS CES report and pass an English Language Proficiency examination.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: There is a fee paid to CGFNS and to the organization providing the English Language Proficiency examination. Board staff understands that the CGFNS CES report cost to be \$385.00; and the costs to take the ELP examinations are as follows: the Test of English as a Foreign Language (TOEFL) examination is \$185.00, and the International English Language Testing System (IELTS) is \$225.00.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance

with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: It will not.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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 314.041, KRS 314.051, KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 900 KAR 5:020E

This emergency administrative regulation is necessary to update the State Health Plan to increase access to diagnostic cardiac catheterization procedures; increase access to Level III neonatal intensive care unit beds; and, consistent with changes in 900 KAR 6:075E filed concurrent with this regulation, grant nonsubstantive review status to certificate of need applications submitted by licensed health facilities: (1) seeking to establish a Class I ground ambulance service to provide nonemergency transport of individuals who are patients of the licensed health facility or a health facility under common ownership and the applicant agrees to the placement of certain restrictions on its proposed certificate of need and ground ambulance license; or (2) seeking to transfer acute care beds to a new facility in the same county if certain criteria are met. This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. in order to meet an imminent threat to public health, safety, and welfare. The State Health Plan was not updated with substantive changes to the review criteria during 2020 or 2021 due to the uncertainty created by the COVID-19 pandemic. The pandemic has significantly impacted and strained Kentucky's healthcare system in unexpected ways. Updated changes to the State Health Plan are needed to immediately help promote access to healthcare across the state and to maintain consistency with the companion regulation filed concurrently, 900 KAR 6:075E,

addressing nonsubstantive review of certificate of need applications. This emergency administrative regulation will be replaced by an ordinary administrative regulation in an effort to promote greater access to care across Kentucky, help provide relief to the commonwealth's overburdened healthcare systems, and help prevent ongoing delays in nonemergency ambulance transportation. The companion 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 Inspector General
Division of Certificate of Need
(Emergency Amendment)**

900 KAR 5:020E. State Health Plan for facilities and services.

EFFECTIVE: January 27, 2022

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The [2020-2022] State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2022 Update to the [2020-2022] State Health Plan", January 2022 [August 2020], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

ADAM MATHER, Inspector General
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 25, 2022

FILED WITH LRC: January 27, 2022 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2022, 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 March 14, 2022, 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 March 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after

comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2022 Update to the State Health Plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a., by establishing the State Health Plan's review criteria used for determinations regarding the issuance and denial of certificates of need.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the review criteria for certificate of need determinations.

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

(a) How the amendment will change this existing administrative regulation: In response to suggestions and comments submitted to the cabinet by interested groups, the amendment to this administrative regulation makes the following changes to the State Health Plan (SHP): - Updates the title and edition date of the SHP on page i of the Plan; - Updates the page numbers listed in the Table of Contents on page ii to align with the new changes to the SHP; - Updates the title of the SHP on page iii of the Plan under the heading "Purpose"; - Adds new language to the review criteria on pages 2 and 3 to allow acute care hospitals to transfer existing acute care beds to a new hospital under common ownership if: the hospitals are located within the same county; the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher for three (3) of the last four (4) reported quarters preceding the date the application was filed; and no more than fifty (50) percent of the existing hospital's acute care beds are transferred to the new facility. This change aligns with the proposed amendment of 900 KAR 6:075, Section 2(3)(e), filed concurrently with this administrative regulation to grant nonsubstantive review status to certificate of need applications for acute care hospitals that wish to transfer existing acute care beds to a new facility as described above; - Adds new language to the review criteria on page 15 to allow hospitals to convert existing Level II special care neonatal beds to Level III special care neonatal beds; - Revises the language of the review criteria on page 40 to clarify that the addition of a cardiac catheterization program at a hospital shall be based on the existing program's utilization, rather than a specific laboratory's utilization; and - Adds new language to the review criteria on page 52 to align with the proposed amendment of 900 KAR 6:075, Section 2(3)(d), filed concurrently with this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address updates to the State Health Plan as required by KRS 216B.015(28).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes because it incorporates by reference the State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing the review criteria for certificate of need determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications and affected persons as defined by KRS 216B.015(3). A total of 70 certificate of need applications were submitted to the cabinet in calendar year 2021 and 60 certificate of need applications were submitted in calendar year 2020.

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

(a) List 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 that submit a certificate of need application are subject to the criteria set forth in the State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The certificate of need application filing fee for nonsubstantive review and formal review is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities subject to certificate of need approval must demonstrate that their proposal is consistent with the State Health Plan pursuant to KRS 216B.040(2)(a)2.a.

(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 amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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? Yes, tiering is used as there are different certificate of need review criteria for each licensure category addressed in the State Health Plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and may impact any government owned or controlled health care facility.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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

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

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

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

STATEMENT OF EMERGENCY 900 KAR 6:075E

This emergency administrative regulation is necessary to grant nonsubstantive review status to certificate of need applications submitted by licensed health facilities: (1) seeking to establish a Class I ground ambulance service operating at the Advanced Life Support (ALS) or Basic Life Support (BLS) level to provide nonemergency transport of individuals who are patients of the licensed health facility or a health facility under common ownership and the applicant agrees to the placement of restrictions as established by Section 2(3)(d) of this administrative regulation on its proposed certificate of need and ground ambulance license; or (2) seeking to transfer acute care beds to a new facility in the same county under certain conditions. It is also necessary to maintain consistency with changes to 900 KAR 5:020E, the State Health Plan, filed concurrently with this emergency regulation. This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. in order to meet an imminent threat to public health, safety, and welfare. The Commonwealth's acute care hospitals have been severely and adversely impacted by the COVID-19 pandemic. Delays in nonemergency ambulance transport of individuals in need of transfer to or from a health facility, the individual's place of residence, or other community-based setting have a negative impact on the health care system and significantly diminish patient care. The recent surges in hospital demand have depleted hospital resources and filled patient beds. Kentucky hospitals report that the current level of ambulance providers in the Commonwealth have failed to keep pace with demand, resulting in denials of medical transportation services and lengthier wait-times. Delays in transporting patients who need appropriate level care or have been discharged sometimes last for days. These delays have affected hospitals' capacity to admit new patients, and adversely affected patient care with some patients waiting hours or even days waiting for transport to the appropriate level of care. Acute care hospitals would also benefit from having the flexibility to transfer acute care beds in response to the demand for healthcare services in the area of greatest need. This emergency administrative regulation will be replaced by an ordinary administrative regulation in an effort to help prevent ongoing delays in nonemergency ambulance transportation, promote greater access to care across Kentucky, and help provide relief to the Commonwealth's overburdened healthcare systems. The companion 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 Inspector General Division of Certificate of Need (Emergency Amendment)

900 KAR 6:075E. Certificate of need nonsubstantive review.

EFFECTIVE: January 27, 2022

RELATES TO: KRS 216B.010, 216B.015, 216B.040,

216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990
 STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095
 NECESSITY, FUNCTION, AND CONFORMITY: KRS
 216B.040(2)(a)1. requires the Cabinet for Health and Family
 Services to administer Kentucky's Certificate of Need Program and
 to promulgate administrative regulations as necessary for the
 program. KRS 216B.095 authorizes the review of certificate of
 need applications that are granted nonsubstantive status. This
 administrative regulation establishes the requirements necessary
 for consideration for nonsubstantive review of applications for the
 orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is
 defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly
 newsletter that is published by the cabinet regarding certificate of
 need matters and is available on the Certificate of Need Web site at
<https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for
 certificate of need that is reviewed within ninety (90) days from the
 commencement of the review as provided by KRS 216B.062(1)
 and that is reviewed for compliance with the review criteria set forth
 at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's
 Certificate of Need Newsletter.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant
 nonsubstantive review status to an application to change the
 location of a proposed health facility or to relocate a licensed
 health facility only if:

(a) There is no substantial change in health services or bed
 capacity; and

(b)1. The change of location or relocation is within the same
 county; or

2. The change of location or relocation is for a psychiatric
 residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an
 application that proposes to establish an ambulatory surgical
 center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a)
 through (e), pursuant to KRS 216B.095(3)(f), the Office of
 Inspector General shall grant nonsubstantive review status to an
 application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a
 health facility or health service for which there is not a component
 in the State Health Plan;

(b) The proposal involves an application to re-establish a
 licensed healthcare facility or service that was provided at a
 hospital and was voluntarily discontinued by the applicant under
 the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet,
 governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet,
 governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance
 with applicable administrative regulations and was otherwise
 eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate
 of need approval;

2. The application to re-establish the healthcare facility or
 service that was voluntarily discontinued is filed no more than one
 (1) year from the date the hospital last provided the service that the
 applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the
 same county as the former healthcare facility and at a single
 location; and

4. The application shall not seek to re-establish any type of bed
 utilized in the care and treatment of patients for more than twenty-
 three (23) consecutive hours; [or]

(c)1. The proposal involves an application to establish an
 ambulatory surgical center that does not charge its patients and
 does not seek or accept commercial insurance, Medicare,
 Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the
 surgical facilities of an existing licensed ambulatory surgical center
 during times the host ambulatory surgical center is not in operation;

(d) The proposal involves an application by a licensed health
 facility to establish a Class I ground ambulance service operating
 at the Advanced Life Support (ALS) or Basic Life Support (BLS)
 level to provide nonemergency transport of individuals if the
 applicant agrees to the following restrictions to be placed on its
 proposed certificate of need and ground ambulance license:

1. The applicant shall only transport individuals who are
 patients of the licensed health facility or a health facility under
 common ownership; and

2. The applicant shall only transport individuals to or from its
 health facility or a health facility under common ownership and
 another licensed health facility, the individual's place of residence,
 or other community-based setting; or

(e) The proposal involves an application to transfer acute care
 beds from one (1) or more existing Kentucky-licensed hospitals to
 establish a new hospital under the following circumstances:

1. The existing hospital and new facility shall be under
 common ownership and located in the same county;

2. The existing hospital's overall rating by the Centers for
 Medicare and Medicaid Services Hospital Compare was three (3)
 stars or higher for three (3) out of the last four (4) reported quarters
 preceding the date the application was filed; and

3. No more than fifty (50) percent of the existing hospital's
 acute care beds shall be transferred to the new facility.

(4) A certificate of need approved for an application submitted
 under subsection (3)(c) of this section shall state the limitations
 specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by
 the Office of Inspector General, the application shall automatically
 be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by
 the Office of Inspector General, notice of the decision to grant
 nonsubstantive review status shall be given to the applicant and all
 known affected persons.

(7)(a) If an application is granted nonsubstantive review status
 by the Office of Inspector General, any affected person who
 believes that the application is not entitled to nonsubstantive
 review status or who believes that the application should not be
 approved may request a hearing by filing a request for a hearing
 within ten (10) days of the notice of the decision to conduct
 nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct
 of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph,
 nonsubstantive review applications shall not be comparatively
 reviewed.

2. If the capital expenditure proposed involves the
 establishment or expansion of a health facility or health service for
 which there is a component in the State Health Plan, the
 nonsubstantive review applications shall be comparatively
 reviewed.

(d) Nonsubstantive review applications may be consolidated
 for hearing purposes.

(8) If an application for certificate of need is granted
 nonsubstantive review status by the Office of Inspector General,
 there shall be a presumption that the facility or service is needed
 and a presumption that the facility or service is consistent with the
 State Health Plan.

(9) If each applicable review criterion in the State Health Plan
 has been met, there shall be a presumption that the facility or
 service is needed unless the presumption of need has been
 rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090,
 the Office of Inspector General shall approve each application for a
 certificate of need that has been granted nonsubstantive review

status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted, as required by KRS 216B.095(1). A hearing officer shall prioritize rendering decisions regarding applications granted nonsubstantive review status pursuant to Section 2(3)(d) of this administrative regulation.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 25, 2022

FILED WITH LRC: January 27, 2022 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2022, 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 March 14, 2022, 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 March 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the nonsubstantive review of certificate of need applications. Nonsubstantive review is an expedited review process granted to certain applications pursuant to KRS 216B.095. This administrative regulation expands upon the types of applications that qualify for nonsubstantive review per the statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(18), 216B.040, and 216B.095.

(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 adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

(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 adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

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

(a) How the amendment will change this existing administrative regulation: This amendment grants nonsubstantive review status to certificate of need applications submitted by licensed health facilities seeking to establish a Class I ground ambulance service operating at the Advanced Life Support (ALS) or Basic Life Support (BLS) level to provide nonemergency transport of individuals who are patients of the licensed health facility or a health facility under common ownership and the applicant agrees to the placement of restrictions as established by Section 2(3)(d) of this administrative regulation on its proposed certificate of need and ground ambulance license. This amendment also adds a cross-reference to KRS 216B.095(1) to emphasize the 35-day statutory time limit to issue a decision on applications assigned nonsubstantive review and requires hearing officers to prioritize decisions on nonemergency ground ambulance applications. Additionally, this amendment grants nonsubstantive review status to certificate of need applications for acute care hospitals that wish to transfer existing acute care beds to a new facility under common ownership if: - The facilities are located within the same county; - The existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher for three (3) of the last four (4) reported quarters preceding the date the application was filed; and - No more than fifty (50) percent of the existing hospital's acute care beds are transferred to the new facility.

(b) The necessity of the amendment to this administrative regulation: This amendment is being proposed pursuant to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the procedures for review of certificate of need applications granted nonsubstantive review status.

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

administrative regulation: This administrative regulation affects entities that submit certificate of need applications subject to the nonsubstantive review process. The number of entities that submit certificate of need applications subject to nonsubstantive review varies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will permit nonsubstantive review of certificate of need applications for health facility-based Class I ground ambulance service operating at the ALS or BLS level to provide nonemergency transport in accordance with the circumstances prescribed by Section 2(3)(d) of this administrative regulation. This amendment will also permit nonsubstantive review of certificate of need applications for acute care hospitals that wish to transfer existing acute care beds to a new facility under common ownership located in the same county and in accordance with additional criteria proposed in Section 2(3)(e) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The certificate of need application filing fee is the same for nonsubstantive review and formal review and is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment will help improve access to services without a duplication of acute care beds as well as enhance patient care in an effort to address ongoing delays in nonemergency ambulance transportation.

(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 amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 used as certificate of need applications are reviewed under a formal review process (900 KAR 6:070) or nonsubstantive review process (this administrative regulation). The list of applications granted nonsubstantive review is being amended to add two (2) new categories.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects entities that are subject to the certificate of need program's nonsubstantive review process. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(8), 216B.040, 216B.095

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

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

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

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during 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:

AMENDED IN-PROCESS 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 legislation including: 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](#).

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

702 KAR 1:192E. District employee quarantine leave.

EFFECTIVE: February 11, 2022

Prior version:

New Emergency Administrative Regulation: 48 Ky.R.

1999

RELATES TO: KRS 156.070, 156.160, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. This administrative regulation establishes paid quarantine leave to employees in response to the COVID-19 emergency. This emergency regulation is necessary to address the imminent threat to public health, safety, and welfare; and to protect human health; while safely and efficiently operating public schools during the 2021-22 school year in light of the COVID-19 public health emergency.

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

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

(a) Be placed in quarantine due to COVID-19 exposure by a licensed treating physician, physician's assistant, or advanced practice registered nurse, a public health department, the Department for Public Health, or the school district for which the employee works; and

(b) Is up-to-date with their COVID-19 vaccine, having[Have] received either two (2) doses of the Pfizer or Moderna COVID-19 vaccine or a single dose of Johnson & Johnson's Janssen vaccine and any additional doses or booster doses as recommended by the Centers for Disease Control prior to the quarantine period, present a statement from a treating medical professional that a disability prevents the employee from taking the COVID-19 vaccine, or is prevented from taking the COVID-19 vaccination based on sincerely held religious belief.

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

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

(5) Quarantine leave shall not be used if the employee has an

active COVID-19 infection.

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

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

(8) Leave granted pursuant to this section shall not accumulate or carry over beyond the 2021-2022 school year and shall not be transferrable to any other classification of paid leave established by KRS 161.155, KRS 161.154, or local school district policy.

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

JASON E. GLASS, Ed.D., Commissioner & Chief Learner

LU YOUNG, Chairperson

APPROVED BY AGENCY: February 11, 2022

FILED WITH LRC: February 11, 2022 at 4 p.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: The proposed emergency regulation is only applicable to the 2021-2022 school year. Under existing law, local school districts may not have a mechanism to provide leave to employees in quarantine due to the COVID-19 pandemic. The proposed emergency regulation establishes paid leave for eligible employees placed in quarantine by a licensed physician, licensed physician's assistant, licensed advanced practice registered nurse, a health department or by the school district.

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

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

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

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

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

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For school year 2021-2022, this administrative regulation requires school districts to provide leave for employees subject to quarantine due to the COVID-19 pandemic.

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

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

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

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

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General and Federal COVID-19 relief funds (e.g. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations (CRSSA) Act, and the American Rescue Plan (ARP) Act).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No additional fees or funding are anticipated to implement this regulation. However, costs are largely dependent on the number of COVID-19 quarantined employees during school year 2021-2022.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees associated with this regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for: The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine. KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate regulations for: [T]he protection of the physical welfare and safety of the public-school children.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. School districts would incur some indeterminable costs in providing paid leave to eligible employees. Cost will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation is only applicable to the 2021-2022 school year. It will not generate revenue.

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): Unknown

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(As Amended at ARRS, February 7, 2022)

30 KAR 5:011. Definitions for 30 KAR Chapter 5.

RELATES TO: KRS Chapter 355.9

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the definitions for those administrative regulations.

Section 1. Definitions. (1) "Active Record" means a UCC record stored in the UCC information management system and indexed in, but not yet removed from, the searchable index.

(2) "Address" means either:

(a) A street address, route number, or post office box number plus the city, state, and zip code; or

(b) An address that purports to be a mailing address outside of the United States of America.

(3) "Amendment" means a UCC record that relates to an initial financing statement, including party or collateral changes, assignments, continuations, and terminations.

(4) "Assignment" means an amendment that assigns all or part of a secured party's power to authorize an amendment to a financing statement.

(5) "Delivery" means communication of a tangible UCC record.

(6) "Filer" means a person who communicates a UCC record to the filing office for filing.

(7) "Filing office" means the Office of the Kentucky Secretary of State.

(8) "Filing office statement" means a statement entered into the filing office's information management system to correct an error made by the filing office.

(9) "Information statement" means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.

(10) "Individual debtor name" means any name provided as a debtor name in a UCC record in a format that identifies the name as that of the debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(11) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

(12) "Remitter" means a person who delivers a tangible UCC record to the filing office for filing and awaits an immediate determination as to whether the UCC record will be accepted or rejected.

(13) "Searchable index" means the retrievable list of individual debtor names and organization debtor names together with associated file numbers the filing office maintains in the UCC information management system as active records.

(14) "Secured party of record" means a secured party as defined in KRS 355.9-102(1)(bu) who meets the additional requirements established in KRS 355.9-511.

(15) "Tangible UCC record" means a UCC record that has been printed on paper.

(16) "Time of filing" means the time of day on the date a UCC record is deemed filed under this administrative regulation.

(17) "UCC" means the Uniform Commercial Code as adopted in the Commonwealth of Kentucky in KRS Chapter 355.

(18) "UCC information management system" means the computer system used by the filing office to store, index, and retrieve information relating to financing statements as required by

30 KAR 5:041.

(19) "UCC record" means an initial financing statement, an affidavit of wrongfully filed record, an amendment, a filing office statement, or an information statement and includes a record thereof maintained by the filing office, whether tangible or electronic. [The term shall not be deemed to refer exclusively to paper or paper-based writings.]

(20) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system and that has not yet lapsed under KRS 355.9-515 with regard to all secured parties of record.

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(As Amended at ARRS, February 7, 2022)

30 KAR 5:021. Filing methods and forms.

RELATES TO: KRS 355.9, 355.9-516, 355.9-521, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the general provisions for 30 KAR Chapter 5 governing delivery, approved forms, payments and public services.

Section 1. UCC records may be communicated to the filing office as follows:

(1) Direct data entry using the online filing system of the filing office. The time of filing for a UCC record communicated by this method shall be when the entry of all required elements of the UCC record in the proper format is accepted by the online filing system.

(2) Email to the email address designated by the filing office website. The time of filing for a UCC record communicated by this method shall be when the email communicating the UCC record is first received by the filing office.

(3) Personal delivery by remitter at the physical address of the filing office. The time of filing for a UCC record delivered by this method shall be when a UCC record is accepted for filing by the filing office.

(4) Delivery of a UCC record other than by remitter at the filing office physical address. The time of filing for a UCC record delivered by this method shall be 4:30 p.m. on the date the record was delivered to the filing office.

Section 2. (1) Information submitted to the filing office shall be provided using only characters that appear on the American standard keyboard. A financing statement or amendment form shall designate separate fields for:

(a) Organization names; and

(b) Individual names. Individual name fields shall include surname, first personal name, additional names, initials, and suffixes for individual names.

(2) (a) The appropriate box on a financing statement shall be marked to indicate when:

1. An initial financing statement is being filed in connection with a manufactured home;

2. An initial financing statement is being filed in connection with a public finance transaction; or

3. An initial financing statement is being filed against a debtor that is a transmitting utility.

(b) If the requirements of this subsection~~[section]~~ are not met, the filing shall not affect the filing office's determination of the lapse date under 30 KAR 5:041, Section 7.

Section 3. Paper-based forms identified in Section 6 of this administrative regulation, or any form that is substantially the same, shall be utilized for the purpose for which the form is designated.

Section 4. Filing fees may be paid by the following methods:

- (1) Debit and credit cards issued by approved issuers;
- (2) Electronic checks processed under National Automated Clearing House Association ("NACHA") rules and arrangements;
- (3) Prepaid account upon the submission and approval of an Application for Prepaid Account and payment of an amount not less than \$250;
- (4) Personal checks, cashier's checks, certified checks, and money orders made payable to the Kentucky State Treasurer;
- (5) Cash; and
- (6) Interaccount from Kentucky state agencies.

Section 5. (1) The filing fee for a UCC record shall be determined by KRS 355.9-525.

(2) The filing office shall refund the amount of an overpayment.

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

- (a) "Application for Prepaid Account" (10/5/11);
- (b) "UCC Financing Statement (Form UCC1), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
- (c) "UCC Financing Statement Addendum (Form UCC1Ad), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
- (d) "UCC Financing Statement Additional Party (Form UCC1AP ~~[Rev. 8/22/11]~~), International Association of Commercial Administrators (IACA)" (Rev. 8/22/11);
- (e) "UCC Financing Statement Amendment (Form UCC3), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
- (f) "UCC Financing Statement Amendment Addendum (Form UCC3Ad), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
- (g) "UCC Financing Statement Amendment Additional Party (Form UCC3AP), International Association of Commercial Administrators (IACA)" (Rev. 8/22/11);
- (h) "Information Statement (Form UCC5), International Association of Commercial Administrators (IACA)" (Rev. 7/19/12);
- (i) "Information Request (Form UCC11)" (Rev. 7/19/12);
- (j) "Affidavit of Wrongfully Filed Record" (9/16/21); and
- (k) "Request for Secured Party Name Search Form" (6/21).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Secretary of State, Office of Business Services, Records Section, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Secretary of State's Web site at <https://www.sos.ky.gov/bus/UCC/Pages/UCC-Forms.aspx>.

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GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(As Amended at ARRS, February 7, 2022)

30 KAR 5:031. Acceptance and refusal of records.

RELATES TO: KRS. KRS 355.9-513A, 355.9-515, 355.9-516, 355.9-516A, 355.9-520, 446.030

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

Section 1. The filing office shall refuse to accept a UCC record for any reason, or multiple reasons pursuant to KRS 355.9-516. The filing office may refuse to accept a UCC record pursuant to KRS 355.9-516A.

Section 2. Except for UCC records rejected under KRS 355.9-516A~~[of this administrative regulation]~~, the duties and responsibilities of the filing office with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record the filing office shall not:

- (1) Determine the legal effect of the UCC record;
- (2) Determine that information in the record is correct or incorrect, in whole or in part; or
- (3) Create a presumption that information in the record is correct or incorrect, in whole or in part.

Section 3. (1) A continuation statement may be filed six (6) months preceding the month in which the financing statement would lapse and on the date that corresponds with the date the financing statement would lapse or if there is no corresponding date, on the last day of that month.

(2) The last day on which a continuation statement may be filed shall be the date upon which the related financing statement lapses, or the next business day the filing office is open for business.

Section 4. (1) If the filing office finds grounds to refuse a UCC record, the filing office shall refund the filing fee and return the record or a copy of the record in accordance with KRS 355.9-520(2).

(2) The reason or reasons for the refusal and other related information shall be made to the filer as soon as practicable, but no later than two (2) business days after the refused UCC record was received by the filing office. This information shall be provided by the same method by which the UCC record was communicated to the filing office, by mail, or by a more expeditious means.

(3) Records of refusal, including a copy of the refused UCC record and the grounds for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

Section 5. The filing office may communicate to a filer that the filing office noticed potential defects in a UCC record, whether or not it was filed or refused for filing.

Section 6. If a filer believes that a UCC record that was refused for filing should not have been refused, the filer may contact the filing office to request a review of the refusal decision. The filer shall provide a copy of the refused record and a statement of the basis for the belief that the filing office wrongfully refused to file the record. Upon receipt of a request for review, the filing office shall investigate the claim. If the filing office confirms that the record should have been refused, the filing office shall provide a written explanation of the grounds for refusal. If it is determined that the filing office refused to accept the record in error, the filing office shall file the UCC record with the filing date and time the UCC

record was originally communicated for filing. A filing office statement relating to the relevant financing statement shall be placed in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the financing statement maintained in the UCC information management system.

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GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(As Amended at ARRS, February 7, 2022)

30 KAR 5:041. UCC Information management system.

RELATES TO: KRS Chapter 355.9-515, 355.9-519, 355.9-526
STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements for the UCC information management system.

Section 1. The filing office shall use an information management system to store, index, and retrieve information relating to financing statements.

Section 2. (1) Individual debtor names shall be stored in data files that include only the individual debtor names, and not organization debtor names. Separate data entry fields shall be established for surnames, first personal names, and additional names or initials and suffixes.

(2) The filing office shall enter a name into the corresponding data entry field of the UCC information management system exactly as it appears on a UCC record.

(3) Individual name fields in the UCC information management system shall be fixed to fifty (50) characters in length by the filing office. A name that exceeds the fixed length shall be truncated after it exceeds the maximum length of the data entry field.

Section 3. (1) Upon the filing of an amendment, the names of the parties indexed in the UCC information management system shall remain unchanged, except that in the case of an amendment that adds a debtor or a secured party, the new debtor or new secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC information management system. An amendment that designates an assignee shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system. The filing of an amendment that deletes a debtor or a secured party from a financing statement shall not delete data from the UCC information management system.

(2) Except in the case of a continuation statement, the filing of an amendment shall not affect the period of effectiveness of the financing statement.

Section 4. The filing of a termination statement shall not cause an active record to be removed from the searchable index.

Section 5. An information statement may be filed prior to the lapse of the financing statement to which it relates but shall not have an[no] effect upon the information indexed in the UCC information management system.

Section 6. A filing office statement shall affect the indexing of

parties and of the relevant financing statement as provided in the corrective action described in the filing office statement.

Section 7. If no timely filing of a continuation statement is filed, a financing statement lapses on its lapse date but shall remain indexed as an active record for one (1) year, after which the filing office shall remove the financing statement and all related UCC records from the searchable index. Upon the removal from the searchable index, the removed UCC records shall cease to be active records.

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GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(As Amended at ARRS, February 7, 2022)

30 KAR 5:051. Filing, indexing, and data entry procedures.

RELATES TO: KRS 355.9-515, 355.9-519, 355.9-526
STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes requirements relating to filing, indexing, and data entry procedures.

Section 1. Data shall be entered into the UCC information management system exactly as provided in a UCC record, without regard to apparent errors.

Section 2. The filing office shall compare data from tangible UCC records with data entered by the filing office to verify accurate data entry.

Section 3. The filing office shall not take any[no] action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

Section 4. The filing office shall, to the extent reasonably possible, redact certain personal information from the information it provides to searchers and bulk data purchasers in accordance with applicable privacy and identity theft protection laws.

Section 5. The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time. If a correction is made to a UCC record the filing office shall associate a filing office statement with the corrected UCC record in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date the filing office statement was filed and an explanation of the correction.

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GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(As Amended at ARRS, February 7, 2022)

30 KAR 5:060. Search requests, [and] reports, and copies.

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the procedures for public access to UCC records [requirements governing search requests and reports].

Section 1. [General Requirements.] The filing office[officer] shall maintain [for public inspection] a searchable index of active records in the UCC information management system. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement. [Regardless of the retrieval method, the following shall be retrieved:

- (1) The initial financing statement; and
- (2) Each active record related to the initial financing statement.]

Section 2. [Search Requests – Required Information.] (1) A request [Search requests] for certified search results shall be submitted on a completed UCC Information Request Form UCC-11, incorporated by reference in 30 KAR 5:021, together with the fee in accordance with KRS 355.9-525(3). [include the following:

(1) Name searched. A search request shall set forth the name of the debtor to be searched using designated fields for organization or individual surname, first personal name, and additional names or initials.] A search request shall be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field[, without regard to the nature or character of the debtor that is subject of the search].

(2) Requesting party. The search request shall include the name and address of the person to whom the search report is to be sent.

(3) Fee. The five (5) dollar fee shall be tendered, in accordance with KRS 355.9-525(3), if the request is in writing.

(4) Search Logic. The request shall specify if a search methodology other than that described in Section 4 of this administrative regulation is to be applied in conducting the search. If methodology is not specified, the methodology described in Section 4 of this administrative regulation shall be applied.

Section 3. Search Requests – Optional Information.]

(a) A search request submitted under this subsection may include the following:

1. A request for

(1) copies; and.] [The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:

- (a) Include a particular debtor address;
- (b) Include a particular city in the debtor address;
- (c) Were filed on a particular date or within a particular range of dates; or
- (d) Include a particular secured party name.]

2. [(2) Scope of search.] A request[requesting party may ask] for [a search that reports] all unlapsed[active] records retrieved by the search, rather than only active[unlapsed] records [retrieved by the search].

(b) [(3) Mode of delivery.] A search request submitted under this subsection may specify a method[mode] of delivery for search results. This request shall be honored if the requested method[mode] is acceptable to [made available by] the filing office, and provided by the requesting party together with all prepaid [requisite] fees[, under KRS 355.9-525(3), are tendered].

(2) A request for uncertified search results may be submitted

online through the filing office website on the Web page designated by the filing office for that purpose.

(3) A request for search results by secured party name may be submitted on a Request for Secured Party Name Search Form, incorporated by reference in 30 KAR 5:021.

Section 3. [Section 4. Search Methodology.] (1) Search results shall be produced by the application of search logic to the name provided by the requesting party [presented to the filing officer. Human judgment shall not play a role in determining the results of the search].

(2) [Standard search logic.] The requirements established in this subsection shall describe the filing office's standard search logic and shall apply to all searches [unless the search request specifies that a nonstandard search logic be used].

(a) There shall not be a limit to the number of matches that may be returned in response to the search criteria.

(b) A distinction shall not be made between upper and lower case letters.

(c) The character "&" (the ampersand) shall be deleted and replaced with the word "and" each place it appears in the name.

(d) Punctuation marks and accents shall be disregarded. For the purposes of this administrative regulation, punctuation and accents include all characters other than the numerals zero through nine (9) and the letters A through Z, in any case, of the English alphabet.

(e) The word "the" at the beginning of an organization debtor name shall be disregarded.

(f) All spaces shall be disregarded.

(g) For first personal name and additional names or initials of individual debtor names, initials shall be treated as the logical equivalent of all names that begin with those initials, and first personal name and no additional names or initials shall be equated with all additional names or initials. For example, a search request for "John A. Smith" shall cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with the initial "A" or any name beginning with "A" in the additional names or initials field. If the search request is for "John Smith" (first personal name and surnames with no designation in the additional names or initials field), the search shall retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with any name or initial or no name or initial in the additional names or initials field.

(h) If the name being searched is the surname of an individual debtor name without any first personal name or additional names or initials provided, the search shall retrieve from the UCC information management system all financing statements with individual debtor names that consist of only the surname.

(i) The following words, phrases, or abbreviations shall be disregarded from the end of an organization name to the beginning of that organization name until an unlisted word, phrase, or abbreviation appears [as noise words]:

1. "agency";
2. "association";
3. "assn";
4. "associates";
5. "assoc";
6. "assc";
7. "attorney at law";
8. "attorneys at law";
- 9.[8.] "bank";
- 10.[9.] "national bank";
- 11.[10.] "na";
- 12.[11.] "business trust";
- 13.[12.] "charter";
- 14.[13.] "chartered";
- 15.[14.] "company";
- 16.[15.] "co";
- 17.[16.] "cooperative";
18. "coop";
19. "corporation";
- 20.[17.] "corp";

21.[48.] "credit union";
 22.[49.] "cu";
 23.[20.] "federal credit union";
 24.[21.] "fcu";
 25.[22.] "federal savings bank";
 26.[23.] "fsb";
 27.[24.] "general partnership";
 28.[25.] "gen part";
 29.[26.] "gp";
 30.[27.] "incorporated";
 31.[28.] "inc";
 32.[29.] "limited";
 33.[30.] "ltd";
 34.[31.] "ltee";
 35.[32.] "limited liability company";
 36.[33.] "lc";
 37.[34.] "llc";
 38.[35.] "limited liability limited partnership";
 39.[36.] "lllp";
 40.[37.] "limited liability partnership";
 41.[38.] "llp";
 42. "limited partnership";
 43.[39.] "lp";
 44.[40.] "medical doctors professional association";
 45.[41.] "mdpa";
 46.[42.] "medical doctors professional corporation";
 47.[43.] "mdpc";
 48.[44.] "national association";
 49.[45.] "partners";
 50.[46.] "partnership";
 51.[47.] "professional association";
 52.[48.] "prof assn";
 53.[49.] "pa";
 54. "professional service corporation";
 55. "professional service corp";
 56. "prof service corporation";
 57. "prof service corp";
 58.[50.] "professional corporation";
 59.[51.] "prof corp";
 60.[52.] "pc";
 61.[53.] "professional limited liability company";
 62.[54.] "pllc";
 63. "public benefit corporation";
 64. "public benefit corp";
 65. "pbc";
 66. "public benefit";
 67.[55.] "real estate investment trust";
 68.[56.] "registered limited liability partnership";
 69.[57.] "rllp";
 70.[58.] "savings association";
 71.[59.] "sa";
 72.[60.] "sole proprietorship";
 73.[61.] "sp";
 74.[62.] "spa";
 75.[63.kkk.] "trust";
 76.[64.] "trustee"; and
 77.[65.] "as trustee".

(j) After using the requirements outlined in paragraphs (a) through (i) of this subsection to modify the name being searched, the search shall retrieve from the UCC information management system all unexpired records, or, if requested by the searcher, all active records, that pertain to financing statements with debtor names that, after being modified as provided in [Section 5 of] this administrative regulation, exactly match the modified name being searched.

Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that will alter search results, the filing office shall provide public notice of the change.

Section 4. [Section 6.] [Search Responses.] (1) A response[responses] to a search request shall include the

following:

(a)[(1)] [Copies.] A list [Copies] of all UCC records retrieved by the search, unless only limited copies are requested by the searcher. Copies shall reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(b)[(a)] [Filing office identification.] Identification of the filing office responsible for the search response;

(c)[(b)] [Unique search report identification number.] Unique number which identifies the search report;

(e) Report date and time. The date and time the report was generated;

(d) Through date and time. The date and time at, or prior to, which a UCC record was filed with the filing office in order for it to be reflected on the search;

(d)[(e)] [Certification date.] The certification date and time for which the search is effective;

(f) Scope of search;

(g) Search logic used;

(h) Search logic disclaimer language;

(i) Name provided. The name or names searched[as provided by searcher];

(j) Search string. Normalized name as provided by Section 4 of this administrative regulation;

(k) Lien type searched. UCC or other type of documents searched; and

(e)[(1)] [Copies.] Digital images [Copies] of all UCC records retrieved[revealed] by the search in .pdf or .tiff format[and requested by the searcher]. Any images not available may be requested from the filing office[Copies of UCC records shall not be available for electronic search requests].

(2)[(3)] [Report.] In addition to the information provided under subsection (1) of this section, a response to a request for certified[The] search results[report] shall contain the following in a Standard Search Certificate and Report:

(a) [Identification.] Identification of the filing office responsible for the search report;

(b) [Search report identification number.] A certificate [Unique] number [assigned under subsection (2)(b) of this section]; [and]

(b) The date on which the search was certified by the filing office; and

(c) The scope of the search, indicating whether the requesting party has requested active records or only unexpired records. [Identification of financing statement. Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria, including whether the searcher has requested active records or only unexpired records. Financing statement information shall include the following:

1. The initial financing statement file number;
2. The date and time the initial financing statement was filed;
3. The lapse date;
4. The debtor name that appears of record;
5. The debtor address that appears of record;
6. The secured party name that appears of record;
7. The secured party address that appears of record;
8. An indication of type of each amendment, if any;
9. The date and time each amendment, if any, was filed;
10. The amendment file number of each amendment, if any;
11. The date and time a correction statement, if any, was filed;

and

12. The date and time a filing officer statement, if any, was filed.]

(3) A response to a request for a secured party name search shall include only active records and shall not be certified.

Section 5. UCC records and data shall be provided to the public by the following methods:

(1) Copies of individually identified documents shall be provided in digital .pdf format at no charge unless paper copies are specifically requested. Paper copies shall be assessed at the rate

of \$0.50 cents per page. A request for paper copies shall include a mailing address where the requested copies shall be mailed. Copies may be certified for an additional fee of five (5) dollars.

(2) Bulk data related to UCC filings may be obtained through subscription as directed by the website of the Office of the Secretary of State and shall be made available under the terms and conditions of the subscriber agreement.

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**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, February 7, 2022)**

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505-16.652, 61.505[40]-61.705, 78.510-78.852, 344.030, 29 C.F.R. Part 1630, 42 U.S.C. 12111(9)
STATUTORY AUTHORITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f)[61.645(9)(g)] authorizes the Kentucky Public Pensions Authority[Board of Trustees of Kentucky Retirement Systems] to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with[necessary or proper in order to carry out the provisions of] KRS 61.510[61.515] to 61.705, 16.505[16.510] to 16.652, and 78.510[78.520] to 78.852, KRS 16.582, 78.5524, 61.600, 78.5522, [and] 61.665, and 78.545 establish[provide for] a process for applying for disability retirement benefits to members of the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employees Retirement System[retirement systems] and a process for administrative appeal of a denial of an application or reapplication for disability retirement benefits. This administrative regulation establishes the procedure for filing an application or reapplication for disability retirement benefits and the procedures for filing an administrative appeal of a denial of an application for disability retirement benefits.

Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation[, unless otherwise defined herein].

(2) Prior to April 1, 2021, "the agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "the agency" means the Kentucky Public Pension Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "Applicant" means a member or retired member of the State Police Retirement System, the Kentucky Employees Retirement System, or the County Employees Retirement System (or a member or retired member of multiple Systems) who has applied or is applying for disability retirement benefits in accordance with KRS 16.582, 78.5524, 61.600, 78.5522, 61.665, and 78.545.

(4) Prior to April 1, 2021, "DAC" means the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems. Effective April 1, 2021, "DAC" means the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545.

(5) "File" means [the following methods for] delivering or submitting a form or other documents to the retirement office,

unless otherwise stated by[.] mail, fax, in-person delivery, secure email, or[and] upload via Self Service on the Web site maintained by the agency (if available). A form or other document is[shall] not [be deemed] filed until it has been received at the retirement office.

(6) "Invalid" means that the form is deficient and not to be accepted or processed by the agency.

(7)[(6)] "Participating employers" means employers participating in the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(8)[(7)] "Provide[.]" [when used in reference to a form,] means [the following methods for] the agency makes[to make] a form available to a member, retired member, or beneficiary by mail, fax, secure email, or[and] upload via Self Service on the Web site maintained by the agency (if available).

(9)[(8)] For the purposes of this regulation only, "Recipient" means a retired member of the State Police Retirement System, the Kentucky Employees Retirement System, or the County Employees Retirement System (or a retired member of multiple Systems) who is receiving disability retirement benefits in accordance with KRS 16.582, 78.5524, 61.600, 78.5522, 61.665, and 78.545.

(10)[(9)] "[The] Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(11)[(10)] "Valid[.]" [when used in reference to a form,] means that all required sections on a form are completed and all required signatures on a form are executed.

(11) "Invalid, when used in reference to a form, means that the form is deficient and shall not be accepted or processed by the Agency."[(1) An application or reapplication for disability benefits shall be made on "Form 6000, Notification of Retirement".

(2)(a) The application or reapplication shall be filed at the retirement systems within twenty-four (24) months, which is 730 calendar days, of the applicant's last day of paid employment in a regular full-time position.

(b) The time period for filing an application or reapplication for disability retirement benefits shall begin on the day after the applicant's last day of paid employment in the regular full-time position and shall end at close of business on the following 730th day. (c) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(d) The applicant's employer shall certify the applicant's last day of paid employment.

(e) An application or reapplication may be submitted prior to the applicant's last day of paid employment.]

Section 2. Use of Third-party Vendors.

(1) The agency may contract with third-party vendors to act on its behalf throughout the disability retirement application and review process. The agency may also contract with third-party vendors to act on its behalf throughout the periodic review, reinstatement review, and employment review processes.

(2) The agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may [also] provide additional persons to fulfill non-physician roles throughout the disability retirement application process.

(3) [For purposes of this regulation,] Third-party vendors may act on behalf of the agency and the systems with all the rights and responsibilities therein.]

(1) If the applicant is eligible to begin drawing early retirement benefits, the applicant shall be notified of the right to receive a retirement allowance while the disability application is being processed.

(2) Election of early retirement by the applicant shall not affect the application for disability retirement.]

Section 3. Filing an Application or Reapplication for Disability

Retirement Benefits.

(1) An application for disability retirement benefits or a reapplication for disability retirement benefits shall be made on the Form 6000, [“]Notification of Retirement.[“]

(2) (a)1. A reapplication for disability retirement benefits based on the same claim of incapacity shall be accompanied by new objective medical evidence not previously considered with prior applications.

2. An applicant shall have [one hundred eighty (180)] days from the date the reapplication for disability retirement benefits based on the same claim of incapacity is on file at the retirement office in which to file new objective medical evidence not previously considered with prior applications.

3. If the last day of the period described in subparagraph 2. of this paragraph is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the required forms, certification, information, or[and/or] request are on file at the retirement office by the close of the next business day.

4. A reapplication for disability retirement benefits based on the same claim of incapacity that is accompanied by new objective medical evidence shall be reviewed in conjunction with the objective medical evidence, forms, and information filed with all previous applications.

(b) A reapplication for disability retirement benefits based on the same claim of incapacity that is unaccompanied by new objective medical evidence that was not considered with previous applications within [one hundred eighty (180)] days of filing of the reapplication shall be invalid and shall not be accepted or considered by the agency.

(3) A reapplication for disability retirement benefits that is filed subsequent to a prior application for disability retirement benefits and is based on an entirely different claim of incapacity shall[will] be treated in the same manner as a reapplication for disability retirement benefits based on the same claim of incapacity under subsection (2) of this section.

(4)(a) Pursuant to KRS 16.582, 78.5524, 61.600, and 78.5522, the twenty-four (24) month period after the applicant's last day of paid employment during which the applicant shall[must] have a valid application on file at the retirement office shall consist of [seven hundred thirty (730)] calendar days.

(b) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application shall be timely if filed at the retirement office by the close of the next business day.

(c) If a valid application or reapplication for disability retirement benefits is not on file at the retirement office at the close of business on the 730th day, then the application or reapplication is not timely and the applicant is not qualified to retire on disability.

(d)1. The applicant's last day of paid employment shall either be certified by the applicant's employer or filed by the applicant and corroborated by the reporting information received by the agency from the applicant's employer.

2. In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the agency's records.

(5) An application or reapplication may be filed prior to the applicant's last day of paid employment but no earlier than six (6) months prior to the applicant's last day of paid employment.

Section 4. Forms Required with Disability Retirement Application or Reapplication.

(1) In addition to a valid application or reapplication for disability retirement benefits in accordance with Section 3 of this administrative regulation, the applicant shall [be required to] file the following forms and information with the retirement office prior to review by the medical examiners under KRS 61.665 and 78.545:

(a) A valid Form 8035, [“]Employee Job Description.[“]

(b) A valid Form 8040, [“]Prescription and Nonprescription Medications.[“]

(c) Supporting medical information; and

(d) Once all supporting medical information has been submitted, a valid Form 8001, [“]Certification of Application for Disability Retirement and Supporting Medical Information.[“]

(2) The applicant's employer shall complete and submit to the retirement office a Form 8030, [“]Employer Job Description.[“] for all initial applications for disability retirement benefits.

(3) Both the applicant and the employer shall file information regarding the applicant's request for reasonable accommodations as required by KRS 61.665(2)(a), 61.665(2)(b), and 78.545.

(4) The applicant and the applicant's employer shall file or submit additional information regarding the applicant's job duties and reasonable accommodations upon request by the agency or a third-party vendor on its behalf.

(5) For a reapplication for disability retirement benefits, the applicant's employer shall [be required to] complete and submit to the retirement office an updated Form 8030, [“]Employer Job Description.[“] and additional information on reasonable accommodations as described in subsection (3) of this section only if the applicant's job duties or the reasonable accommodation information have changed since the prior application.

(6) The agency or its contracted third-party vendor shall provide to the medical examiners the application or reapplication for disability retirement benefits and all forms and information listed in subsections (1) and (5) of this section upon submission of a valid Form 8001, [“]Certification of Application for Disability Retirement and Supporting Medical Information.[“]

(7)(a) The [one hundred eighty (180)] day period to file all necessary forms, certifications, and information under KRS 61.665(2)(a) and 78.545 and this section shall begin on the day the applicant's valid Form 6000, [“]Notification of Retirement.[“] that complies with Section 3 of this administrative regulation is on file at the retirement office and shall end at close of business on the last day of the prescribed time period.

(b) Pursuant to KRS 61.665(2)(f), 61.665(2)(h), 61.665(3)(a), and 78.545, the [one hundred eighty (180)] day period to appeal the recommended denial of disability retirement benefits by two (2) or more of the three (3) medical examiners reviewing the objective medical evidence shall begin on the day the notification of the recommendation of the medical examiners is mailed by the agency, or a third-party vendor on its behalf, and shall end at close of business on the last day of the prescribed time period.

(c) If the last day of the period described in paragraphs (a) or (b) of this subsection is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the forms, certification, information, appeals, or[and/or] requests required by KRS 61.665 and 78.545 and this section are on file at the retirement office by the close of the next business day.

Section 5. Effect of Subsequent Disability Retirement Reapplication While a Prior Application or Reapplication is Still Pending.

(1) If a subsequent valid reapplication for disability retirement benefits that complies with Section 3 of this administrative regulation is filed at the retirement office while a prior application or reapplication is pending review by the medical examiners under KRS 61.665 and 78.545, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545. The subsequent reapplication shall not be submitted for review by the medical examiners.

(2)(a) If a subsequent valid reapplication for disability retirement benefits that complies with Section 3 of this administrative regulation is filed at the retirement office after an applicant has requested an administrative hearing to appeal the denial of an earlier application or reapplication for disability retirement benefits, but prior to a Final Order of DAC regarding the earlier application or reapplication, then the subsequently filed reapplication shall be found as[deemed] a notice of intent to dismiss the request for administrative hearing unless the applicant simultaneously files a written statement that the subsequently filed reapplication has been filed solely for the purpose of designating a

new beneficiary in accordance with KRS 61.542 and 78.545.

(b) A subsequently filed reapplication as described in paragraph (a) of this subsection shall not be processed by the agency until thirty-one (31) days after the entry of a Final Order of DAC dismissing the previously requested administrative appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall be effective immediately.

(c) All evidentiary filings made during an administrative hearing process to appeal the denial of an earlier application or reapplication for disability retirement benefits shall be included in the information provided to the medical examiners for review of the subsequently filed reapplication.

(3)(a)1. If a subsequent valid reapplication for disability retirement benefits is filed at the retirement office after DAC has issued a Final Order denying a prior application or reapplication for disability retirement benefits and during the statutory time for appeal of the Final Order or after an appeal of the Final Order has been made, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

2. The subsequent reapplication as described in subparagraph 1. of this paragraph shall not be submitted for review by the medical examiners, unless the applicant simultaneously files a written statement that the applicant **shall/will** not appeal the Final Order of DAC or has withdrawn any pending appeal of a Final Order of DAC.

(b) If a subsequent valid reapplication for disability retirement benefits is filed at the retirement office after DAC has issued a Final Order denying an application or reapplication for disability retirement benefits, all applicable statutory time for appeals of the Final Order have lapsed, and the reapplication complies with KRS 16.582, 78.5524, 61.600, 78.5522, and Section 3 of this **administrative** regulation, then the subsequently filed reapplication for disability retirement benefits shall be valid.

Section 6. Eligibility for Early or Normal Retirement Benefits at the Time of Application for Disability Retirement Benefits.

(1)(a) If the applicant is eligible to receive early or normal retirement benefits ~~when/at the time~~ a valid Form 6000, **[“]Notification of Retirement, [”]** for disability retirement benefits that complies with Section 3 **of this administrative regulation** is filed at the retirement office, the agency shall treat a valid Form 6000, **[“]Notification of Retirement, [”]** as **[also]** being an application for early or normal retirement benefits.

(b) If the applicant becomes eligible to receive early or normal retirement benefits while the application for disability retirement benefits is pending or an appeal of the denial of disability retirement benefits is pending, the agency shall treat a valid Form 6000, **[“]Notification of Retirement, [”]** of the applicant that complies with Section 3 **of this administrative regulation** as **[also]** being an application for early or normal retirement benefits upon written request by the applicant filed at the retirement office.

(2) If the applicant has terminated employment from all participating employers and the applicant's Form 6000, **[“]Notification of Retirement, [”]** is **[also]** an effective application for early or normal retirement benefits pursuant to subsection (1) of this section, the agency shall provide a Form 6010, **[“]Estimated Retirement Allowance, [”]** for early or normal retirement benefits to the applicant.

(3)(a) An application for disability retirement benefits on the Form 6000, **[“]Notification of Retirement, [”]** that is **[also]** an effective application for early retirement benefits pursuant to subsection (1) of this section shall not be affected if the applicant fails to have a valid Form 6010, **[“] Estimated Retirement Allowance, [”]** for early retirement benefits on file at the retirement office within six (6) months following termination from all employment with participating employers in accordance with KRS 61.590(5)(b) and 78.545, **if/so long as** the application for disability retirement benefits is still pending medical examiner review, administrative action, or judicial review.

(b) If the applicant has been provided with a Form 6010, **[“]Estimated Retirement Allowance, [”]** for early retirement

benefits in accordance with subsection (2) of this section and the applicant does not have a valid Form 6010, **[“]Estimated Retirement Allowance, [”]** for early retirement benefits on file at the retirement office within six (6) months following termination from all employment with participating employers, then ~~[in order]~~ to receive early retirement benefits the applicant shall ~~[be required to]~~ file a new Form 6000, **[“]Notification of Retirement, [”]** solely for early retirement benefits in accordance with KRS 61.590(5)(b) and 78.545.

(c) If the applicant is required to file a new valid Form 6000, **[“]Notification of Retirement, [”]** specifically for early retirement benefits as described in paragraph (b) of this subsection and designates a different beneficiary than designated on the original Form 6000, **[“]Notification of Retirement, [”]** for disability retirement benefits, then the beneficiary designation on the later Form 6000, **[“]Notification of Retirement, [”]** specifically for early retirement benefits shall supersede any prior beneficiary designation pursuant to KRS 61.542 and 78.545.

Section 7. Requests for Additional Objective Medical Evidence by the Medical Examiners.

(1) A medical examiner reviewing an application or reapplication for disability retirement benefits pursuant to KRS 61.665 and 78.545 may place their recommendation on hold and request additional objective medical evidence.

(2) If two (2) or more of the three (3) medical examiners reviewing an application or reapplication for disability retirement benefits place their recommendation on hold and request additional objective medical evidence, then the agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence along with a valid Form 8001, **[“]Certification of Application for Disability Retirement and Supporting Medical Information, [”]** to the retirement office.

(3) If there is no majority recommendation by the three (3) medical examiners reviewing an application or reapplication for disability retirement benefits because one (1) medical examiner recommends approval, one (1) medical examiner recommends denial, and one (1) medical examiner requests additional objective medical evidence, then the agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence along with a valid Form 8001, **[“]Certification of Application for Disability Retirement and Supporting Medical Information, [”]** to the retirement office.

(4)(a) Upon receipt of the requested additional objective medical evidence with a valid Form 8001, **[“]Certification of Application for Disability Retirement and Supporting Medical Information, [”]** the agency, or a third-party vendor, shall resubmit the matter, including any additional objective medical evidence submitted in response to the medical examiner's request, to all three (3) medical examiners and the medical examiners shall issue new recommendations.

(b) Upon the expiration of sixty (60) days from the date of the notification, if no additional objective medical evidence with a valid Form 8001, **[“]Certification of Application for Disability Retirement and Supporting Medical Information, [”]** is on file at the retirement office, the agency, or a third-party vendor, shall resubmit the matter to only the medical **examiner or examiners[examiner(s)]** that placed their recommendation on hold and the medical **examiner or examiners[examiner(s)]** shall issue a new recommendation.

Section 8. Medical or Psychological Examination Required at the Expense of the Agency.

(1) The applicant shall complete and submit to the retirement systems—a "Form—8035, Employee's Job Description". The applicant's employer shall complete and submit to the retirement systems—a "Form—8030, Employer's Job Description". Both the applicant and the employer shall provide information regarding applicant's request for reasonable accommodations and the reasonable accommodations available to applicant, whether or not

the applicant actually accepted the reasonable accommodations.

(2) The retirement systems may require additional details from the applicant and the applicant's employer regarding the applicant's job duties, if necessary.

Section 4.]

(1) If the agency[retirement systems] requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(j) and 78.545 or KRS 61.665(3)(c) and 78.545, the agency[retirement systems] shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems]. The applicant shall be reimbursed for the most direct[and usually traveled] routes.

(2)(a)[Mileage shall be based on the MapQuest website, Google Maps website, the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas."] The applicant shall complete and file[submit] a Form 8846, Travel Voucher for["]Independent Examination [Travel Voucher].["] indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems]. The applicant shall also indicate any actual parking costs and any actual bridge or highway toll charges on the most direct route on the Form 8846, Travel Voucher for["]Independent Examination [Travel Voucher].["] The applicant shall use the most direct and usually traveled routes.]

(b) The applicant shall file the Form 8846, Travel Voucher for["]Independent Examination [Travel Voucher]" and all necessary receipts at the retirement office within fifteen (15) days of the examination or evaluation in order to be reimbursed for mileage, actual parking costs, and any actual bridge or highway toll charges as described in subsections (3) through (6) of this section.

(3)(a) Mileage shall be based on the MapQuest Web site, Google Maps Web site, the ["Kentucky Official Highway Map, as incorporated by reference in 200 KAR 2:006["] or the most recent edition of the ["Rand McNally Road Atlas, as incorporated by reference in 200 KAR 2:006["]

(b) The mileage certified by the applicant on the Form 8846, Travel Voucher for["]Independent Examination [Travel Voucher].["] shall not be greater than the mileage indicated by the MapQuest Web site, Google Maps Web site, the ["Kentucky Official Highway Map,["] mileage software, or the most recent edition of the ["Rand McNally Road Atlas["] for the most direct[and usually traveled] route from applicant's home address as it is on file at the retirement office[systems], to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement office[systems].

(c) If the mileage certified by the applicant on the Form 8846, Travel Voucher for["]Independent Examination [Travel Voucher].["] is greater than the mileage indicated by the MapQuest Web site, Google Maps Web site, the ["Kentucky Official Highway Map,["] mileage software, or the most recent edition of the ["Rand McNally Road Atlas["] for the most direct route, the agency[retirement systems] shall pay the applicant the mileage indicated by the MapQuest Web site, Google Maps Web site, the ["Kentucky Official Highway Map,["] mileage software, or the most recent edition of the ["Rand McNally Road Atlas["] for the most direct route.

(4) Reimbursement for use of a privately owned vehicle shall be made at the Internal Revenue Service[IRS] established standard mileage rate applicable at the time of travel[which changes periodically; and shall not exceed the cost of commercial coach fare].

(5) Actual costs for parking shall be reimbursed upon submission of receipts.[The applicant shall submit the originals of the parking receipts along with a written request for reimbursement.]

(6) Actual[Actually] bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct[and

usually traveled] route.[The applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.]

(7) The applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.

Section 5. The applicant shall provide to the retirement system information concerning his continuing status with regard to receipt of Workers' Compensation and Social Security disability benefits.

Section 6. (1) The applicant shall complete and submit a "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information." The applicant shall attach all medical information, forms, and other information for review by the medical examiners to the "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information."

(2) The retirement systems shall submit the completed "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information" and all the attached information to the medical examiners upon receipt by the retirement systems.

(3) The time periods prescribed in KRS 61.600 and 61.665 shall begin on the day the notification of the recommendation of the medical examiners is mailed by the retirement systems and shall end at close of business on the last day of the prescribed time period.

(4) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(5) An applicant's request for a formal hearing shall be made in writing.

(6) Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results.

Section 7. The medical examiner may contact the applicant or the applicant's physicians to request additional medical evidence as necessary.]

Section 9. Social Security and Workers' Compensation Benefits.

(1) The applicant shall notify the agency of his or her intent to apply for Workers' Compensation or disability benefits from the Social Security Administration.

(2) The applicant shall file information concerning his or her status with regard to receipt of Workers' Compensation and Social Security disability benefits at the retirement office.

(3) Upon receipt of approval for Workers' Compensation or disability benefits from the Social Security Administration, the applicant shall file at the retirement office a copy of the approval notice containing the amount of the award or payments. For Workers' Compensation settlements, the applicant shall file a copy of the settlement signed by the Administrative Law Judge.

(4) To determine the maximum benefit under KRS 61.607 and 78.5530, the following shall be added together:

(a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 and 78.5522 or 16.582 and 78.5522, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 and 78.545 or 16.576, converted to an annual amount.

(b) The applicant's total gross monthly benefit from Workers' Compensation excluding spouse or dependent benefits and allowances. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit shall be determined as follows:

1. The gross amount of any lump sum payment shall be divided by the applicant's life expectancy, expressed in years, from the applicant's effective date of retirement.

2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's

life expectancy, expressed in years, from the applicant's effective date of retirement.

3. The total determined in subparagraphs 1. and 2. of this paragraph shall be combined and added to the total gross annual amount of the applicant's lifetime benefit, if any.

(c) The applicant's gross monthly disability benefit from the Social Security Administration, excluding spouse or dependent benefits converted to an annual amount.

(5) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the systems operated by the agency shall be reduced as follows:

(a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 and 78.5522 or 16.582 and 78.5522, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 and 78.545 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 and 78.545 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective dates of the individual benefits.

(6) The disability retirement allowance payable shall not be reduced below an amount that ~~results/would result~~ from a computation of retirement allowance under early retirement or the disability retirement allowance from the systems operated by the agency using the applicant's actual total service, whichever is greater.

(7)(a) Failure to respond to requests from the agency for information concerning a recipient's status with regard to receipt of Workers' Compensation and Social Security disability benefits may result in the agency putting the recipient's monthly benefit on hold.

(b) Monthly benefits held for failure to respond to a request for information concerning a recipient's status with regard to receipt of Workers' Compensation and Social Security disability benefits ~~shall/will~~ be paid to the recipient once the recipient files the requested information at the retirement office.

Section 10. Administrative Hearings Concerning the Denial of Disability Retirement Benefits.

(1)(a) A request by the applicant for an administrative hearing to appeal the denial of disability retirement benefits under KRS 61.665 and 78.545 shall be made in writing and contain a short statement of the issues being appealed.

(b) An applicant's written request for an administrative hearing to appeal the denial of disability retirement benefits shall be filed at the retirement office. Email requests shall not be accepted.

(2)

[Section 8. (1)] The hearing officer presiding over an administrative hearing may allow the applicant to introduce, among other evidence, the determination of other state and federal agencies, ~~such as/including, but not limited to~~ the Kentucky Department of Workers' Claims and the ~~Workers'~~ Compensation or Social Security Administration, approving the applicant for ~~awarding disability~~ benefits ~~to the applicant~~ if accompanied by underlying objective medical evidence.

(3)(2) The hearing officer presiding over an administrative hearing shall consider only objective medical evidence ~~records~~ contained within the determination and shall not consider or be bound by vocational factors or ~~be bound by~~ factual or legal findings of other state or federal agencies.

(4) Statements by physicians within the administrative record of the application or reapplication for disability retirement benefits shall not be considered by themselves to be objective medical evidence unless accompanied by documented medical records or test results.

Section 11.[Section 9.] Provisions Applicable to Applicants with

Hazardous and Nonhazardous Service.

(1) [The provisions of this section shall only apply to a member who began participating on or before July 31, 2004.

(2) If an application for disability is approved, the applicant's disability benefit shall be paid retroactive to the month following the month of the applicant's last day of paid employment.

(3) The service added for determining the disability retirement allowance shall be determined under KRS 16.582 and 78.5524 if the applicant's last day of paid employment was in a hazardous position, or under KRS 61.605 and 78.5522 if the applicant's last day of paid employment was in a nonhazardous position.

(2) [(4)] If the applicant has both hazardous and nonhazardous service in the same system, the added service shall be prorated between hazardous and nonhazardous service based on the proportion of service in each position to the whole, except that all of the added service shall be applied toward the nonhazardous retirement allowance if:

(a) The applicant is disabled from a hazardous position as a result of an act in line of duty; and

(b) Twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service.

(3) [(5)] If the applicant has service in more than one (1) system administered by the Kentucky Retirement Systems or the County Employees Retirement System, the added service shall be prorated between the systems based on the proportion of service in each system to the whole, except if the applicant is disabled from a hazardous position in one (1) system as a result of an act in line of duty and twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service:

(a) All of the added service shall be applied toward the nonhazardous retirement system if the applicant is vested for disability retirement benefits from the nonhazardous system.

(b) All of the added service shall be applied toward the hazardous retirement system if the applicant is not vested for disability retirement benefits from the nonhazardous system.

Section 12.[Section 10.] Back Payment of Enhanced Disability Retirement Allowance.

(1) If the applicant ~~who~~ is awarded disability retirement benefits ~~and did not receive early or normal retirement benefits,~~ ~~upon the applicant's selection of a payment option,~~ the ~~agency~~ ~~retirement systems~~ shall pay the applicant the total monthly retirement allowances payable retroactive to the month following the month of the applicant's last day of paid employment ~~from the effective date of disability retirement~~.

(2)(a) If the applicant received early or normal retirement benefits, the ~~agency~~ ~~retirement systems~~ shall calculate and pay to the applicant the difference between the early or normal retirement benefit which was paid to the applicant and the disability retirement benefit.

(b) The applicant shall not change the beneficiary named ~~or his~~ the payment option selected upon early or normal retirement, except as provided in KRS 61.542(5)(a), 61.542(5)(b), and 78.545. [(3) If benefits are payable to dependent children, as defined in KRS 16.505(17), the parent or guardian shall provide:

(a) A completed Form 6456, Designation of Dependent Child;

(b) A verification of full-time student status of a child age eighteen (18) or over;

(c) A copy of the birth certificate of each dependent child;

(d) If a dependent child is a minor, a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the minor child has a court-appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator; and

(e) Notice of the death or marriage of a dependent child, or if the dependent child ceases to be a full-time student.

(f) A copy of the dependent child's verification of full-time student status shall be filed with the retirement system for each semester of study within thirty (30) days following the start and

within thirty (30) days following the end of each semester.

(4) An increase provided to recipients under KRS 61.691 shall be applied to the applicant's disability benefit and payments to dependent children in determining the total retroactive payments owed to the applicant and dependent children.

Section 11. (1) The applicant shall notify the retirement systems of his intent to apply for workers' compensation or benefits from the Social Security Administration. Upon receipt of approval for workers' compensation or benefits from the Social Security Administration, the applicant shall file at the retirement systems a copy of the approval notice containing the amount of the award.

(2) To determine the maximum benefit under KRS 61.607, the following shall be added together:

(a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576, converted to an annual amount.

(b) The applicant's total gross annual benefit from workers' compensation. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit shall be determined as follows:

1. The gross amount of any lump sum payment shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.

2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.

3. The total determined in subparagraphs 1 and 2 of this paragraph shall be combined and added to the total gross annual amount of the applicant's lifetime benefit, if any.

(c) The applicant's gross monthly disability benefit from the Social Security Administration, excluding spouse or dependent benefits converted to an annual amount.

(3) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the retirement system shall be reduced as follows:

(a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective dates of the individual benefits.

(4) The disability retirement allowance payable shall not be reduced below an amount which would result from a computation of retirement allowance under early retirement or the disability retirement allowance from the retirement system using the disabled employee's actual total service, whichever is greater.]

Section 13.[Section 12.] Direct Deposit or Payment by Check.

(1) A recipient shall complete a Form 6130, ["Authorization for Deposit of Retirement Payment,"] and file it at the retirement office, include direct deposit information on the Form 6000, ["Notification of Retirement,"] or authorize direct deposit via Self-Service on the Web site maintained by the agency to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall file[provide] the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a

new valid Form 6130, ["Authorization for Deposit of Retirement Payment,"] and filing the form at the retirement office[systems], or by changing their direct deposit information via Self-Service on the Web site maintained by the agency.

(b) The latter of the designation on a valid Form 6000, ["Notification of Retirement,"] the last valid Form 6130, ["Authorization for Deposit of Retirement Payment,"] after the Form 6000 is on file at the retirement office[systems], or the direct deposit information submitted via Self-Service on the Web site maintained by the Agency shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a Form 6135, ["Request for Payment by Check,"] and file it at the retirement office if the recipient does not currently have an account with a financial institution or the member's financial institution does not participate in the electronic funds transfer program.

(5) The agency[retirement systems] shall not process the retirement allowance until the recipient has filed a valid Form 6000, ["Notification of Retirement,"] that complies with Section 3 of **this administrative regulation** at the retirement office[a completed Form 6130, Authorization for Deposit of Retirement Payment or filed a completed Form 6135, Request for Payment by Check].

Section 14. Death During Disability Retirement Application Process.

(1)(a) If an applicant has a valid Form 6000, ["Notification of Retirement,"] for disability retirement benefits that complies with Section 3 of **this administrative regulation** on file at the retirement office, is not receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in order] to continue with the applicant's application or reapplication for disability retirement benefits:

1. A Form 6008, ["Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member,"]

2. Any outstanding forms required by Section 4 of **this administrative regulation** that have not yet been filed by the applicant; and

3. Any additional relevant objective medical evidence and a valid Form 8002, ["Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information,"]

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, ["Notification of Retirement,"] as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, ["Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member,"] within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, ["Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member,"]

(d) If the beneficiary named on the Form 6000, ["Notification of Retirement,"] as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the Form 6000 shall be invalid and the disability application or reapplication shall not be processed by the agency.

(2)(a) If an applicant has a valid Form 6000, ["Notification of Retirement,"] for disability retirement benefits that complies with Section 3 of **this administrative regulation** on file at the retirement office, is receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, and no monthly or lump-sum benefits are payable to the beneficiary listed on the Form 6000, then the executor, administrator, or other representative of the applicant's estate shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in order] to continue with the applicant's application or reapplication for

disability retirement benefits:

1. An order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court;~~;~~;

2. A written statement that the application or reapplication for disability retirement benefits ~~shall~~should continue;~~;~~;

3. Any outstanding forms required by Section 4 **of this administrative regulation** that have not yet been filed by the applicant;~~;~~; and

4. Any additional relevant objective medical evidence and a valid Form 8002, **["Beneficiary"] Certification of Application for Disability Retirement and Supporting Medical Information.** ~~[""]~~

(b) If none of the deadlines in KRS 61.665 and 78.545 apply, within sixty (60) days of their appointment, the executor, administrator, or other representative of the applicant's estate as described in paragraph (a) of this subsection shall file the following at the retirement office ~~[in order]~~ to continue with the applicant's application or reapplication for disability retirement benefits:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court;~~;~~; and

2. A written statement that the application or reapplication for disability retirement benefits ~~shall~~should continue.

(c) An executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file the following at the retirement office:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court;~~;~~; and

2. A written statement that the application or reapplication for disability retirement benefits is withdrawn.

(d) If the executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the application or reapplication for disability retirement benefits shall be invalid and shall not be processed by the agency.

(3)(a) If an applicant has a valid Form 6000, ~~[""]~~Notification of Retirement,~~[""]~~ for disability retirement benefits that complies with Section 3 **of this administrative regulation** on file at the retirement office, is receiving monthly early or normal retirement benefits, and dies prior to being approved for disability retirement benefits by at least a majority of the medical examiners or by a Final Order of DAC, and lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 ~~[in order]~~ to continue with the applicant's application or reapplication for disability retirement benefits:

1. A Form 6008, ~~[""]~~Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member;~~[""]~~

2. Any outstanding forms required by Section 4 **of this administrative regulation** that have not yet been filed by the applicant;~~;~~; and

3. Any additional relevant objective medical evidence and a valid Form 8002, **["Beneficiary"] Certification of Application for Disability Retirement and Supporting Medical Information.** ~~[""]~~

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, ~~[""]~~Notification of Retirement, ~~[""]~~ as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, ~~[""]~~Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member,~~[""]~~ within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, ~~[""]~~Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member. ~~[""]~~

(d) If the beneficiary named on the Form 6000, ~~[""]~~Notification of Retirement,~~[""]~~ as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the disability retirement application or reapplication shall be invalid and shall not be processed by the agency.

Section 15.~~[Section 13.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement,"~~[""]~~ April 2021~~[July 2004];~~

(b) Form 8030, "Employer[s] Job Description,"~~[""]~~ April 2021~~[July 2004];~~

(c) Form 8035, "Employee[s] Job Description,"~~[""]~~ April 2021~~[July 2004];~~

(d) Form 8040, "Prescription and Nonprescription Medications," October 2005~~[Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", May 2003];~~

(e) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," April 2021~~[Form 6456, "Designation of Dependent Child," July 2004];~~

(f) Form 6010, "Estimated Retirement Allowance," April 2021;

(g) Form 8846, "Travel Voucher for Independent Examination," May 2008;

(h) Form 6130, "Authorization for Deposit of Retirement Payment,"~~[""]~~ April 2021~~[May 2008];~~

(i)~~[(g)]~~ Form 6135, "Request for Payment by Check,"~~[""]~~ May 2015~~[February 2002];~~

(j) Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," **September 2010**~~[April 2021];~~ and

(k) Form 8002, **["Beneficiary"] Certification of Application for Disability Retirement and Supporting Medical Information,** April 2021.

~~[(h) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information", May 2008; and~~

~~(i) Form 8846, "Independent Examination Travel Voucher", May 2008.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority~~[Retirement Systems], [Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the~~ authority's **Web site at** ~~https://kyret.ky.gov/Publications/Pages/default.aspx.~~

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, February 7, 2022)**

105 KAR 1:310. Fred Capps Memorial Act.

RELATES TO: KRS 16.505-16.652, 61.505~~[40]~~-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.505(1)(f), 61.621~~[61.645(9)(g)]~~

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 61.505(1)(f) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852.** KRS 61.621, The Fred Capps Memorial Act, establishes duty-related disability or death benefits for~~[enables an]~~ nonhazardous employees~~[of a state-administered retirement system] who are[is]~~ killed or totally and permanently disabled from a duty-related injury~~[to receive death or disability benefits equal to those received by~~

hazardous employees under KRS 16.582]. This administrative regulation establishes the procedure for filing an application or reapplication for duty-related death or disability benefits and the appeal procedure for duty-related death or disability[injury] benefits for nonhazardous employees.

Section 1. Definitions.

(1) **Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation[, unless otherwise defined herein].**

(2) Prior to April 1, 2021, "~~the~~ Agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "~~the~~ Agency" means the Kentucky Public Pension Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "Applicant" means a member or retired member of the Kentucky Employees Retirement System, the County Employees Retirement System, or both who has applied or is applying for duty-related disability benefits in accordance with KRS 61.621, 61.665, and 78.545.

(4) Prior to April 1, 2021, "DAC" means the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems. Effective April 1, 2021, "DAC" means the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545.

(5) "File" means ~~the following methods for~~ delivering or submitting a form or other documents to the retirement office, unless otherwise stated **by**: mail, fax, in-person delivery, secure email, **or** upload via Self Service on the Web site maintained by the agency (if available). A form or other document **is** ~~shall~~ not **be deemed** filed until it has been received at the retirement office.

(6) **"Invalid" means that the form is deficient and not to be accepted or processed by the agency.**

(7)~~(6)~~ "Participating employer" means an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System.

(8)~~(7)~~ **For the purposes of this regulation only,** "Recipient" means a retired member of the Kentucky Employees Retirement System, the County Employees Retirement System, or both who is receiving duty-related disability benefits in accordance with KRS 61.621, 61.665, and 78.545.

(9)~~(8)~~ "Valid~~ly~~" **when used in reference to a form,** means that all required sections on a form are completed and all required signatures on a form are executed.

(9) **"Invalid," when used in reference to a form, means that the form is deficient and shall not be accepted or processed by the Agency.**

Section 2. Use of Third-party Vendors.

(1) The agency may contract with third-party vendors to act on its behalf throughout the duty-related disability and duty-related death benefit application and review process. The agency may also contract with third-party vendors to act on its behalf throughout the periodic review, reinstatement review, and employment review processes.

(2) The agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may **also** provide additional persons to fulfill non-physician roles throughout the duty-related disability and duty-related death benefit application process.

(3) **For purposes of this administrative regulation,** Third-party vendors may act on behalf of the agency and the systems with all the rights and responsibilities therein.

Section 3. Application for Duty-Related[Injury] Death Benefits.

(1)(a) A written request for duty-related[injury] death benefits pursuant to KRS 61.621 and 78.545 shall~~may~~ be filed~~made~~ by the surviving spouse,~~or~~ dependent child, or parent or guardian of dependent child at the retirement~~(Frankfort)~~ office~~of the Kentucky Retirement Systems~~.

(b) The agency may notify the surviving spouse, dependent child, or parent or guardian of the dependent child of their ability to file a written request for duty-related death benefits if the agency becomes aware of a nonhazardous employee potentially killed as a result of a duty-related injury.

(c) A claim for duty-related[injury] death benefits shall be verified by the deceased employee's immediate supervisor and agency head on the ["]Form 6800, **"Application for [Death Benefits] Duty Related/In Line of Duty Death Benefits."**

(2)(a) The participating employer, surviving spouse, ~~or~~ dependent child, or parent or guardian of dependent child shall submit the following documents:

1. A copy of the death certificate;
2. The employer death investigation report; and
3. An employee job description provided by the participating employer.

(b) The agency~~retirement system~~ may request additional information:~~or~~ medical records, including hospital, emergency room, autopsy, or other related records;~~;~~ documentation relating to Workers' Compensation claims; and police or other crime reports, if necessary, from the participating employer, surviving spouse, ~~or~~ dependent child, or parent or guardian of dependent child.

(3) The application for duty-related[injury] death benefits and accompanying documentation as listed in subsection (2) of this section shall be reviewed by the agency's~~board's~~ medical examiners, or the agency's third-party vendor, and administered in the same manner as provided in KRS 16.582, 78.5524,~~and~~ 61.665, and 78.545.

Section 4[2]. Application for Duty-Related[Injury] Disability Benefits.

(1)(a) A claim for duty-related[injury] disability benefits pursuant to KRS 61.621 and 78.545 shall be filed by the applicant~~employee~~ at the retirement~~(Frankfort)~~ office~~of the Kentucky Retirement Systems~~.

(b) An application for duty-related[injury] disability benefits shall be made by the applicant~~employee~~ on the ["]Form 6000, **"Notification of Retirement."**

(2) The applicant shall **be required to** file the following forms and information to the retirement office along with a valid application for duty-related disability benefits in accordance with subsection (1) of this section:

(a) A Workers' Compensation incident report, **if** ~~where~~ one exists;

(b) A valid Form 8035, **"Employee Job Description."**

(c) A valid Form 8040, **"Prescription and Nonprescription Medications."**

(d) Supporting medical information; and

(e) Once all supporting medical information has been submitted, a valid Form 8001, **"Certification of Application for Disability Retirement and Supporting Medical Information."**

(3) The applicant's participating employer shall complete and submit to the retirement office a Form 8030, **"Employer Job Description."**

(4) The applicant and the applicant's employer shall file or submit additional information regarding the applicant's job duties and reasonable accommodations upon request by the agency or a third-party vendor on its behalf.

(5) The application for duty-related[injury] disability benefits and accompanying documentation as listed in subsections (2), (3), and (4) of this section shall be reviewed by the agency's~~board's~~ medical examiners, or the agency's third-party vendor, and administered in the same manner as provided in KRS 16.582, 78.5524,~~and~~ 61.665, and 78.545.

Section 5. Joint Application for Duty-Related Disability Benefits and Disability Retirement Benefits.

(1) If qualified to retire on disability pursuant to KRS 61.600 and 78.5522, an applicant may apply for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same valid Form 6000, ["Notification of Retirement,"]

(2)(a) If an applicant qualified to retire on disability applies for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same Form 6000, ["Notification of Retirement,"] and is approved only for disability retirement benefits by a majority or greater of the reviewing medical examiners pursuant to KRS 61.665 and 78.545, the applicant may solely appeal the denial of duty-related disability benefits in the same manner provided for disability retirement benefits in KRS 61.665(2)(f), 61.665(2)(h), and 78.545.

(b) A request for an administrative hearing to solely appeal the denial of duty-related disability benefits shall not affect the disability retirement benefits of an applicant who has been approved for disability retirement benefits under KRS 61.600 and 78.5522, except as provided in KRS 61.685 and 78.545.

(3) If an applicant qualified to retire on disability applies for both duty-related disability benefits in accordance with KRS 61.621 and 78.545 and disability retirement benefits in accordance with KRS 61.600 and 78.5522 using the same Form 6000, ["Notification of Retirement,"] and is denied for both by a majority or greater of the reviewing medical examiners pursuant to KRS 61.665 and 78.545, the applicant may appeal both the denial of duty-related disability and disability retirement benefits as provided by KRS 61.665(2)(f), 61.665(2)(h), and 78.545.

(4) A request for an administrative hearing to solely appeal the denial of duty-related disability benefits or to appeal denials of both duty-related disability benefits and disability retirement benefits shall[~~must~~] conform with Section 10 of this administrative regulation.

Section 6[3]. Time Period for Filing.

(1)(a) The application or reapplication for duty-related[~~-injury~~] death or duty-related [~~-injury~~] disability benefits shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

(b) The filing period shall begin on the day after the last day of paid employment in a regular full-time position and shall end at close of business on the [following] 730th calendar day.

(c) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the public office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application shall be timely if filed at the retirement office by the close of the next business day.

(d) If the 730th day is on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the application or reapplication is not timely and the employee, surviving spouse, dependent child, or parent or guardian of dependent child is not qualified for duty-related death or duty-related disability benefits.

(e)1. The applicant's last day of paid employment shall either be certified by the applicant's employer or filed by the applicant and corroborated by the reporting information received by the agency from the applicant's employer.

2. In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the agency's records.[~~If the last day of the filing period is a Saturday, Sunday, or a state or federal holiday, then the application shall be timely filed if received in the retirement office by the close of the next business day following the weekend or holiday.~~]

(2) If rejected, an employee's reapplication for duty-related[~~injury~~] disability benefits based on the same claim of incapacity shall be reconsidered for disability if accompanied by new objective medical evidence or new evidence concerning the duty-related

injury that was not considered with previous applications. The reapplication shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

Section 7. Effect of Application or Reapplication for Duty-Related Disability Benefits While Prior Application or Reapplication is Pending.

(1) If a subsequent valid reapplication for duty-related disability benefits that complies with Sections 4 and 6 of this administrative regulation is filed at the retirement office while a prior application or reapplication is pending review by the medical examiners under KRS 61.665 and 78.545, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545. The subsequent reapplication shall not be submitted for review by the medical examiners.

(2)(a) If a subsequent valid reapplication for duty-related disability benefits that complies with Sections 4 and 6 of this administrative regulation is filed at the retirement office after an applicant has requested an administrative hearing to appeal the denial of an earlier application or reapplication for duty-related disability benefits, but prior to a Final Order of DAC regarding the earlier application or reapplication, then the subsequently filed reapplication shall be found as[deemed] a notice of intent to dismiss the request for administrative hearing unless the applicant simultaneously files a written statement that the subsequently filed reapplication has been filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

(b) A subsequently filed reapplication as described in paragraph (a) of this subsection shall not be processed by the agency until thirty-one (31) days after the entry of a Final Order of DAC dismissing the previously requested administrative appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall be effective immediately.

(c) All evidentiary filings made during an administrative hearing process to appeal the denial of an earlier application or reapplication for duty-related disability benefits shall be included in the information provided to the medical examiners for review of the subsequently filed reapplication.

(3)(a)1. If a subsequent valid reapplication for duty-related disability benefits is filed at the retirement office after DAC has issued a Final Order denying a prior application or reapplication for duty-related disability benefits and during the statutory time for appeal of the Final Order or after an appeal of the Final Order has been made, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542 and 78.545.

2. The subsequent reapplication shall not be submitted for review by the medical examiners, unless the applicant files a written statement that the applicant shall[will] not appeal the Final Order of DAC or has withdrawn any pending appeal of a Final Order of DAC.

(b) If a subsequent valid reapplication for duty-related disability benefits is filed at the retirement office after DAC has issued a Final Order denying an application or reapplication for duty-related disability benefits, all applicable statutory time for appeals of the Final Order have lapsed, and the reapplication complies with KRS 61.621, 78.545 and Sections 4 and 6 of this administrative regulation, then the subsequently filed reapplication for duty-related disability benefits shall be valid.

Section 8. Medical or Psychological Examination Required at the Expense of the Agency.

(1) If the agency requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(i) and 78.545 or KRS 61.665(3)(c) and 78.545, the agency shall reimburse the applicant for expenses associated with the medical or psychological examination in the same manner as 105 KAR 1:210, Section 8.

(2) The applicant shall file the Form 8846, Travel Voucher for[~~the~~] Independent Examination [Travel Voucher~~?~~] and all

necessary receipts at the retirement office within fifteen (15) days of the examination or evaluation [in-order] to be reimbursed for mileage, actual parking costs, and any actual bridge or highway toll charges as described in subsection (1) of this section and 105 KAR 1:210, Section 8.

Section 9. Requests for Additional Objective Medical Evidence by the Medical Examiners.

(1) A medical examiner reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits may place their recommendation on hold and request additional objective medical evidence.

(2) If two (2) or more of the three (3) medical examiners reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits place their recommendation on hold and request additional objective medical evidence, then the agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence to the retirement office.

(3) If there is no majority recommendation by the three (3) medical examiners reviewing an application or reapplication for duty-related disability benefits or duty-related death benefits because one (1) medical examiner recommends approval, one (1) medical examiner recommends denial, and one (1) medical examiner requests additional objective medical evidence, then the agency, or a third-party vendor, shall notify the applicant of the medical examiner's request for additional objective medical evidence. The applicant shall have sixty (60) days from the date of the notification to file the requested objective medical evidence to the retirement office.

(4)(a) Upon receipt of the requested additional objective medical evidence with a valid Form 8001, [“]Certification of Application for Disability Retirement and Supporting Medical Information,[”] the agency, or a third-party vendor, shall resubmit the matter, including any additional objective medical evidence submitted in response to the medical examiner's request, to all three (3) medical examiners and the medical examiners shall issue new recommendations.

(b) Upon the expiration of sixty (60) days from the date of the notification, if no additional objective medical evidence with a valid Form 8001, [“]Certification of Application for Disability Retirement and Supporting Medical Information,[”] is on file at the retirement office, the agency, or a third-party vendor, shall resubmit the matter to only the medical examiner or examiners[examiner(s)] that placed their recommendation on hold and the medical examiner or examiners[examiner(s)] shall issue a new recommendation.

Section 10. Administrative hearings concerning the denial of duty-related disability or duty-related death benefits.

(1)(a) A request by an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child for an administrative hearing to appeal the denial of duty-related disability or duty-related death benefits under KRS 61.621, 61.665, and 78.545 shall be made in writing and contain a short statement of the issues being appealed.

(b) The written request for an administrative hearing to appeal the denial of duty-related disability or duty-related death benefits by an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child shall be filed at the retirement office. Email requests shall not be accepted.

(2) The hearing officer presiding over an administrative hearing may allow an applicant, surviving spouse, dependent child, or parent or guardian of a dependent child to introduce, among other evidence, the determination of other state and federal agencies, such as[including, but not limited to] the Kentucky Department of Workers' Claims and the Social Security Administration, approving the applicant for benefits if accompanied by underlying objective medical evidence or vocational evidence.

(3) The hearing officer presiding over an administrative hearing shall consider only objective medical evidence and vocational records contained within or that accompany a determination by

another state or federal agency.

(4) The hearing officer presiding over an administrative hearing shall not consider or be bound by factual or legal findings of other state or federal agencies.

(5) Statements by physicians within the administrative record of the application or reapplication for duty-related disability or duty-related death benefits shall not be considered by themselves to be objective medical evidence unless accompanied by documented medical records or test results.

Section 11. Employment and Medical Reviews. If, upon review in accordance with KRS 61.610, 61.615, 78.5528, or other applicable statute, the medical examiner, or third-party vendor, determines that a retired member receiving duty-related disability benefits no longer meets eligibility requirements, then the medical examiner, or third-party vendor, shall determine if the retired member is qualified and remains eligible for disability retirement benefits in accordance with KRS 61.600 and 78.5522.]

~~Section 4. (1) If the retirement systems requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(j) or (3)(c), the retirement systems shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall be reimbursed for the most direct and usually traveled routes.~~

~~(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas." The applicant shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall use the most direct and usually traveled routes.~~

~~(3) The mileage certified by the applicant shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. If the mileage certified by the applicant is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the applicant the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas."~~

~~(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.~~

~~(5) Actual costs for parking shall be reimbursed upon submission of receipts. The applicant shall submit the originals of the parking receipts along with a written request for reimbursement.~~

~~(6) Actual bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. The applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.~~

~~(7) The applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.]~~

Section 12[5]. Benefit Payment Procedures for Duty-Related Disability.

(1) If the employee's application for duty-related[–injury] disability benefits is approved, the employee's duty-related disability benefit shall be paid retroactive to the month following the

month of the employee's last day of paid employment in a regular full-time position.

(2) If the employee did not receive early or normal retirement benefits or disability retirement benefits under KRS 61.600 and 78.5522, upon the employee's selection of a payment option, the agency[retirement-office] shall pay the employee the total monthly retirement allowances owed.

(3)(a) If the employee did receive early or normal retirement benefits or disability retirement benefits under KRS 61.600 and 78.5522, the agency[retirement-office] shall calculate and pay to the employee the difference between the early or normal retirement benefit or disability retirement benefit which was paid to the employee and the duty-related disability benefit.

(b) The employee shall not change the beneficiary named or the[his] payment option selected upon early, normal, or disability retirement, except as provided in KRS 61.542(5)(a), 61.542(5)(b), and 78.545.

(4) If benefits are payable to a dependent child as defined in KRS 16.505, the dependent child or the child's parent or guardian shall file[submit] the following documents at the retirement office:

(a) A ["]Form 6448[56], ["]Designation of Dependent Child for Qualifying Total and Permanent Disability["];

(b) If the child is age eighteen (18) or over and a full-time student, verification of full-time student status, if applicable;

(c) If the child is eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability, file a copy of the most recent statement issued by the Social Security Administration for the[such] dependent children[(b) If the child is age eighteen (18) or over, verification of full-time student status];

(d)[(e)] A copy of the birth certificate of each dependent child; and

(e)[(d)] If a dependent child is a minor, a ["]Form 6110, ["]Affidavit of Authorization to Receive Funds on Behalf of Minor, ["]; If the minor has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, ["]Affidavit of Authorization to Receive Funds on Behalf of Minor,[" the guardian or conservator shall file[submit] a copy of the court order appointing the guardian or conservator.[:]

(5)(a)[(e)] The dependent child or the parent or guardian of the dependent child shall also:

1. Notify the agency[retirement-system] of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student, if applicable; and

2. File[Submit] a copy of the dependent child's verification of full-time student status with the agency[retirement-system] for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester, if applicable.

(b) The dependent child or the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the information required by paragraph (a) of this subsection.

(6)[(5)] Any increases provided[to recipients] under KRS 61.691 and 78.5518 shall be applied to the employee's duty-related disability benefit and payments to a dependent child in determining the total retroactive payments owed to the employee and dependent child.

(7)(a)[(6)] If upon review in accordance with KRS 61.610 or other applicable statute, the board determines that an employee receiving duty-related injury disability benefits no longer meets eligibility requirements, then the board shall determine if the employee is eligible for disability benefits under KRS 61.600.

Section 6. (1) A recipient shall complete a Form 6130, ["]Authorization for Deposit of Retirement Payment,[" and file it at the retirement office, include direct deposit information on the Form 6000, ["]Notification of Retirement,[" or authorize direct deposit via Self-Service on the Web site maintained by the agency to have the monthly retirement allowance deposited to an account in a financial institution.

(b) A dependent child or parent or guardian of a dependent

child shall file a valid Form 6130, ["]Authorization for Deposit of Retirement Payment,[" at the retirement office [in-order] to have the monthly benefit deposited to an account in a financial institution.

(c)[(2)] The recipient, dependent child, or parent or guardian of a dependent child and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(8)[(3)](a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new valid ["]Form 6130, ["]Authorization for Deposit of Retirement Payment,[" and filing the form at the retirement office, or by changing their direct deposit information via Self-Service on the Web site maintained by the agency[in-Frankfort].

(b) The latter of the designation on a valid Form 6000, ["]Notification of Retirement,[" the last valid Form 6130, ["]Authorization for Deposit of Retirement Payment,[" after the Form 6000 is on file at the retirement office, or the direct deposit information submitted via Self-Service on the Web site maintained by the agency shall control the electronic transfer of the recipient's retirement allowance.

(c) At any time while receiving a monthly benefit, the dependent child or parent or guardian of a dependent child may change the designated institution by filing a new valid Form 6130, ["] Authorization for Deposit of Retirement Payment,[" at the retirement office or by submitting new direct deposit information via Self-Service on the Web site maintained by the agency.

(d) The last valid Form 6130, ["]Authorization for Deposit of Retirement Payment, [" or the last direct deposit information submitted via Self-Service on the Web site maintained by the agency shall control the electronic transfer of the dependent child's monthly benefit.

(9)[(4)] A[The] recipient, dependent child, or parent or guardian of a dependent child may complete a valid ["]Form 6135, ["]Request for Payment by Check,[" and file it at the retirement office if the recipient, dependent child, or parent or guardian of a dependent child does not currently have an account with a financial institution or the financial institution does not participate in the electronic funds transfer program.

(10)[(5)] The agency[retirement-office] shall not process the retirement allowance or monthly benefit until the recipient, dependent child, or parent or guardian of a dependent child has filed a valid[completed-]"Form 6130, ["]Authorization for Deposit of Retirement Payment,[" included direct deposit information on a valid ["]Form 6000, Notification of Retirement,[" [-or] filed a valid [completed-]"Form 6135, ["]Request for Payment by Check,[" or authorized direct deposit via Self-Service on the Web site maintained by the agency.

Section 13. Benefit Payment Procedures for Duty-Related Deaths.

(1) If the application for duty-related death benefits is approved, the duty-related death benefit shall be paid retroactive to the month following the month of the employee's date of death.

(2) If the surviving spouse did not receive survivor benefits under KRS 61.640 and 78.5532, upon the surviving spouse's selection of a payment option, the agency shall pay the surviving spouse the total monthly retirement allowances owed.

(3)(a) If the beneficiary was a surviving spouse who began receiving survivor benefits KRS 61.640 and 78.5532, the agency shall calculate the difference between the survivor benefit paid to the surviving spouse beneficiary and the duty-related death benefit. The agency shall pay the surviving spouse any additional funds due.

(b) If the surviving spouse was paid more than the amount due under KRS 61.621 or KRS 78.545, the agency shall deduct the difference from the \$10,000 lump sum payment and from the monthly retirement allowance payments until the amount owed to the agency has been recovered.

(4) If benefits are payable to a dependent child as defined in KRS 16.505, the dependent child or the child's parent or guardian shall file the following documents at the retirement office:

(a) A Form 6458, ~~[""]~~Designation of Dependent Child for In Line of Duty/Duty-Related~~[""]~~.

(b) If the child is age eighteen (18) or over and a full-time student, verification of full-time student status, if applicable;

(c) If the child is eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability, file a copy of the most recent statement issued by the Social Security Administration for ~~the[such]~~ dependent children;

(d) A copy of the birth certificate of each dependent child; and

(e) If a dependent child is a minor, a Form 6110, ~~[""]~~Affidavit of Authorization to Receive Funds on Behalf of Minor~~[""]~~. If the minor has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, ~~[""]~~Affidavit of Authorization to Receive Funds on Behalf of Minor~~[""]~~ the guardian or conservator shall file a copy of the court order appointing the guardian or conservator.

(5)(a) The dependent child or the parent or guardian of the dependent child shall ~~[also]~~;

1. Notify the agency of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student, if applicable; and

2. File a copy of the dependent child's verification of full-time student status with the agency for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester, if applicable.

(b) The dependent child or the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the information required by paragraph (a) of this subsection.

(6) Any increases provided under KRS 61.691 and 78.5518 shall be applied to the surviving spouse's duty-related death benefit and payments to a dependent child in determining the total retroactive payments owed to the surviving spouse and dependent child.

(7)(a) A surviving spouse, dependent child, or parent or guardian of a dependent child shall complete a Form 6130, ~~[""]~~Authorization for Deposit of Retirement Payment~~[""]~~ and file it at the retirement office ~~[in-order]~~ to have the monthly benefit deposited to an account in a financial institution.

(b) The surviving spouse, dependent child, or parent or guardian of a dependent child and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(8)(a) At any time while receiving a monthly benefit, the surviving spouse, dependent child, or parent or guardian of a dependent child may change the designated institution by filing a new valid Form 6130, ~~[""]~~Authorization for Deposit of Retirement Payment~~[""]~~ at the retirement office or by submitting new direct deposit information via Self-Service on the Web site maintained by the agency, if available.

(b) The last valid Form 6130, ~~[""]~~Authorization for Deposit of Retirement Payment~~[""]~~ or the last direct deposit information submitted via Self-Service on the Web Site maintained by the agency shall control the electronic transfer of the surviving spouse's or dependent child's monthly benefit.

(9) A surviving spouse, dependent child, or parent or guardian of a dependent child may file a valid Form 6135, ~~[""]~~Request for Payment by Check~~[""]~~ at the retirement office if the surviving spouse, dependent child, or parent or guardian of a dependent child does not currently have an account with a financial institution or the financial institution does not participate in the electronic funds transfer program.

(10) The agency shall not process the retirement allowance or monthly benefit until the surviving spouse, dependent child, or parent or guardian of a dependent child has filed a valid Form 6130, ~~[""]~~Authorization for Deposit of Retirement Payment~~[""]~~ filed a valid Form 6135, ~~[""]~~Request for Payment by Check~~[""]~~ or authorized direct deposit via Self-Service on the ~~Web site/website~~ maintained by the agency.

Section 14. One-Time Window for Surviving Spouse to Apply for Duty-Related Death Benefits. A surviving spouse of an employee who died prior to retirement and prior to April 13, 2018 who is currently receiving monthly benefits from the agency and who did not seek benefits for an employee's death resulting from a duty-related injury pursuant to KRS 61.621 and 78.545 may apply for duty-related death benefits ~~if[so long as]~~ the application for duty-related death benefits **as provided in Section 3 of this administrative regulation** is on file at the retirement office on or before January 1, 2021.

Section 15. Death During Duty-Related Disability Benefits Application Process.

(1)(a) If an applicant has a valid Form 6000, ~~[""]~~Notification of Retirement~~[""]~~ for duty-related disability benefits on file at the retirement office that complies with Sections 4 and 6 **of this administrative regulation**, is not receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 ~~[in-order]~~ to continue with the applicant's application or reapplication for duty-related disability benefits:

1. A Form 6008, ~~[""]~~Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member~~[""]~~;

2. Any outstanding forms required by Section 4 **of this administrative regulation** that have not yet been filed by the applicant~~[""]~~ and

3. Any additional relevant objective medical evidence and a valid Form 8002, ~~[""]~~Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information~~[""]~~

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, ~~[""]~~Notification of Retirement~~[""]~~ as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, ~~[""]~~Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member~~[""]~~ within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, ~~[""]~~Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member~~[""]~~

(d) If the beneficiary named on the Form 6000, ~~[""]~~Notification of Retirement~~[""]~~ as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the Form 6000 shall be invalid and the duty-related disability application or reapplication shall not be processed by the agency.

(2)(a) If an applicant has a valid Form 6000, ~~[""]~~Notification of Retirement~~[""]~~ for duty-related disability benefits that complies with Sections 4 and 6 **of this administrative regulation** on file at the retirement office, is receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, and no monthly or lump-sum benefits are payable to the beneficiary listed on the Form 6000, then the executor, administrator, or other representative of the applicant's estate shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 ~~[in-order]~~ to continue with the applicant's application or reapplication for duty-related disability benefits:

1. An order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court~~[""]~~;

2. A written statement that the application or reapplication for duty-related disability benefits **shall[should]** continue~~[""]~~;

3. Any outstanding forms required by Section 4 **of this administrative regulation** that have not yet been filed by the applicant~~[""]~~ and

4. Any additional relevant objective medical evidence and a valid Form 8002, ~~[""]~~Beneficiary Certification of Application for

Disability Retirement and Supporting Medical Information.^[7]

(b) If none of the deadlines in KRS 61.665 and 78.545 apply, within sixty (60) days of their appointment, the executor, administrator, or other representative of the applicant's estate as described in paragraph (a) of this subsection shall file the following at the retirement office [in-order] to continue with the applicant's application or reapplication for duty-related disability benefits:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court;^[6] and

2. A written statement that the application or reapplication for duty-related disability benefits shall[should] continue.

(c) An executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file the following at the retirement office:

1. A copy of the order appointing the executor, administrator, or other representative of the applicant's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court;^[6] and

2. A written statement that the application or reapplication for duty-related disability benefits is withdrawn.

(d) If the executor, administrator, or other representative of the applicant's estate as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the application or reapplication for duty-related disability benefits shall be invalid and shall not be processed by the agency.

(3)(a) If an applicant has a valid Form 6000, [7]Notification of Retirement.^[7] for duty-related disability benefits that complies with Sections 4 and 6 of this administrative regulation on file at the retirement office, is receiving monthly early, normal, or disability retirement benefits, and dies prior to being approved for duty-related disability benefits by at least a majority of the medical examiners or by a Final Order of DAC, and lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000, then the beneficiary named on the Form 6000 shall file the following at the retirement office in accordance with any applicable deadlines in KRS 61.665 and 78.545 [in-order] to continue with the applicant's application or reapplication for duty-related disability benefits:

1. A Form 6008, [7]Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member.^[7]

2. Any outstanding forms required by Section 4 of this administrative regulation that have not yet been filed by the applicant;^[7] and

3. Any additional relevant objective medical evidence and a valid Form 8002, [7]Beneficiary Certification of Application for Disability Retirement and Supporting Medical Information.^[7]

(b) If there are no applicable deadlines pursuant to KRS 61.665 and 78.545, then the beneficiary named on the Form 6000, [7]Notification of Retirement.^[7] as described in paragraph (a) of this subsection shall file at the retirement office a Form 6008, [7]Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member.^[7] within sixty (60) days of the date of the applicant's death.

(c) A beneficiary as described in paragraphs (a) or (b) of this subsection that does not want to continue with the applicant's application or reapplication may file at the retirement office a Form 6008, [7]Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member.^[7]

(d) If the beneficiary named on the Form 6000, [7]Notification of Retirement.^[7] as described in paragraphs (a) or (b) of this subsection does not timely file the required documentation, then the duty-related disability application or reapplication shall be invalid and shall not be processed by the agency.

Section 16[7]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6800, "Application for [Death-Benefits] Duty Related/In Line of Duty Death-Benefits."^[7] April 2021[April 2003];

(b) Form 6000, "Notification of Retirement,"^[7] April 2021[July

2004];

(c) Form 8035, "Employee Job Description," April 2021;

(d) Form 8040, "Prescription and Nonprescription Medications," **October 2005[April 2021];**

(e) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," April 2021;

(f) Form 8030, "Employer Job Description," April 2021;

(g) Form 8846, "Travel Voucher for Independent Examination," May 2008;

(h) Form 6448, "Designation of a Dependent Child for Qualifying Total and Permanent Disability," June 2021;

(i)[(e)] Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor,"^[7] April 2021[May 2003];

(j)[(d)] Form 6456, "Designation of Dependent Child," July 2004;

(e) Form 6130, "Authorization for Deposit of Retirement Payment," April 2021[May 2008];^[7] and

(k)[(f)] Form 6135, "Request for Payment by Check,"^[7] May 2015;[February 2002.]

(l) Form 6458, "Designation of Dependent Child for In Line of Duty/Duty-Related," April 2021;

(m) Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member," **September 2010[April 2021];** and

(n) Form 8002, "Certification of Application for Disability Retirement and Supporting Medical Information," April 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Retirement Systems], [Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the authority's Web site at <https://kyret.ky.gov/Publications/Pages/default.aspx>.**

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, February 7, 2022)**

105 KAR 1:330. Purchase of service credit.

RELATES TO: KRS 16.545, 16.645[(20), (26), (29), (31)], 61.505, 61.543, 61.552, [61.5525, 61.555,] 61.592, 78.5520, 61.685, 78.545[(6), (31), (35), (43)], 78.610, 26 U.S.C. 415

STATUTORY AUTHORITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f)[KRS 61.645(9)(g)] authorizes the Kentucky Public Pensions Authority[requires the Board of Trustees of Kentucky Retirement Systems] to promulgate [all]administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with[necessary or proper to carry out the provisions of] KRS 16.505[40] to 16.652, 61.510[45] to 61.705, and 78.510[20] to 78.852. KRS 16.545, 16.645[(20), (26), (29), (31)], 61.543, 61.552,[61.555,] 61.592, 78.5520, 61.685, [and] 78.545[(6), (31), (35), and (43)], and 78.610 provide for purchasing service credit. 26 U.S.C. 415 establishes federal requirements regarding purchases of service credit. This administrative regulation establishes the documentation required from the employee or person as proof of eligibility for purchasing service credit, the filing deadlines on which the cost calculation will be made, and the procedures for purchase of service credit.

Section 1. Definitions. (1) Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation[7, unless

otherwise defined herein.

(2) Prior to April 1, 2021, "~~the~~ agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "~~the~~ agency" means the Kentucky Public Pension Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "File" means the following methods for delivering or submitting a form to the retirement office by mail, fax, secure email, in-person delivery, or and upload via Self Service on the Web site maintained by the agency (if available). A form shall not be deemed filed until it has been received at the retirement office.

(4) "Provide" when used in reference to a form or other document means the following methods for the agency makes to make a form or document available to a member, retired member, or person by mail, fax, secure email, or and upload via Self Service on the Web site maintained by the agency (if available).

(5) "~~The~~ Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(6) "Valid" when used in reference to a form means that all required sections on a form are completed and all required signatures on a form are executed.

Section 2. Cost Calculation Date for Determining the Cost of the Service Purchase. (1) The cost calculation date for determining the cost of the service to be purchased shall be the later of:

(a) The last day of the month in which the request for the cost of the service is filed received at the retirement office;

(b) The last day of the month the employee or person designates as the intended purchase date;

(c) The last day of the month in which documentation of the service is filed at the retirement office;

(d) The last day of the month in which the employee member attains sufficient service credit to be eligible to make the purchase; or

(e) The last day of the month in which the employee member terminates employment if the employee member files a completed Form 4172, Notice of Intent to Transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan, at the retirement office indicating that the employee member intends to defer the employee's member's lump sum payment for accrued compensatory and annual leave to be paid to the employee member at termination to the Kentucky Public Employees Deferred Compensation Authority or other qualified employer sponsored plan. The employee member shall then rollover the funds from the Kentucky Public Employees Deferred Compensation Authority or other qualified employer sponsored plan to the agency Kentucky Retirement Systems as payment, in whole or in part, for the employee's member's service purchase.

(2)(a) The purchase deadline date shall be the later of the cost calculation date or thirty (30) days from the date the purchase cost is provided mailed to the employee, unless day thirty (30) is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the public office is actually and legally closed, weekend or any other federal or state holiday that disrupts mail service, then the purchase deadline date shall be the next business day.

(b) Upon discovery of a delay in providing the purchase cost to the employee or person, the agency may extend the purchase deadline date in paragraph (a).

(3) An employee or person shall may not make a new request for cost calculation for purchase of service previously requested until the purchase deadline date has passed.

(4) Payment Except as provided in KRS 61.552(16), payment for purchase of service credit shall be filed at the retirement office while the employee is participating in an eligible retirement system and prior to the employee's termination date, except in the following circumstances:

(a) If the purchase of service credit is made under KRS 61.552(2);

(b) If the employee files a Form 4170, Direct Transfer/Rollover Authorization Form, at the retirement office while the employee is participating in an eligible retirement system and prior to the employee's termination date, so long as the financial institution completes the transfer or rollover within sixty (60) days of the payment due date, the payment for purchase of service credit by transfer or rollover may occur when the employee is no longer participating in an eligible retirement system and after the employee's termination date; or

(c) If the agency discovers an error or omission in the service purchase cost, then the agency may provide corrected costs to the employee, person, member, or retired member and, in order to have the service purchase credited to his or her account, the employee, person, member, or retired member shall pay any additional amount due for the corrected costs.

(5) If the employee member elects to purchase only a portion of the service for which he or she has requested a cost calculation, the employee member shall be required to obtain a new cost calculation for the remaining service unless the remaining service is service under KRS 61.552(2)(f) or (3)(23).

Section 3. Section 2. General Requirements to Purchase Service. (1) The employee or person shall file at the retirement office provide all documentation necessary for the agency retirement system to determine that the service meets the eligibility requirements for purchase of service. The documentation may be in the form of:

(a) A statement or letter signed by the reporting official, personnel director or agency head, or if the service is with the university, federal government or military a statement or letter signed by an authorized employee of the university, federal government or military, except that no employee shall certify his own service. The retirement system may require that the statement be made under oath; or

(b) Copies of personnel and wage records supplied by the agency.

(2) The agency may require that any statement, letter, form, or other document required in this administrative regulation be notarized, made under oath as defined in KRS 523.010, or both.

(3) An No employee or person shall not certify his or her own service on any of the statements, letters, forms, or other documents required by this administrative regulation.

(4)(a) The agency shall determine how much service is eligible for purchase by statute and shall notify the employee or person in writing of the cost of the service that qualifies for purchase.

(b) If the agency determines that the service is not eligible for purchase, it the agency shall notify the employee or person in writing of the reasons.

Section 4. Purchase of Omitted Service. (1)(a) To purchase omitted service pursuant to KRS 61.552(2) and 78.545, the employee or person shall file at the retirement office a valid Form 4225, Verification of Past Employment.

(b) If the employee or person is seeking to purchase omitted service based on employment with the Executive Branch, copies of personnel and wage records provided by the employer shall be filed at the retirement office instead of the Form 4225, Verification of Past Employment.

(2) If the agency retirement system determines that the employer agency records submitted on the Form 4225, Verification of Past Employment or the personnel and wage records from the Executive Branch employer are not sufficient, the agency retirement system may require the employee or person to supplement the employer agency records with copies of check stubs, W-2 forms, personnel action forms, or payroll records in the employee's or person's possession.

(3) If the employee or person does not have additional documentation of the service, the employee or person may file at the retirement office submit a report of detailed earnings from the Social Security Administration for the period of service, along with two (2) Form 4160s, Affidavit and Certification for

Documentation of Service[""] [affidavits] completed by persons[individuals] who earned, or were eligible for, service for the same period in a state administered retirement system with the same employer. Each affiant shall detail the employee's or person's employment status and length of service.

Section 5. Purchase of School Board Service.

~~[(4) The retirement office shall determine if all or part of the service is eligible for purchase and shall notify the employee in writing of its determination.~~

~~Section 3. (1) For service with a public agency, other than a school board, participating in one (1) of the systems administered by the Kentucky Retirement Systems or with a nonparticipating agency whose service is authorized by statute, the employee shall submit the following documentation and may be required by the system to provide additional information, if necessary for determination:~~

~~(a) The beginning and ending dates of the service and any breaks which may have occurred during the service, listed by fiscal year;~~

~~(b) The number of calendar months worked;~~

~~(c) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary or interim; and~~

~~(d) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.~~

~~(2) For service with a school board, the employee shall file at the retirement office a valid Form 4225, ["Verification of Past Employment.""] (provide the following documentation and may be required by the system to provide additional information, if necessary for determination:~~

~~(a) The beginning and ending dates of the service and any breaks which may have occurred during the service, listed by fiscal year;~~

~~(b) The number of calendar months worked;~~

~~(c) The number of days in the employee's employment contract and the actual number of days worked;~~

~~(d) The hours worked per day;~~

~~(e) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary or interim; and~~

~~(f) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.]~~

Section 6. Vested Service Purchases. (1)(a) ~~[In order]~~ To purchase service credit for[(3) For] active duty service in the Armed Forces of the United States pursuant to KRS 61.552(5)(d) and 78.545, the employee shall file at the retirement office[provide] a copy of the federal form DD-214 or other official military documents clearly indicating:

~~1. [(a)] The date of entry into active duty service;~~

~~2. [(b)] The date of discharge from active duty service; and~~

~~3. [(c)] The type of discharge.~~

~~(b) [In order] To purchase service credit for[(4) For] service in the National Guard or the military reserve forces pursuant to KRS 61.552(5)(e) and 78.545, including periods of active duty training, or for service in the National Guard, the employee shall file at the retirement office[provide] copies of official military documents clearly indicating the date of entry and current participation or date of discharge.~~

~~(c) The documents required in paragraphs (a) or (b) of this subsection shall be verified by a statement or letter signed by an authorized employee of the military.~~

~~(d) The agency shall verify with the employer the beginning and ending dates of the period of leave associated with active duty service in the Armed Forces of the United States, service in the National Guard, or service in the military reserve forces.~~

~~[(5) For service with the federal government, the employee shall provide the following documentation:~~

~~(a) The name of the federal agency where the employee worked;~~

~~(b) The beginning and ending dates of the service and any~~

~~breaks which may have occurred during the service;~~

~~(c) The job title;~~

~~(d) If the individual worked an average of 100 or more hours per month and if the position was temporary, seasonal or regular full time; and~~

~~(e) If the employee participated in a retirement plan and if the employee has taken a refund of contributions to the plan.]~~

~~(2)(a) To purchase service for[(6) For] a period when the employee[member] was on[leave, including] educational, maternity, or[and] sick leave without pay pursuant to KRS 61.552(5)(i) and 78.545, the employee[member] shall file at the retirement office a statement or letter from the reporting official, personnel director, or agency head certifying[submit documentation of] the beginning and ending dates of the period of leave and the type of leave designated by the employer.~~

~~(b) The agency shall verify with the employer the beginning and ending dates of the period of educational, maternity, or sick leave without pay.~~

~~(3) To purchase state university service pursuant to KRS 61.552(5)(b) and 78.545, the employee shall file at the retirement office a valid Form 4120, ["Verification of Employment with a State University.""]~~

~~(4) To purchase federal service pursuant to KRS 61.552(5)(f) and 78.545, the employee shall file at the retirement office a valid Form 4115, ["Federal Verification.""]~~

~~(5)(a) To purchase past seasonal, emergency, interim, probationary, temporary, or part-time employment that averages the required hours of work per month pursuant to KRS 61.552(5)(g) and 78.545, the employee shall file at the retirement office a valid Form 4225, ["Verification of Past Employment.""]~~

~~(b) If the employee is seeking to purchase service based on past seasonal, emergency, interim, probationary, temporary, or part-time employment with the Executive Branch, copies of personnel and wage records provided by the employer shall be filed at the retirement office instead of [the] Form 4225, ["Verification of Past Employment.""]~~

~~(6) To purchase service with a non-participating agency whose service is authorized pursuant to KRS 61.552(5)(j) and 78.545, the employee shall file at the retirement office the following documentation and may be required to file additional information, if necessary for determination:~~

~~(a) The beginning and ending dates of the service and any breaks that may have occurred during the service, listed by fiscal year;~~

~~(b) The number of calendar months worked;~~

~~(c) The position title and status, including full-time, part-time, probationary, emergency, seasonal, temporary, or interim; and~~

~~(d) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.~~

~~(7) To purchase urban-county government service pursuant to KRS 61.552(5)(k) and 78.545, the employee shall file at the retirement office a valid Form 4131, ["Verification of Urban-County Government Service.""]~~

~~(8)(a) To purchase service credit for out-of-state public service pursuant to KRS 61.552(5)(c) and 78.545, the employee shall file at the retirement office a valid Form 4140, ["Verification of Out-of-State Service.""]~~

~~(b) To purchase out-of-state service credit for a hazardous duty position, the employee shall also file at the retirement office a copy of the description of the duties of the out-of-state position from his or her former out-of-state employer.~~

~~[(7) For service with one (1) of the state universities in Kentucky, the employee shall provide the following documentation:~~

~~(a) The name of the university where the employee worked;~~

~~(b) The beginning and ending dates of the service and any breaks which may have occurred during the service;~~

~~(c) The job title;~~

~~(d) If the individual worked an average of 100 or more hours per month and if the position was temporary, seasonal or regular full time; and~~

~~(e) If the employee participated in a benefit plan during the period of employment.~~

(8) An employee wishing to purchase service credit for out-of-state public service under KRS 61.552(17) and (18) shall request a copy of the "Form 4140, Certification of Out-of-State Service".

(a) The employee shall mail the "Form 4140, Certification of Out-of-State Service", to his former employer and retirement plan for completion, and if the employee wishes to purchase hazardous service in KERS, CERS, or SPRS, he shall also obtain a copy of the description of his duties in the out-of-state position from his former employer.]

(c) Out-of-state service[Service] credit shall be eligible for purchase as hazardous duty if the position is the same as or substantially similar to positions for which hazardous duty credit has been approved under KRS 61.592 or 78.5522.;

(b) The employee shall be responsible for obtaining the information requested regarding the period of out-of-state service, and the completed "Form 4140, Certification of Out-of-State Service", and job description shall be submitted to the retirement office.;

(c) The retirement system shall determine how much service is eligible for purchase under the statute and shall notify the employee of the full actuarial cost of the service which qualifies for purchase; and

(d) If the retirement system determines that the service is not eligible for purchase, the retirement system shall notify the employee of the reasons.;

Section 7.[Section 4.] Service Purchase Calculations Based on Actuarial Cost. (1) Except for employees of a school board paid under an employment contract, for [For] a purchase based on the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545[61.5525], the higher of the current rate of pay, final rate of pay, or final compensation times the actuarial age factor shall be determined as follows, ~~except that for an employee of a local school board paid under an employment contract, the current rate of pay shall be equal to the final compensation as of the cost calculation date.~~

(a)[(1) Except for a classified employee of a local school board,] Current rate of pay shall be determined as follows:

1.[(a)] For an hourly employee paid on a seven and one-half (7 1/2) hour day, the hourly rate times 1,950;

2.[(b)] For an hourly employee paid on an eight (8) hour day, the hourly rate times 2,080;

3.[(c)] For an employee paid by the day, the daily rate times 260;

4.[(d)] For an employee paid by the week, the weekly rate times fifty-two (52);

5.[(e)] For an employee paid by the month, the monthly rate times twelve (12);

6.[(f)] For a part-time employee who averages 100 or more hours per month, the hourly rate times hours per day times 260. If the number of hours worked per day is not fixed by the employer, seven and one-half (7 1/2) hours shall be used;

7.[(g)] For an employee who receives a fixed amount in addition to an hourly, daily, weekly, monthly, or annual rate, the current rate shall include all fixed amounts, averaged into the same period;

8.[(h)] For an employee simultaneously employed in more than one (1) of the systems[retirement system administered by the Kentucky Retirement Systems], the higher of the combined current rate of pay, combined final rate of pay, or combined final compensation shall be used as of the cost calculation date.

(b)[(2)] Final compensation shall be determined as of the cost calculation date, except that the final compensation of nonhazardous members of the County Employees Retirement System or Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be based on the three (3) fiscal years with the highest average monthly earnings if the sum of the employee's service when added to his age would equal at least seventy-five (75), assuming the employee's service includes:

1.[(a)] All service remaining on an active installment purchase agreement;

2.[(b)] All service which the employee is eligible to purchase

under KRS 61.552(2), 61.552(3), and 78.545[(4) and (23)(a) and (b)]; and

3.[(e)] All service the employee would accrue if employment continued through December 31, 2008.

(c)[(3)] The employee's age rounded to the nearest year as of the cost calculation date shall be used.

(d)[(4)] The benefit factor used to determine the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545[61.5525], shall be the benefit factor to which the employee is entitled on the first day of the month following the cost calculation date, except that the benefit factor for nonhazardous employees of the County Employees Retirement System and the Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be the highest benefit factor to which the employee would be entitled, assuming total;

(a) An effective retirement date no later than January 1, 2009; and

(b) Total service as determined in paragraph (b)[subsection (2)] of this subsection[section].

(2) For employees of a school board paid under an employment contract, for a purchase based on the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545, the higher of the current rate of pay, final rate of pay, or final compensation times the actuarial age factor shall be determined as follows:

(a) The current rate of pay shall be equal to the final compensation as of the cost calculation date.

(b) Final compensation shall be determined as of the cost calculation date, except that the final compensation of nonhazardous members of the County Employees Retirement System or Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be based on the three (3) fiscal years with the highest average monthly earnings if the sum of the employee's service when added to his age would equal at least seventy-five (75), assuming the employee's service includes:

1. All service remaining on an active installment purchase agreement;

2. All service which the employee is eligible to purchase under KRS 61.552(2), 61.552(3), and 78.545; and

3. All service the employee would accrue if employment continued through December 31, 2008.

(c) The employee's age rounded to the nearest year as of the cost calculation date shall be used.

(d) The benefit factor used to determine the actuarial cost, in accordance with KRS 61.552(10)(a) and 78.545, shall be the benefit factor to which the employee is entitled on the first day of the month following the cost calculation date, except that the benefit factor for nonhazardous employees of the County Employees Retirement System and the Kentucky Employees Retirement System with an effective retirement date within the window provided in KRS 61.510(14)(b) and 78.510(14)(b) shall be the highest benefit factor to which the employee would be entitled, assuming total service as determined in paragraph (b) of this subsection.

Section 8.[Section 5.] Correction Upon Discovery of Error or Omission in Service Purchase Costs.

(1) After the employee, member, or retired member has purchased service, the agency[retirement system] may recalculate the cost of the service if, upon audit, the agency[retirement system] determines that any of the information utilized to calculate the cost of the service was incorrect.

(2) If the recalculation results in an increase in the cost of \$100 or more, the employee or person, member, or retired member shall have thirty (30) days to pay the additional amount.

(3) If the employee, member, retired member, or the employer, fails to pay the additional amount, the employee's, member's, or retired member's service shall be reduced to the next lower increment or number of months for which the employee, member, or retired member is eligible based on the original payment, and

the difference shall be refunded to the employee, member, or retired member.

Section 9.[Section 6.] Special Considerations for Purchase of Refunded or Past Service. (1) The verified wages associated with service purchased under the provisions of KRS 61.552 and 78.545 that[(4) to (5)(a) and (24), which] would have qualified as creditable compensation[.] shall be added to the employee's account and shall be used in determining the employee's final compensation.

(2) An employee purchasing service under the preceding subsection[paragraph] by increments or by installment purchase agreement shall have the service credited in chronological order beginning with the earliest service.

Section 10.[Section 7.] Incorporation by Reference. (1) The following material is incorporated by reference:

[(a) Form 4140, "Verification of Out-of-State Service", July 2000;]

[(a)][(b)] Form 4172, "Notice of Intent to Transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan,[-] April 2021[May-2008];[-and]

[(b)][(e)] Form 4170, "Direct Transfer/Rollover Authorization Form"[-] April 2021;[2002.]

[(c) Form 4225, "Verification of Past Employment," April 2021;

[(d) Form 4160, "Affidavit and Certification for Documentation of Service," September 2010;

[(e) Form 4120, "Verification of Employment with a State University," April 2021;

[(f) Form 4115, "Federal Verification," April 2021;

[(g) Form 4131, "Verification of Urban-County Government Service," April 2021; and

[(h) Form 4140, "Verification of Out-of-State Service," April 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Kentucky Retirement Systems, Perimeter Park West], 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, February 7, 2022)

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 and includes establishing required standards for training programs. 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, and if applicable, a statement of deficiencies, and a plan of correction~~], if applicable.~~

Section 2. (1) 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.

(2) 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; and

3. The board may waive the master's degree requirements in this paragraph[requirement] upon a showing that the proposed program administrator is otherwise qualified, such as possessing a minimum of eight (8) years of experience in dialysis patient

care and administration;f:]

(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; and

3. The board may waive the baccalaureate degree requirements in this paragraph[requirement] upon a showing that the proposed assistant program administrator is otherwise qualified, such as possessing a minimum of five (5) years of experience in dialysis patient care and administration;f:]

(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 consist of multidisciplinary members with expertise in the subject matter.

(b) Didactic faculty shall possess:

1.[have] A minimum of a baccalaureate degree from an accredited college or university; or

2. An associate degree from an accredited school of nursing.

(c) Nursing didactic faculty shall possess:

1. a. A current state license as a registered nurse; or

b. A privilege to practice in the state; and

2. A minimum of one (1) year of experience with dialysis patient care.

(d)[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.

(e)] 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.

(e)[(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.

(f)[(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 (1) of the following dialysis technician certification organizations:

1. The Board of Nephrology Examiners Nursing Technology (BONENT);

2. [i] The Nephrology Nursing Certification Commission (NNCC);f:] or

3. 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 subsection (3)[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 ~~(3)(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 ~~material is~~~~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>.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, February 7, 2022)

201 KAR 20:474. Continuing approval and periodic evaluation of dialysis technician training programs.

RELATES TO: KRS 314.035, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians and includes establishing required standards for training programs. This administrative regulation establishes the requirements for continued approval of dialysis technician training programs.

Section 1. Renal Dialysis Center Survey and Certification. (1) The board shall retain jurisdiction over dialysis technician training programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:472 or this administrative regulation[201 KAR 20:474]. The board may conduct a site visit at any time during normal business hours, and may also conduct site visits when the Centers for Medicaid and Medicare Services (CMS) conducts a survey or site visit of the renal dialysis center utilized by the dialysis technician training program.

(2) A dialysis technician training program shall notify the board regarding CMS site visits:

(a) Within thirty (30) days following the site visit that it has occurred; and

(b) Within ninety (90) days following the close of the site visit, the program shall forward all correspondence and reports from CMS concerning the site visit, any statement of deficiencies, subsequent plan of correction, and the continued approval certification.

Section 2. Dialysis Technician Training Program Evaluation.

(1) To verify continued compliance with 201 KAR 20:472, the program shall submit progress reports or periodic supplemental

reports, completed questionnaires, surveys, and other related documents as requested by the board.

(2) A dialysis technician training program shall perform a systematic review of the training program that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board on an annual basis.

(3) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.

(4) The evaluation report shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the dialysis technician training program:

(a) Organization and administration of the dialysis technician training program;

(b) Curriculum;

(c) Teaching and learning methods including distance education;

(d) Faculty evaluation;

(e) Student achievement of program outcomes;

(f) Student completion rates;

(g) Student certification achievement rates; and

(h) Clinical resources.

(5) If a dialysis technician training program utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education is substantially comparable to face to face education.

(6) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the dialysis technician training program.

Section 3. Voluntary Closure of a Dialysis Technician Training Program.

(1) A dialysis technician training program that intends to close shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) The dialysis technician training program may choose one (1) of the following procedures for closing:

(a) The dialysis technician training program shall continue to operate until the last class enrolled has completed training; ~~and~~

1. The program shall continue to meet the standards until all students enrolled have completed the program; ~~and~~

2. The official closing of the program shall be the date on the certificate of the last graduate; and

3. The dialysis technician training program shall notify the board in writing of the official closing date; or

(b) The dialysis technician training program shall close the program following the transfer of students to other approved dialysis technician training programs; ~~and~~

1. The program shall continue to meet the standards until all students have transferred; ~~and~~

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the renal dialysis center; and

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The dialysis technician training program that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The dialysis technician training program that ceases to exist shall transfer training logs and certificates of completion of each student and graduate to a third party vendor approved by the Council for Postsecondary Education for safekeeping.

Section 4. Continued Approval of a Dialysis Technician Training Program.

(1) To receive continued approval, a dialysis technician training program shall:

(a) File a completed Application for Dialysis Technician Training Program ~~[Approval]~~, as incorporated by reference in

201 KAR 20:472:

(b) Submit an annual program evaluation summary report as required by Section 2(2) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor; and

(d) Pay a fee of \$1,000.

(2)(a) The material required to be submitted by **subsection[paragraph]** (1) of this section shall be submitted at least ninety (90) days prior to the end of the current approval period.

(b) If any of the material required to be submitted pursuant to **subsection[paragraph]** (1) of this section is submitted less than ninety (90) days, but more than thirty (30) days prior to the end of the current approval period, an additional fee of \$300 shall be charged. Nonpayment of this fee shall result in denial of the application for continued approval.

(c) If material required to be submitted pursuant to **subsection[paragraph]** (1) of this section is submitted less than thirty (30) days prior to the end of the current approval period, the material shall not be accepted. The program shall lapse at the end of the current approval period and the renewal fee shall be forfeited.

(3) Continued approval shall be based on compliance with the standards established in 201 KAR 20:472 and this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to seek renewal of its approval status thirty (30) days prior to the end of the current approval period, the approval shall lapse at the end of the current approval period.

Section 5. Reinstatement of Dialysis Technician Training Programs.

(1) A program with lapsed approval shall cease all training activity until provided with written notice of the reinstatement of approval.

(2) A dialysis training program that has closed or that has a lapsed or withdrawn approval status may seek to reinstate approval as follows:

(a) File a completed Application for Dialysis Technician Training Program **[Approval], as incorporated by reference in 201 KAR 20:472:**

(b) If applicable, file evidence of compliance with the requirements of any order issued by the board in accordance with Section 8 of this administrative regulation; and

(c) Pay a fee of \$1,000.

Section 6. Site Visits. (1) A representative of the board may conduct a site visit at any time **during normal business hours.**

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:472 and **this administrative regulation[201 KAR 20:474]** are being met:

(a) Change of status by CMS or an accrediting body recognized by CMS;

(b) Providing false or misleading information to students or the public concerning the dialysis technician training program;

(c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:472 or **this administrative regulation[201 KAR 20:474];**

(d) A change in physical facilities;

(e) Information received by the board that may indicate a violation of 201 KAR 20:472 or **this administrative regulation[201 KAR 20:474];** and

(f) Failure to submit reports as required by 201 KAR 20:472 or **this administrative regulation[201 KAR 20:474].**

Section 7. Action Following Site Visit. (1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide

clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:472 or **this administrative regulation[201 KAR 20:474]** by the dialysis technician training program, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify **in writing** the dialysis technician training program of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the dialysis technician training program is unable to meet the requirements in the time set by the board, it may request additional time. The board **[in its discretion,]** may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 8 of this administrative regulation.

Section 8. Withdrawal of Approval. (1) **If in the event that** the standards are not being met, the board shall send **written** notice to the program administrator of the affected dialysis technician training program of its intent to withdraw approval. The **written** notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

(a) The number and severity of the deficiencies;

(b) The length of time in which the deficiencies have existed; and

(c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the **written** notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the dialysis technician training program shall be closed. A closed program shall comply with Section 3 of this administrative regulation.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer designated by the board pursuant to KRS Chapter 13B.

(c) If the order of the board is adverse to the dialysis technician training program, the board may impose the following costs:

1. The cost of the stenographic services;

2. The cost of any expert witness, including travel;

3. Travel for other witnesses;

4. Document reproduction costs; and

5. The cost of the hearing officer which shall be \$400 per day.

(5)(a) The dialysis technician training program that has been closed shall assist a currently enrolled student to transfer to an approved dialysis technician training program.

(b) A dialysis technician training program that fails to assist students as required in this subsection shall be ineligible for reinstatement for at least one (1) year.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, February 7, 2022)

201 KAR 20:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

RELATES TO: KRS 314.035, 314.103, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians, **and includes establishing**

credentialing requirements. This administrative regulation establishes the requirements for credentialing dialysis technicians, initially, by renewal, and by reinstatement.

Section 1. Requirements for Initial Dialysis Technician Credential. (1) An individual who wants to be credentialed as a dialysis technician (DT) in order to engage in dialysis care shall:

(a) File with the board the Application for Dialysis Technician Credential;

(b) Pay the fee established in Section 4 of this administrative regulation;

(c) Have completed a board approved DT training program;

(d) Submit the Checklist for Dialysis Technician Competency Validation; and

(e) Submit a criminal record check pursuant to subsection (3) of this section and meet the requirements of that subsection.

(2)(a) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who does not hold certification from one (1) of the certification organizations listed in subsection (4)(b) of this section shall submit to the board the training program's curriculum and evidence of completion of the training program.

1. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as established in 201 KAR 20:472.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of 201 KAR 20:472, Section 6.

(b) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who holds certification from one (1) of the certification organizations listed in subsection (4)~~], paragraph](b)~~ of this section shall complete an educational module that covers the information contained in 201 KAR 20:472, Section 6(2)(a)2.

(3)(a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee required by the KSP and the FBI.

(b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.

(c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is found as deemed necessary, the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(4)(a) After the applicant has met the requirements of subsection (1)(a), (b), (c), (d), and (e) of this section, the board shall issue a provisional credential to the applicant. The applicant shall be referred to as a DT Applicant. The DT Applicant shall practice dialysis care under the supervision of a registered nurse.

(b) The provisional credential shall expire eighteen (18) months from the date the application is received by the board. During that time, the applicant shall obtain certification from one (1) of the following certification organizations:

1. The Board of Nephrology Examiners Nursing Technology (BONENT);

2. The Nephrology Nursing Certification Commission (NNCC); or

3. The National Association of Nephrology Technicians/Technologists (NANT).

(c) If the applicant fails to obtain certification as established in paragraph (b) of this subsection~~[set forth above]~~, the

application shall lapse. The applicant may reapply by completing the training program again and meeting the requirements of subsection (1)(a), (b), (c), (d), and (e) of this section. However, a provisional credential shall not be issued.

(5) The DT Applicant shall only practice dialysis care as a DT Applicant until:

(a) The credential is issued;

(b) The application is denied by the board; or

(c) The application lapses.

(6)(a) Upon approval of the Application for Dialysis Technician Credential pursuant to subsection (1) of this section and the applicant's successful certification pursuant to subsection (4) of this section, the board shall issue the DT credential.

(b) If the credential is issued prior to May 1, it shall expire on October 31 of the current credentialing period as defined in 201 KAR 20:085, Section 2.

(c) If the credential is issued on or after May 1, it shall expire on October 31 of the succeeding credentialing period as defined in 201 KAR 20:085, Section 2.

(d) After the issuance of the initial DT credential, the credentialing period shall be as defined in 201 KAR 20:085, Section 2.

Section 2. Renewal. (1) To be eligible for renewal of the credential, the DT shall submit prior to the expiration date of the credential:

(a) The Application for Dialysis Technician Credential ~~Renewal~~~~[of the Dialysis Technician Credential]~~;

(b) The fee established in Section 4 of this administrative regulation; and

(c) Evidence of current certification by one (1) of the organizations listed in Section 1(4)(b) of this administrative regulation.

(2) If the application form is submitted online at www.kbn.ky.gov~~[on-line]~~, it shall be received by the board prior to midnight on the last day of the credentialing period.

(3) If a paper application is submitted, it shall be received no later than the last day of the credentialing period. If the application is not received by the board until after the last day of the credentialing period, the application shall have been postmarked at least seven (7) days prior to the last day of the credentialing period.

(4) All information needed to determine that an applicant meets the requirements for renewal of credential shall be received by the board no later than the last day of the credentialing period. If the information is not received by the board until after the last day of the credentialing period, in order to be considered by the board for the current renewal, the information shall have been postmarked at least seven (7) days prior to the last day of the credentialing period.

(5) Failure to comply with these requirements shall result in the credential lapsing. A person whose credential has lapsed shall comply with Section 3 of this administrative regulation to reinstate the credential.

Section 3. Reinstatement. (1) If the DT credential has lapsed for less than twelve (12) months, an individual may reinstate the credential as follows:

(a) Submit the Application for Dialysis Technician Credential;

(b) Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation;

(c) Pay the fee established in Section 4 of this administrative regulation; and

(d) Provide a criminal record check by the Department of the Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and comply with the requirements of subsection (2) of this section.

(2)(a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee required by the KSP and the

FBI.

(b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.

(c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is **found as[deemed]** necessary, the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(3) If the DT credential has lapsed for more than twelve (12) months, an individual may reinstate the credential by one **(1)** of the following methods.

(a) If the DT has not worked as a DT in another state, the individual shall:

1. Complete a DT training program approved by the board;
2. After completion of the training program, submit an Application for Dialysis Technician Credential;
3. The supervising registered nurse shall complete and submit the Checklist for Dialysis Technician Competency Validation to the board;
4. Pay the fee established by Section 4 of this administrative regulation;
5. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and
6. Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation.

(b) If the DT has worked as a DT in another state, the individual shall:

1. Submit an Application for Dialysis Technician Credential;
2. Submit verification of working as a DT in another state;
3. Pay the fee established by Section 4 of this administrative regulation;
4. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and
5. Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation.

(4) An Application for Dialysis Technician Credential submitted for reinstatement shall be valid for one (1) year from the date of receipt by the board.

(5) Upon approval of the application, the credential shall be reinstated.

Section 4. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be thirty-five (35) dollars.

(3) The credential reinstatement fee shall be \$100.

(4) A fee of ten (10) dollars shall be charged for issuing a duplicate of the credential.

(5) A check submitted to the board for payment of a fee that is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(6) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(7) A fee of twenty-five (25) dollars shall be charged for a name change and the issuance of a new credential.

(8) All fees shall be nonrefundable.

Section 5. Material Incorporated by Reference. (1) The following **material is[materials are]** incorporated by reference:

- (a) "Application for Dialysis Technician Credential", 4/2021;
- (b) "Application for **Dialysis Technician Credential** Renewal/**of Dialysis Technician Credential**", 4/2021; and
- (c) "Checklist for Dialysis Technician Competency Validation",

4/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, February 7, 2022)

201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

RELATES TO: KRS 314.021, 314.035, 314.089, 314.091, 314.103, 314.137, 314.991

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians **and includes establishing provisions for discipline and further regulating as necessary.** This administrative regulation establishes the scope of practice and disciplinary procedures for dialysis technicians.

Section 1. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse, an advanced practice registered nurse, a physician, or a physician's assistant:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering, or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is **found[determined]** by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 2. Discipline of a Dialysis Technician. (1) The board **may[shall have the authority to]** discipline a dialysis technician (DT) or a dialysis technician applicant (DTA) for:

(a) Failure to safely and competently perform the duties of a DT or DTA as established in this administrative regulation;

(b) Practicing beyond the scope of practice as established in this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Use, or impairment as a consequence of use, of alcohol or drugs while on duty as a dialysis technician, dialysis technician trainee, or dialysis technician applicant;

(g) Possession or use of a Schedule I controlled substance;

(h) Personal misuse or misappropriation for use of others of any drug placed in the custody of the DT or DTA for administration;

(i) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(j) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(k) Practicing without filing an Application for Dialysis Technician Credential, **as incorporated by reference in 201 KAR 20:476**, or without holding a dialysis technician credential;

(l) Abuse of a patient;

(m) Theft of facility or patient property;

(n) Having disciplinary action on a professional or business license;

(o) Violating any lawful order or directive previously entered by the board;

(p) Violating any applicable requirement of KRS Chapter 314 or 201 KAR Chapter 20;

(q) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(r) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(2) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the Application for Dialysis Technician Credential, **as incorporated by reference in 201 KAR 20:476**.

(3) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(4) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to \$10,000.

Section 3. Miscellaneous Requirements. (1) **Any** person credentialed by the board as a dialysis technician shall maintain a current mailing address and email address with the board and immediately notify the board in writing of a change of mailing address or email address.

(2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) **Any** dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the

board in writing of any misdemeanor or felony conviction in this or any other jurisdiction.

(4) **Any** dialysis technician credentialed by the board shall, within ninety (90) days of entry of a sanction specified in this subsection, notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal is denied.

(5) If the board has reasonable cause to believe that any DT or DTA is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a substance use disorder evaluation or a mental or physical examination by a board approved practitioner.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a substance use disorder evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of substance use disorder evaluation, mental examination, or physical examination ordered by the board.

(c) Upon failure of the dialysis technician to submit to a substance use disorder evaluation, mental examination, or physical examination ordered by the board, **unless due to circumstances beyond the person's control,** the board **may[shall]** initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a substance use disorder evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the dialysis technician shall be subject to disciplinary procedures as established in this administrative regulation.

(6) Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, February 7, 2022)**

301 KAR 4:091. Buying and selling mounted wildlife specimens.

RELATES TO: KRS 150.010, 150.180, 150.411, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.411(1), 150.412, 150.413

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting wildlife. KRS 150.411 authorizes licensed taxidermists to buy and sell legally taken inedible wildlife parts for the purpose of mounting. KRS 150.412 authorizes the department to promulgate administrative regulations **that[which]** allow resident nonprofit 26 U.S.C. 501(c)(3) institutions to sell donated mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. KRS 150.413 authorizes the department to promulgate administrative regulations

to allow the sale and purchase of mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. This administrative regulation establishes the requirements for the buying and selling of mounted wildlife specimens.

Section 1. Definitions. (1) "Deer" means *Odocoileus virginianus*.

- (2) "Elk" means *Cervus elaphus nelsoni*.
- (3) "Wild turkey" means *Meleagris gallopavo sylvestris*.
- (4) "Black bear" means *Ursus americanus*.
- (5) "Bobcat" means *Lynx rufus*.

Section 2. (1) A mounted wildlife specimen purchased from or sold to a licensed taxidermist pursuant to KRS 150.4111 shall be exempt from the requirements of this administrative regulation.

(2) A mounted wildlife specimen may be bought or sold by any person or entity, except as prohibited by federal law.

(3) A nonprofit charitable, religious, or educational institution, which has qualified for exemption pursuant to 26 U.S.C. 501(c)(3), may sell mounted wildlife specimens if the mounts have been donated, except as prohibited by federal law.

(4) Prior to selling a mounted wildlife specimen of a species established in paragraphs (a) through (e) of this subsection, the seller shall first obtain a registration number from the department by completing the online registration process on the department's Web site at fw.ky.gov for each mounted specimen of:

- (a) Black bear;
- (b) Bobcat;
- (c) Deer;
- (d) Elk; or
- (e) Wild turkey.

(5) Prior to selling a mounted wildlife specimen of a species established in subsection (4) of this section, the seller shall affix the registration number to the mount in a clear and legible manner.

(6) A department registration number shall be required for each sale of a mounted wildlife specimen established in subsection (4) of this section.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(As Amended at ARRS, February 7, 2022)**

502 KAR 15:020. Abandoned vehicles[Definitions].

RELATES TO: KRS 189.450, 189.751, 189.752, 189.753, 376.275

STATUTORY AUTHORITY: KRS 189.753(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.753(3) ~~requires~~[directs] the Department of Kentucky State Police to promulgate administrative regulations to carry out the provisions of KRS 189.753, relating to abandoned vehicles [department] [of State Police] ~~[to locate abandoned vehicles, order their removal from the rights-of-way of state highways, and notify the owners of vehicles]~~. This administrative regulation establishes/is adopted to establish[define] the procedures for location, removal, notification of owners and sale of abandoned vehicles.

Section 1. Definitions. (1) "Department" is ~~[The department shall locate, order removal of, and send notification to the owner of vehicles which are abandoned on the rights-of-way of state highways. This administrative regulation will not affect vehicles abandoned on toll roads, interstate highways or other fully controlled access highways as] defined~~ by/in KRS 16.010(8)[603 KAR 5:025].

(2)

~~[Section 2. Definitions. (1)]~~ "Presumed abandoned" means ~~[it has been determined that]~~ a vehicle that has been left upon the right-of-way [rights-of-way] of a state highway, county road, or city street for a period of three (3) ~~[fifteen (15)]~~ consecutive days.

~~(3)[(2)]~~ "Rights-of-way" means, in addition to the actual width of a state highway and the area between any separated highway, those areas lying outside the shoulders and ditch lines and within any landmarks, such as fences, fence posts, cornerstones, or other similar monuments indicating the boundary line.

Section 2. The department shall locate, order removal of, and send notification to the owner of vehicles ~~that~~[which] are abandoned on the rights-of-way of state highways, county roads, or city streets. This **administrative regulation shall**[will] not affect vehicles abandoned on toll roads, interstate highways, or other fully controlled access highways as defined in 603 KAR 5:025.

Section 3. Location of Abandoned Vehicles. The department, upon a determination that ~~[When the Department of State Police observes]~~ a vehicle ~~[that]~~ is presumed [apparently] abandoned on a state highway, county road, or city street shall affix a **notice**[stalled vehicle check form] [shall be affixed] to the vehicle documenting[noting] the date and location. ~~[Notwithstanding the provisions of KRS 189.450, the vehicle shall be presumed abandoned if it remains at the location for fifteen (15) consecutive days.]~~

Section 4. Removal and Storage of Abandoned Vehicles. (1) ~~If~~ ~~[When]~~ a vehicle is presumed abandoned, the department ~~[Department of State Police]~~ may order any person engaged in the business of storing or towing motor vehicles to remove the abandoned vehicle to a site chosen by the [such] person removing the vehicle.

(2) As soon as practicable, the department ~~[Department of State Police]~~ shall, if possible, notify the owner by certified mail:

- (a) That the vehicle was illegally upon public property;
- (b) The present location of the vehicle;
- (c) [that] Retrieval will require payment of towing and storage charges; and
- (d) [that] The vehicle may be sold if not claimed within sixty (60) days.

(3) A[No] notification shall not be required if ownership cannot be determined.

(4) Notice by the department ~~[Department of State Police]~~ shall constitute substantial compliance of the notice requirement by the towing and storing business.

Section 5. Sale of Abandoned Vehicles. (1) If after a period of sixty (60) days the reasonable charges for towing and storing the vehicle have not been paid, the vehicle may be sold by the owner of the towing or storing facility to pay the charges.

(2) Prior to setting any date for sale, the towing or storage facility shall:

- (a) Contact the state police and determine if the vehicle is part of an ongoing investigation that [which] would preclude sale; and
- (b) [to] Inform the state police of any anticipated date of sale.

(3) Ten (10) days prior to the sale, the towing or storing facility shall send a certified letter to the owner stating the time and place of the sale.

(4) If the owner fails to respond to this second notice or make provisions to pay the towing and storage charges, the vehicle may be sold pursuant to KRS 376.275.

(5) If there is a[In the event of such] sale, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.

(6) The towing or storage facility selling any vehicle shall by affidavit inform the department ~~[Department of State Police]~~ of the towing and storage charges, the proceeds of the sale, and transmit any excess funds which shall be deposited in the state police agency fund account.

CONTACT PERSON: Amy Barker, Assistant General Counsel,

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)

502 KAR 35:010. Definitions.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.160, ~~[17.080,]~~ 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160

~~authorizes [and 17.080, provide that]~~ the Secretary of ~~the~~ Justice and Public Safety Cabinet ~~to promulgate [may adopt]~~ [such] administrative regulations that are necessary to properly administer the laws and functions vested in the cabinet. KRS 17.450 establishes the Kentucky Missing Child Information Center. This administrative regulation establishes the definitions to be used in the administration of the Kentucky Missing Child Information Center.

Section 1. ~~Definitions.[As employed in 502 KAR 35:010 through 502 KAR 35:050, unless the context requires otherwise:]~~

(1) ~~"Child" means any person under eighteen (18) years of age or any persons certified or known to be mentally incompetent or disabled.["Kentucky Missing Child Information Center" means a system including equipment, facilities, procedures, agreements and organizations thereof, for the collection, processing, and subsequent dissemination of information related to missing children.]~~

(2) ~~"Kentucky Missing Child Information Center" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, and subsequent dissemination of information related to missing children.["Missing child information," hereafter referred to as MCI, is reported to and preserved in the Kentucky Missing Child Information Center. MCI shall include] [be inclusive of] [, but not be limited to, all information as listed on the KSP Form 261, Kentucky Missing Person's Report][Form].~~

~~[(3) "Kentucky Missing Persons Report Form" means the form furnished to all requesters by the Kentucky State Police for the purpose of obtaining personal identifiers, characteristics, habits and actions for use in the entry of information in the Kentucky Missing Child Information Center.]~~

~~[(3)][(4)] "Law enforcement agency" means a full-time governmental agency, or any subunit thereof, which is charged with the responsibility of the detection and prevention of crime, apprehension of criminals, the maintaining of law and order throughout the respective jurisdiction, to collect, classify, and maintain information useful for the detection of crime and the identification, apprehension, and conviction of criminals, and to enforce laws within that respective governmental jurisdiction.~~

~~[(4)][(5)] "Missing child information" or "MCI" means information that is reported to and preserved in the Kentucky Missing Child Information Center. MCI shall include all information as listed on KSP Form 21, Kentucky Missing Person's Report. ["Child" means any person under eighteen (18) years of age or any persons certified or known to be mentally incompetent or disabled.]~~

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)

502 KAR 35:020. Capabilities of the Missing Child Information Center computer system.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS ~~15A.160[15A.060–17.080]~~, 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~15A.160 [17.080]~~ authorizes the Secretary of ~~the~~ Justice and Public Safety Cabinet to ~~promulgate [institute rules and]~~ administrative regulations and direct proceedings and actions for administration of laws and functions that are vested in the ~~cabinet[Justice Cabinet]~~. KRS 17.450 establishes ~~the[, in the Justice Cabinet, a]~~ Kentucky Missing Child Information Center. ~~[As defined in 502 KAR 35:010(1), the Kentucky Missing Child Information Center shall act as a central repository of and a clearing house for information with regard to those Kentucky-related children believed to be missing.]~~ This administrative regulation sets specific computer program standards and information submission guidelines for the Kentucky Missing Child Information Center.

Section 1. The Kentucky Missing Child Information Center shall maintain a system capable of accepting and initiating the capture, retention, and [subsequent] dissemination of information relating to missing children from Kentucky and missing children believed to be located in Kentucky. The system shall:

(1) Be capable of retrieving missing child information by name, description, date of birth, Social Security number, fingerprint class, body marks, known associates, and the associates' locations;

(2) Communicate with the National Crime Information Center; and

(3) Ensure the ability to provide statistical data associated with the Kentucky Missing Child Information Center.

Section 2. The Kentucky Missing Child Information Center shall be located within the Kentucky State Police for administrative purposes.

~~[Section 3. The system shall be developed that will at a minimum be capable of the retrieval of missing child information by name, description, date of birth, Social Security number, fingerprint class, body marks, known associates and the associate's locations. The system shall also be developed to ensure the ability to provide statistical data associated with the Kentucky Missing Child Information Center.]~~

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police.
(As Amended at ARRS, February 7, 2022)

502 KAR 35:030. Quality of information reported to the Kentucky Missing Child Information Center.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.060, ~~[17.080,]~~ 17.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.450(8) ~~authorizes[provides that]~~ the Secretary of ~~the~~ Justice and Public Safety Cabinet ~~to promulgate[may issue]~~ administrative regulations ~~[in order]~~ to provide for the orderly receipt and retrieval ~~[and/or retrieval]~~ of missing child information. This administrative regulation establishes the procedures for the entry and retrieval of missing child information ~~[procedures]~~.

Section 1. Only law enforcement agencies as defined in this Chapter ~~[502 KAR 35:010(4)]~~ shall be allowed to enter

information, change existing information, or retrieve information from the files of the Missing Child Information Center. Initial entry or modification of existing missing child information shall ~~[only]~~ be accomplished by the submission of KSP Form 261, the Kentucky Missing Persons Report Form, to the Missing Child Information Center. Each submitted form ~~[Kentucky Missing Persons Report Form]~~ shall be as complete as possible and list the submitting law enforcement officer's name and ~~[as well as]~~ the authorizing law enforcement agency.

~~[Section 2. A parent or guardian may enter or retrieve missing child information directly to or from the Missing Child Information Center on his child when the law enforcement agency of jurisdiction has refused to enter or retrieve such missing child information. The parent or guardian of the missing child that has been denied service by a law enforcement agency may directly contact the Kentucky Missing Child Information Center for assistance in the initial entry, modification thereof, or retrieval of information relating to his or her missing child. The Missing Child Information Center shall immediately notify the State Police Post, which serves the area, to initiate an investigation on the missing child.]~~

Section 2. ~~[Section 3.]~~ Affidavit Certifying Noncompliance with KRS 17.450 by a Law Enforcement Agency. The parent or guardian attesting that a law enforcement agency has not rendered the appropriate service, as outlined in KRS 17.450 or 17.460, shall be required to file a formal affidavit outlining the circumstances surrounding the failure of the law enforcement agency to provide service. Copies of the ~~[said]~~ affidavit shall be forwarded to the chief administrative officer of the agency denying service in addition to the State Police Post which shall ~~[will]~~ conduct the investigation on the missing child.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)**

502 KAR 35:050. Statistical analysis of information related to missing children.

RELATES TO: KRS 17.450, 17.460

STATUTORY AUTHORITY: KRS 15A.160, ~~[17.080,]~~ 17.450, 17.460

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 ~~authorizes~~ ~~[17.080 provides that]~~ the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A and direct proceedings and actions for the administration of all laws and functions which are vested in the cabinet ~~[may adopt such rules and administrative regulations as]~~ ~~[are]~~ ~~[necessary to properly administer the cabinet]~~. KRS 17.450 ~~authorizes~~ ~~[provides that]~~ the Secretary to promulgate ~~[may]~~ ~~[of Justice]~~ ~~[further issue]~~ administrative regulations which shall ~~[will]~~ provide for the functioning of the Kentucky Missing Child Information Center. KRS 17.450 requires that the Kentucky Missing Child Information Center annually report statistical information regarding ~~[with regard to]~~ the numbers of children missing from or believed missing in the Commonwealth of Kentucky. This administrative regulation establishes rules ~~[and administrative regulations]~~ regarding ~~[with regard to]~~ the furnishing of the ~~[said]~~ statistical data.

Section 1. Annual Report Required. On or before July 1 of each year, a written report shall be provided to the Secretary ~~[of Justice]~~ that shall ~~[will]~~ include statistical information regarding ~~[with regard to]~~ missing children in the Commonwealth of Kentucky.

Section 2. Law Enforcement Agency Assistance Required. The Kentucky Missing Child Information Center may require additional assistance from all law enforcement agencies regarding ~~[with regard to]~~ the development of the statistical data report as outlined in Section 1 of this administrative regulation. The ~~[Said]~~ assistance shall include ~~[be inclusive of]~~ ~~[but not be limited to]~~ in-depth case analysis with regard to a specific missing child incident, overall trends within a given geographical or jurisdictional area, and an in-depth missing child recovery trend analysis as well as the agency's methodology for finding and returning missing children.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)**

502 KAR 45:005. Definitions.

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires the Commissioner of the Kentucky State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 ~~requires~~ ~~[authorizes]~~ the commissioner to promulgate ~~[adopt]~~ administrative regulations for the enlistment of officers. KRS 16.050 requires the Kentucky State Police Personnel Board to promulgate ~~[adopt]~~ administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the definitions to be used in the chapter ~~[administrative regulations]~~ concerning the selection process for cadet troopers ~~[trooper cadets]~~.

Section 1. Definitions.

(1) "Applicant" means a fully-qualified person, pursuant to ~~[as contemplated in]~~ KRS 16.040, who submits an employment application for the position of cadet trooper and who participates in the selection process.

(2) "Appointment" means selection by the commissioner ~~[Commissioner]~~ of a cadet trooper for employment as an officer, upon successful completion of basic training at the Kentucky State Police Academy.

(3) "Aptitude examination" means an assessment of the cognitive abilities used to determine if applicants can successfully perform the essential job tasks of a Kentucky State Police Trooper.

(4) ~~[(3)]~~ "Cadet trooper" means an applicant for employment as an officer who is selected by the commissioner to attend the Kentucky State Police Academy and is conditionally employed as a trainee.

(5) ~~[(4)]~~ "Candidate" means an applicant for employment who has successfully completed all phases of the selection process and whose name has been placed on the register.

(6) "Immediate family" means the parents, step-parents, siblings, step-siblings, aunts, or uncles of an applicant for employment.

(7) "Law Enforcement Accelerated Program" or "LEAP" means the accelerated training program reserved for applicants who are current officers who have at least two (2) years of Kentucky Police Officer Professional Standards (POPS) certified law enforcement experience.

(8) ~~[(5)]~~ "Physical Fitness Test" or "PFT" means a series of physical fitness tests ~~[Content Based Task Test (CBTT)]~~ means the physical fitness test consisting of simulated essential job tasks, used to determine if applicants can perform the essential job tasks required during basic training at the Kentucky State Police Academy.

(9)(6)] "Register" means the list of persons eligible for selection as a cadet trooper.

(10) "Trooper Applicant Points System" or "TAPS" means a calculated point system that may be based upon the educational, military, and law enforcement experience of an applicant or graduate[graduation] from the Kentucky State Police Apprenticeship program.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)

502 KAR 45:035. Application and selection process.

RELATES TO: KRS 16.040, 16.050(7), 16.080(1)

STATUTORY AUTHORITY: KRS 16.040, 16.050(7), 16.080(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040

requires [16.050(7) and 16.080(1) grant] the Commissioner of the Kentucky State Police to prescribe minimum physical requirements for persons appointed as state police officers, to conduct tests to determine the fitness and qualifications of applicants, and to direct an investigation to be conducted to determine an applicant's suitability for employment as an officer[the authority to establish criteria for the appointment of department officers]. KRS 16.050(7) requires the Kentucky State Police Personnel Board to promulgate administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. KRS 16.080(1) requires the commissioner to promulgate administrative regulations for the enlistment, training, code of ethics, discipline, and conduct of officers of the department and individuals employed as a Trooper R Class or CVE R Class, and also authorizes the commissioner to promulgate administrative regulations for the governing and operation of the department as appear to him or her reasonably necessary to carry out the provisions of KRS 16.010 to 16.170. This administrative regulation establishes eligibility requirements for applicants and the application forms [form] to be submitted by applicants.

Section 1. Eligibility Requirements for Testing. An applicant shall be eligible to take the aptitude[written] examination established by 502 KAR 45:045, [and], if otherwise eligible, the Physical Fitness[Content Based Task] Test established by 502 KAR 45:150, and the [oral] interview established by 502 KAR 45:055 if the applicant:

- (1) Meets the requirements established by KRS 16.040(2)(a) through (d)(b), (c) and (d); and
- (2) [Is at least twenty-one (21) years of age; and
- (3)] Possesses a valid driver's license against which not more than six (6) points are currently assessed.

Section 2. Application. (1) To apply for employment, an [An] applicant shall complete a ["]Kentucky State Police - Cadet Trooper Application for Employment["] form.

(2) An applicant may submit [shall type or print legibly in ink the information requested on] the ["]Kentucky State Police - Cadet Trooper Application for Employment["] form in paper or electronic form.

Section 3. Documents Submitted with Application. An applicant shall submit [attach] the following documents with his or her application, in paper or electronic form:

- (1) A certified copy of the applicant's birth certificate and operator's license; and
- (2) A certified copy of college or university transcripts, if applicable; or

(3) A certified copy of the applicant's high school diploma or GED certificate and any other additional materials, determined by the commissioner, and as described in this Chapter, as necessary to establish the educational or experience qualifications of KRS 16.040(2)(d).

Section 4. Law Enforcement Accelerated Program (LEAP). (1) The commissioner may conduct an accelerated academy.

(2) A LEAP applicant shall submit the following documents with his or her application, in paper or electronic form:

(a) A completed ["]Kentucky State Police - Cadet Trooper Application["] form;[;]

(b) A copy of his or her Kentucky POPS certificate;[;] and

(c) A completed 3 ["]Kentucky State Police Three] Years Work Experience Verification["] form.

(3) The applicant shall undergo an interview with the Post Commander nearest the applicant's home address.

(4) The applicant shall not be subject to an existing employment contract, including any employment contract authorized under Chapter 70 of the Kentucky Revised Statutes[If an applicant has had at least two (2) years experience in law enforcement:

(a) A certified copy of the applicant's high school diploma or GED certificate; and

(b) A notarized letter from his law enforcement employer, stating:

1. Whether the applicant was a fulltime, sworn officer; and

2. The period during which the applicant was employed.

(4) If an applicant has had at least two (2) years' active duty experience in the military, a copy of the applicant's:

(a) DD214, or a notarized letter from the applicant's commanding officer verifying the applicant's length of service; and

(b) A certified copy of the applicant's high school diploma or GED certificate].

[Section 4. Filing of Application. (1) An applicant may mail or submit his application to the Kentucky State Police Recruitment Office, 919 Versailles Road, Frankfort, Kentucky 40601.

(2) An applicant may make an appointment to submit his application at the nearest state police post or driver testing station in Louisville or Lexington.

(3) When an application is filed, an applicant shall choose a date and time to report for the written examination from the list of examinations furnished by the department pursuant to 502 KAR 45:045.

(4) If an applicant is not selected to participate in a phase of the selection process established by 502 KAR Chapter 45, he shall not reapply for a twelve (12) month period following the date upon which he first took the written examination.]

Section 5. Not Recommended. If an applicant has not been recommended by two (2) previous background investigations, the applicant shall be required to appeal, in writing, to the Kentucky State Police Personnel Board for approval to reapply.

Section 6. Incorporation by Reference. (1) [KSP Form 4.]Kentucky State Police - Cadet Trooper Application for Employment" KSP 4[02-97" form], 2019 edition is incorporated by reference.

(2) [KSP Form 004a,] "3 [Kentucky State Police Three (3)] Years Work Experience Verification Form", KSP-004a, 2019 edition, is incorporated by reference.

(3) This material [It] may be inspected, copied, or obtained at the Department of State Police, Recruitment Branch [Office], 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and on the agency Web site at kentuckystatepolice.org.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)

502 KAR 45:045. Aptitude [Written] examination.

RELATES TO: KRS 16.050, 16.080(1)

STATUTORY AUTHORITY: KRS 16.050, 16.080(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 and 16.080(1) require the Commissioner and the Department of Kentucky State Police Personnel Board to establish establishment of open competitive examination of applicants for employment as troopers. This administrative regulation establishes the criteria for the aptitude[written] examination.

Section 1. The aptitude[written] examination shall be:

- (1) Practical in nature; and
- (2) Designed and constructed to reveal the capacity of the applicant for employment as a sworn officer of the department.

Section 2. The aptitude[(1)–An] examination shall be administered at the times and places designated by the commander of the Recruitment[Recruit] Branch[commissioner].

~~[(2) The commissioner may direct that an examination be conducted regionally if he finds a regional examination to be convenient and practicable.]~~

Section 3. The Recruitment Branch shall work in coordination with the Kentucky State Police Personnel Board to establish the aptitude test. [An applicant may take the examination:

(1) Two times in a twelve (12) month period.

(2)(a) If an applicant fails the written examination, he may notify the recruitment office of the department that he wishes to retake the examination.

(b) If he has notified the recruitment office as provided by this subsection, he:

1. May retake the written examination once; and

2. Shall retake the next written examination that is scheduled at least thirty (30) days after the written examination the applicant failed.]

Section 4. An applicant shall have submitted a completed application prior to taking the aptitude[written] examination.

Section 5. The aptitude[An] examination shall be rated impartially.

Section 6. An applicant shall be informed of his or her score.

[Section 7. The written examination shall be pass/fail.]

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)

502 KAR 45:075. Register.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires the Kentucky State Police Personnel Board to promulgate administrative regulations which include provisions for the establishment of eligibility lists as a result of competitive examinations, from which [lists] vacancies shall be filled. This administrative regulation establishes a register for the employment of cadet troopers.

Section 1. (1) The commissioner shall determine the number of cadet trooper positions required to be filled.

(2) The commissioner shall base his determination upon:

- (a) The needs of the department;
- (b) Projected attrition; and
- (c) Available funding [Authorized strength levels].

Section 2. (1) The commissioner shall propose a register of applicants eligible[eligibles] for appointment as a cadet trooper to the Kentucky State Police Personnel Board.

(2) Upon approval by the board, the commissioner shall establish a register of applicants eligible for appointment as a cadet trooper.

Section 3. (1) A register shall be effective for a period of twelve (12) months.

(2) If an applicant who has been placed on a register is not selected for employment within twelve (12) months of the applicant's[his] placement on the register, the applicant[he]:

(a) May [Shall] be removed from the register; and

(b) If removed from the register, may reapply for employment.

Section 4. An applicant may be placed on a register if the applicant has:

(1) Successfully completed the:

(a) Aptitude[Written] examination;

(b) Physical Fitness[Content Based Task] Test; and

(c) Oral] Interview; and

(2) Not been disqualified as a result of a background investigation.]

(3) ~~The applicants who shall undergo a background investigation shall be determined by:~~

(a) ~~An applicant's combined Content Based Task Test and the oral interview scores; and~~

(b) ~~The number of positions required to be filled.]~~

Section 5. (1) Except as provided by subsection (2) of this section, an applicant shall be placed on the register in rank order, determined by the combined score on the[an] applicant's Physical Fitness[Content Based Task] Test, and] [oral] interview score, and Trooper Applicant Points System (TAPS) points. A maximum of six (6) TAPS [(6.0)] [Trooper Applicant Points System (TAPS)] points may be earned and added to the combined score. Applicants shall receive TAPS points based upon the following:

(a) Applicants shall receive two (2) [(2.0)] points for:

1. An associate degree in any discipline from an accredited college or university;

2. A copy of the applicant's[their] DD-214 reflecting four (4) years of active military service; or

3. A notarized letter from a law enforcement employer certifying three (3) years of full-time law enforcement employment as a sworn officer.

(b) Applicants shall receive four (4) [(4.0)] points for:

1. A bachelor degree in any discipline from an accredited college or university;

2. A copy of the applicant's [their] DD-214 reflecting a minimum of five (5) and less than nine (9) years of active military service; or

3. A notarized letter from a law enforcement employer certifying a minimum of four (4) and less than seven (7) years of full-time law enforcement employment as a sworn officer.

(c) Applicants shall receive six (6) points for:

1. A master degree or above in any discipline from an accredited college or university;

2. A copy of the applicant's[their] DD-214 reflecting nine (9) years or more of active military service; or

3. A notarized letter from a law enforcement employer certifying seven (7) years or more of full-time law enforcement employment as a sworn officer.

(d) Graduates of the KSP Apprenticeship Program shall receive up to six (6) points for the following:

1. Three (3) points upon graduation;
2. Two (2) points upon completion of the physical preparedness program; and
3. One (1) point upon completion of five (5) core classes toward the Kentucky State Police Academy Associates in Applied Sciences degree in General Occupational and Technical Studies while enrolled in the Bluegrass Community and Technical College with a grade of C or higher in each class.

(2) Applicants who receive the same score shall be ranked by random draw, with military veterans receiving preference as provided by KRS 16.040(3).

Section 6. (1) Except as provided by this section, the commissioner shall select eligible applicants for appointment as cadet troopers from the register in rank order.

(2) The commissioner may deviate from the rank order of the register if the commissioner[he] determines that it is necessary to correct a manifest imbalance of minorities or women in the department.

Section 7. The commissioner may remove a candidate from the register for the following reasons:

- (1) Upon receipt of reliable information indicating grounds for disqualification or deferral;
- (2) If the candidate cannot be located by postal authorities;
- (3) If the candidate:
 - (a) Declines an offer of employment;
 - (b) Fails to respond to an offer of employment;
 - (c) Notifies the department that the applicant[he] no longer wishes to be considered for employment; or
 - (d) Upon the expiration of a period of twelve (12) months from the date of the applicant's[his] placement on the register.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)

502 KAR 45:085. Medical examination.

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040, 16.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires[provides] that officers [shall][must] be in good health and also requires[directs] the commissioner to prescribe minimum physical requirements for appointment as an officer.[and] to conduct such tests, and to require physical examinations to determine the fitness of each applicant. This administrative regulation establishes the tests and examinations that shall[which are to] be conducted.

Section 1. Applicants selected to be cadet troopers and offered probationary employment as trainees shall be required to submit to medical examinations to determine fitness to safely perform essential job tasks with or without reasonable accommodation. The medical examination shall be conducted after an offer of employment has been[is] made but before applicants report for training. The offer of employment shall be conditioned upon successful completion of the medical examination.

Section 2. Medical examinations shall be conducted by physicians selected by the department. The examinations shall include hearing and visual examinations, and a determination as to whether the applicant is color blind. The physicians shall render opinions to the department as to whether applicants who have been offered employment are physically fit to safely perform essential job tasks, with or without reasonable accommodation, and as to whether applicants have any medical condition which, during the performance of duty as a state trooper, and with or

without reasonable accommodation, would endanger the applicant or others.

Section 3. As part of the medical examination, applicants shall be required to provide complete medical history information and to answer questions related to the examination. Information and records related to the medical examinations shall be confidential and retained in a file separate from the applicants personnel file.

Section 4. The medical examination may include tests conducted by an occupational therapist under the direction of the examining physician, if necessary to determine an applicant's ability to safely perform essential job tasks with or without reasonable accommodation.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)

502 KAR 45:105. Appointment.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050, 16.080, 16.140(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires[authorizes] the Commissioner of the Department of Kentucky State Police to appoint persons as officers as necessary for the efficient administration of the department. KRS 16.050 requires that[directs] appointments to vacancies [to] be made from lists of applicants eligible for appointment[eligibles]. This administrative regulation establishes the method of appointment.

Section 1. The commissioner [in his discretion] shall determine, based on the needs of the department, projected attrition, and available funding, [and] [authorized strength levels,] the number of candidates to be offered employment as cadet troopers. The[This] offer of employment shall be subject to the condition that the candidate submits to a medical and psychological examination and is found fit to perform safely the essential job tasks of a trooper[an officer], with or without reasonable accommodation.

Section 2. Candidates who are offered employment as cadet troopers shall be required to undergo training at the Kentucky State Police Academy prior to appointment as troopers[officers]. During the training period, a cadet trooper may be dismissed at any time, with or without cause.

Section 3. Cadet troopers who successfully complete academy training shall be appointed as troopers [officers] and given the constitutional oath of office. Troopers [Officers] shall be on probation for a period of one (1) year from and after the date of appointment, and may be dismissed from employment at any time during the probationary period, with or without cause, pursuant to KRS 16.140(11).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, February 7, 2022)

502 KAR 45:115. Appeals.

RELATES TO: KRS 16.050

STATUTORY AUTHORITY: KRS 16.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 ~~requires~~~~[directs that]~~ the Kentucky State Police Personnel Board ~~to~~~~[shall]~~ hear appeals from applicants. This administrative regulation establishes the procedure for appeals.

Section 1. An applicant~~[Applicants]~~ who ~~is~~~~[are]~~ disqualified or deferred ~~during the application process~~ and who ~~believes~~~~[believe that]~~ the disqualification or deferral was unlawful or that ~~the applicant has~~~~[they have]~~ been discriminated against because of ~~the applicant's~~ ~~[their]~~ race, religion, sex, age, disability, ethnic origin, or political affiliation may initiate an appeal to the board by filing a statement of appeal in the office of the commissioner.

Section 2. The statement of appeal shall be in writing and shall be dated, signed, and sworn. It shall set forth with particularity the specific acts or omissions that are alleged to be discriminatory or otherwise unlawful. The statement of appeal shall be filed within thirty (30) days of the date of the act or omission which forms the basis for the appeal, or, if more than thirty (30) days have elapsed, within ten (10) days of the date that the applicant received notice or first became aware of the act or omission, if no notice was given.

Section 3. Within thirty (30) days of the receipt of the statement of appeal by the commissioner, ~~the appellant applicant shall receive confirmation the~~~~[their]~~ appeal was received and ~~that~~~~[,]~~ legal counsel for the department shall file a response which shall be served upon the appellant applicant ~~[appellant]~~. No later than sixty (60) days thereafter, the board shall consider the statement of appeal and the response. The board may rule upon the appeal based upon the statement of appeal and response, or ~~it~~ ~~[in its discretion]~~ may order a hearing~~[,]~~ with at least ten (10) days prior notice to the appellant applicant. ~~The appellant~~~~[Appellant]~~ applicant may elect to waive, in writing, the ten (10) day notice requirement.

Section 4. The board ~~[in its discretion]~~ may employ hearing officers who are attorneys to conduct the hearings and make advisory findings of fact, conclusions of law, and recommendations. At the hearing, the board shall not be bound by rules of order, evidence, or procedure except as it may itself establish.

Section 5. The board shall render a decision within six (6) months of the date of filing of the statement of appeal, and shall enter an order which sets forth the appropriate relief.

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PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS, February 7, 2022)

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

RELATES TO: KRS 304.12-237, 304.17A-150, 304.17A-235, 304.17A-500, 304.17A-527, 304.17A-530, 304.17A-532, 304.17A-560, 304.17A-575, ~~[304.17A-578]~~, 304.17A-728, 304.17C-060, 304.17C-070, 304.99

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-527(1), 304.17C-060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner ~~[executive director]~~ to promulgate reasonable administrative regulations necessary to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-527(1) and ~~[KRS]~~ 304.17C-060(1) ~~require~~~~[authorize]~~~~[require]~~ the commissioner ~~[Department]~~ to promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes the filing requirements of provider agreements, subcontract agreements, and risk sharing arrangements.

Section 1. Definitions.

(1) "Provider agreement" means a contract between an insurer offering a managed care plan and a provider for the provision of health care services.

(2) "Subcontract agreement" means a contract for the provision of health care services to:

An enrollee, which ~~is~~~~[shall be]~~~~[is]~~ negotiated between a participating health care provider with a managed care plan and a nonparticipating provider with a managed care plan; or

~~(b)~~ A covered person, which ~~is~~~~[shall be]~~~~[is]~~ negotiated between a risk sharing entity ~~through a "risk sharing arrangement"~~, as ~~defined by~~~~[identified in]~~ KRS 304.17A-500(13), and a provider.

Section 2. Filing Requirements. (1) An insurer, managed care plan, and limited health service benefit plan shall file a sample copy of the following with the commissioner at least sixty (60) days before its use:

- (a) Provider agreement;
- (b) Risk sharing arrangement; and
- (c) Subcontract agreement.

(2) A filing pursuant to subsection (1) of this section shall:

(a) Include:

- 1. A compensation arrangement, including a description of the:
 - a. Payment methodology; and
 - b. Payor as defined in the agreement;
- 2. Any attachment, exhibit, or addendum to the items listed in subsection (1) of this section;

3. A completed and signed Face Sheet and Verification Form HIPMC-F1, incorporated by reference in 806 KAR 14:007~~[17:005]~~; and

4. A filing fee, including:

- a. Twenty-five (25) dollars for a provider agreement or subcontract agreement filing; or
- b. Fifty (50) dollars for a risk sharing arrangement filing; and

~~(b)1.~~ Not be considered complete until the information required by paragraph (a) of this subsection is received by the department; and

2. Be disapproved if a complete filing is not received within sixty (60) days of the date of filing.

(3) If a managed care plan, insurer, or limited health service benefit plan amends an existing provider agreement, subcontract agreement, or risk sharing agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the managed care plan shall submit:

(a) An amended filing at least sixty (60) days before its use; and

(b) A letter that identifies and explains each amendment.

(4) The failure of a managed care plan, insurer, or limited health service benefit plan to file a sample copy of a provider agreement, subcontract agreement, or risk sharing agreement ~~shall constitute a basis for~~~~[may result in imposition of]~~ a civil penalty in accordance with KRS 304.99.

(5) An insurer issuing, delivering, or renewing a limited health service benefit plan shall complete and attach Form HL-F11, Health Summary Sheet – Form Filings, incorporated by reference in 806 KAR 14:007 ~~[HIPMC-F37, Limited Health Service Benefit Plan Summary Sheet – Form Filings (07/02)]~~, to each limited health service benefit plan filed with the commissioner.

Section 3. Provider Agreement Requirements. (1) The sample

copy of a provider agreement for an insurer or managed care plan filed with the commissioner shall:

- (a) Comply with the requirements of KRS 304.17A-527(1);
- (b) Comply with the requirements of KRS 304.17A-728; ~~and~~
- (c) Comply with the requirements of KRS 304.12-237, as applicable; and
- (d) Not include a:
 - 1. Most-favored nation provision in accordance with KRS 304.17A-560;
 - 2. Limitation on disclosure provision in accordance with KRS 304.17A-530;
 - 3. Condition of participation provision in accordance with KRS 304.17A-150(4); ~~or~~and
 - 4. Mandatory use of hospitalist provision in accordance with KRS 304.17A-532(2).
- (2) The sample copy of a provider agreement for a limited health service benefit plan filed with the commissioner shall:
 - (a) Comply with the requirements of KRS 304.17C-060(1);
 - (b) Be governed under the jurisdiction of~~by~~ Kentucky~~[-law];~~ and
 - (c) Not include a limitation on disclosure provision in accordance with KRS 304.17C-070.

Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement that is part of a provider agreement or risk sharing arrangement shall:

- (1) Be filed with the commissioner by the managed care plan, limited health service benefit plan, or insurer in conjunction with the provider agreement or risk sharing arrangement;
- (2) Meet applicable requirements of Section 3 of this administrative regulation; and
- (3) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

Section 5. Risk Sharing Arrangement Requirements. (1) The sample copy of a risk sharing arrangement filed with the commissioner shall:

- (a) Meet the requirements of Section 3 of this administrative regulation;
- (b) Include a Risk Sharing Arrangement Information Sheet, HIPMC-R1 ~~[, incorporated by reference in Section 6 of this administrative regulation]~~[incorporated by reference in 806 KAR 17:005]; and
- (c) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.
- (2) On or before September 1 of each calendar year, an insurer, managed care plan, or limited health services benefit plan shall file with the commissioner the HIPMC-R1, [incorporated by reference in Section 6 of this administrative regulation]~~[806 KAR 17:005]~~, for each risk sharing arrangement currently effective.

Section 6. Incorporation by Reference. (1) HIPMC-R1, Risk Sharing Arrangement Information Sheet, 10/2021 ~~["Limited Health Service Benefit Plan Summary Sheet – Form Filings HIPMC-F37", 07/18]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov>].

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PUBLIC PROTECTION CABINET

Department of Insurance

Division of Health and Life Insurance and Managed Care
(As Amended at ARRS, February 7, 2022)

806 KAR 17:575. Pharmacy benefit managers.

RELATES TO: KRS 304.1-050, 304.2-160, 304.2-165, 304.9-020, 304.17A-161, 304.17A-162

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-054~~[304.2-160, 304.2-165, 304.9-020, 304.17A-161,]~~ 304.17A-162

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) ~~authorizes [provides that] the commissioner of the Department of Insurance to promulgate [may make] reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-162 requires the department to promulgate~~[an] administrative regulations [regulation] [regulations] to establish [establishing] the manner in which a pharmacy benefit manager shall respond to an appeal regarding maximum allowable cost pricing, the manner in which a pharmacy benefit manager shall make available the sources for drug pricing data to contracted pharmacies [makes available to contracted pharmacies information regarding sources for drug price data], a comprehensive list of drugs subject to maximum allowable cost and the actual maximum allowable cost for each drug, and weekly drug list updates [updates to the list]. KRS 304.9-054 authorizes~~[304.2-160, 304.2-165, 304.9-020, 304.17A-161, and 304.17A-162 together authorize]~~ the department to promulgate [an] administrative [provide authority for the department's] regulations [regulation] to implement and enforce the provisions of KRS 304.17A-162 and specify the contents of any required forms or reports [establish the specific listing requirements and appeal processes related to maximum allowable cost pricing for pharmacy benefit managers] [of pharmacy benefit managers and the specific maximum allowable cost pricing and appeal process set forth in this administrative regulation]. This administrative regulation establishes requirements for a pharmacy benefit manager's maximum allowable cost appeals process, [the process for a pharmacy benefit manager's maximum allowable cost appeals process,] the process for the department's review of a complaint associated with a maximum allowable cost appeal, [and] the requirements for the cost listings made available by a pharmacy benefit manager, and reporting requirements.

Section 1. Definitions. (1) "Contracted pharmacy" or "pharmacy" is defined by KRS 304.17A-161(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Maximum Allowable Cost" is defined by KRS 304.17A-161(3).

(4) "Pharmacy Benefit Manager" is defined by KRS 304.17A-161(4).

Section 2. Maximum Allowable Cost Pricing Appeal Process.

(1) A pharmacy benefit manager shall establish a maximum allowable cost pricing appeal process that allows [where] a contracted pharmacy or the pharmacy's designee to [may] appeal if:

(a) The maximum allowable cost established for a drug reimbursement is below the cost at which the drug is available for purchase by pharmacists and pharmacies in Kentucky from national or regional wholesalers licensed in Kentucky by the Kentucky Board of Pharmacy; or

(b) The pharmacy benefit manager has placed a drug on the maximum allowable cost list in violation of KRS 304.17A-162(8).

(2) The pharmacy benefit manager shall accept an appeal submitted by a contracted pharmacy on or before sixty (60) days of the initial claim; and

(3) The pharmacy benefit manager's appeal process shall include the following:

[(a) The pharmacy benefit manager shall accept an appeal by

~~a contracted pharmacy on or before sixty (60) days of the initial claim~~];

(a) [(b)] Notification to the appealing party that the appeal has been received, and the names, addresses, email addresses, and telephone numbers of the pharmacy benefit manager's contact persons for questions regarding the maximum allowable cost appeal process; and

(b) [(c)] A provision allowing a contracted pharmacy, pharmacy service administration organization, or group purchasing organization to initiate the appeal process, regardless of whether [(f)] an appeal has previously been submitted by a pharmacy or the pharmacy's designee outside of Kentucky, by contacting the pharmacy benefit manager's designated contact person electronically, by mail, or telephone. If the appeal process is initiated by telephone, the appealing party shall follow up with a written request within three (3) days.

(4) [(3)] The pharmacy benefit manager's maximum allowable cost pricing appeal process shall be readily accessible to contracted pharmacies;

(a) Electronically; [(f)]

(b) Through publication on the pharmacy benefit manager's website; [(f)] and

(c) 1. In [(either)] the contracted pharmacy's contract with the pharmacy benefit manager; or

2. Through a pharmacy provider manual distributed to contracted pharmacies, pharmacy service administration organizations, and group purchasing organizations.

(5) [(4)] For an appeal received from a pharmacy services administration organization or a group purchasing organization related to a dispute regarding maximum allowable cost pricing, a pharmacy benefit manager may request documentation that the pharmacy services administration organization or group purchasing organization is acting on behalf of a contracted pharmacy before responding to the appeal.

(6) [(5)] The pharmacy benefit manager shall investigate, resolve, and respond to the appeal within ten (10) calendar days of receipt of the appeal. Upon resolution, the pharmacy benefit manager shall issue a written response to the appealing party that shall include the following:

(a) The date of the decision;

(b) The name, phone number, mailing address, email address, and title of the person making the decision; and

(c) A statement setting forth the specific reason for the decision, including:

1. If the appeal is granted:

a. The amount of the adjustment to be paid retroactive to the initial date of service to the appealing pharmacy;

b. The drug name, national drug code, and prescription number of the appealed drug; and

c. The appeal number assigned by the pharmacy benefit manager, if applicable; or

2. If the appeal is denied:

a. The national drug code of the appealed drug, or the national drug code of a therapeutically equivalent drug as referenced [defined] in KRS 304.17A-162(9), of the same dosage, dosage form, and strength of the appealed drug; and

b. The Kentucky licensed wholesaler offering the drug at or below maximum allowable cost on the date of fill.

(7) If [(6) When] a pharmacy benefit manager grants an appeal for which a price update is warranted in accordance with KRS 304.17A-162(2), the pharmacy benefit manager shall individually notify contracted pharmacies of the date of the granted appeal, the appealed drug, initial date of service, national drug code, generic code number, applicable information to identify the health benefit plan, and retroactive price update by the time of release of the next scheduled maximum allowable cost update following the appeal decision by:

(a) Mail Courier;

(b) Electronic mail;

(c) Facsimile; or

(d) Web portal posting for sixty (60) days and corresponding electronic communication to a contracted pharmacy with hyperlink to the portal for the granted appeal. A pharmacy benefit manager

shall include in the beginning and upon renewal of the contract with a pharmacy or the pharmacy's representative, notice[,] and instructions for how to access and use the web portal.

(8) [(7)] All contracted pharmacies permitted to reverse and resubmit claims following a granted appeal pursuant to KRS 304.17A-162(2) shall submit claims to the pharmacy benefit manager within sixty (60) days of notification that the appeal was granted.

(9) [(8)] A pharmacy benefit manager shall submit the maximum allowable cost pricing appeal process and a template response satisfying the requirements of subsection (6) [(5)] of this section to the department for review and approval.

Section 3. Department Review of Maximum Allowable Cost Pricing Appeal. (1) A contracted pharmacy or the pharmacy's designee may file a complaint with the department following a final decision of the pharmacy benefit manager, [to the department] in accordance with KRS 304.2-160, [and] 304.2-165, and 304.17A-162(5).

(2) A complaint shall be submitted to the department no later than thirty (30) calendar days from the date of the pharmacy benefit manager's final decision.

(3) The department shall be entitled to request additional information necessary to resolve a complaint from any party in accordance with KRS 304.2-165 and 304.17A-162(5).

Section 4. Maximum allowable cost list availability and format.

(1) [The pharmacy benefit manager shall make available to the contracted pharmacy a comprehensive list of drugs subject to maximum allowable cost pricing.

(2)] The comprehensive maximum allowable cost pricing list required under KRS 304.17A-162(4) shall:

(a) Be a complete listing by drug in an electronically accessible format; [, unless, upon a pharmacy's written request the list be provided in a paper or other agreed format within two (2) business days upon receiving the necessary information required for each list requested;]

(b) Identify the applicable health plan for which the pricing is applicable;

(c) [Be electronically searchable and sortable] Contain the ability to search and sort drugs electronically by individual drug name, national drug code, and generic code number;

(d) Contain data elements, including the drug name, national drug code, per unit price, and strength of drug;

(e) List a specific maximum allowable cost for each drug that will be reimbursed by the pharmacy benefit manager;

(f) Provide the effective date for that maximum allowable cost price; and

(g) Provide the date the maximum allowable cost list was updated.

(2) [(3)] The pharmacy benefit manager shall retain, in accordance with subsection (1) [(2)] (a) of this section, historical pricing data for a minimum of 120 days.

Section 5. Weekly Updates to Maximum Allowable Cost Price List.

(1) Pharmacy benefit managers shall send to all contracted pharmacies one (1) weekly update to the maximum allowable cost price list, in accordance with the requirements of this section.

(2) The weekly update, required under 34.17A-162(7), shall:

(a) Be in an electronically accessible format on the pharmacy benefit manager's Web site; and

(b) Include the information below for all drugs added, removed, or changed in price since the last weekly update:

[(a) Be in an electronically accessible format on the pharmacy benefit manager's Web site], unless, upon written request by the pharmacy the update be provided in paper or other agreed format within two (2) business days of receipt of the request from the contracted pharmacy];

1. [(b) Identify] The basis for each drug's inclusion on the update;

2. [(c)] If a drug is added to the maximum allowable cost list, the maximum allowable cost price [shall be indicated];

3.[(d) Identify] All drugs removed from the maximum allowable cost list;

4.[(e)] If a change in the maximum allowable cost price is made, **[include]** the old price~~;~~ and new price;

5.[(f) Identify] The drug name, national drug code, generic code number, and the applicable health benefit plan information; and

6.[(g) Identify] The effective date of the change.

Section 6. Data Source Availability. Each pharmacy benefit manager shall identify electronically or within contracts to all contracted pharmacies the national drug pricing compendia, or sources used to obtain drug price data for those drugs, subject to maximum allowable cost provisions. If any changes are made to the data sources following the execution of a contract, the pharmacy benefit manager shall individually notify the contracted pharmacies of the changes ~~[either]~~ through correspondence submitted electronically, by facsimile, or by mail courier.

Section 7. Annual report. All pharmacy benefit managers licensed to do business in Kentucky shall transmit ~~[at least annually by March 31 to the department]~~ a Pharmacy Benefit Manager Annual Report to the department at least annually, by March 31 of each year.

Section 8. Incorporation by Reference. (1) "Pharmacy Benefit Manager Annual Report," 06/1/2017~~[June 2017]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street~~[245 West Main Street]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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**PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS, February 7, 2022)**

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.[(b)] Contains methadone, buprenorphine, or naltrexone; or

[(b)](c)] 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; and

(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.

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**PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(As Amended at ARRS, February 7, 2022)**

806 KAR 18:030. Group health insurance coordination of benefits.

RELATES TO: KRS 304.17-042, 304.17A-250~~[(7)](9)]~~, 304.18-032, 304.18-085, 304.32-145, 304.38-185, 42 U.S.C. 1395

STATUTORY AUTHORITY: KRS 304.2-110(1), **304.17A-250,** 304.18-085, **304.32-145, 304.32-185,** 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner of the Department of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.32-250 authorizes the commissioner to promulgate reasonable administrative regulations necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the commissioner to promulgate reasonable administrative regulations necessary for the proper administration of KRS 304.38. This administrative regulation establishes guidelines for coordination of benefits by

group health insurance contracts.

Section 1. Definitions. (1) "Allowable expense" means a health care service or expense, including deductibles, coinsurance, and copayments, that is covered in full or in part by any of the plans covering the person.

(2) "Claim" means a request that benefits of a plan be provided or paid, and the benefits claimed are in the form of:

- (a) Services, including supplies;
- (b) Payment for all or a portion of the expenses incurred;
- (c) A combination of paragraphs (a) and (b) of this subsection;

or

- (d) An indemnification.

(3) "Complying plan" means a plan with benefit determination requirements that comply with the requirements of this administrative regulation.

(4) "Coordination of benefits" means a provision establishing an order in which plans pay their claims[,] and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(5) "Custodial parent" means the parent awarded custody of a child by a court decree or with whom the child resides more than one-half (1/2) of the calendar year.

(6) "Insurer" is defined by KRS 304.17A-005(29)[(27)].

(7) "Noncomplying plan" means a plan without benefit determination requirements or whose benefit determination requirements do not comply with the requirements of this administrative regulation.

(8) "Plan":

(a) Means:

1. A form of coverage with which coordination of benefits is allowed and "health benefit plans" as defined by KRS 304.17A-005(22); and

2. Sometimes includes Medicare benefits pursuant to 42 U.S.C. 1395, or other governmental benefits; and

(b) Does not mean:

1. The medical benefits coverage in a group, group-type, and individual motor vehicle "no-fault" or [and] traditional automobile "fault" type contract [contracts]; or

2. School accident-type coverages that cover elementary, high school, or college students for accidents only, including athletic injuries, either on a twenty-four (24) hour basis or on a "to-and-from school" basis.

(9) "Primary plan" means a plan whose benefits for a person's health care coverage are determined without taking the existence of any other plan into consideration if:

(a) The plan either has no order of benefit determination requirements, or its requirements differ from those permitted by this administrative regulation; or

(b) All plans that cover the person use the order of benefit determination requirements required by this administrative regulation, and under those requirements the plan determines its benefits first.

(10) "Secondary plan" means a plan that is not a primary plan.

Section 2. Requirements for Coordination of Benefits. (1) If a person is covered by two (2) or more plans, the requirements for determining the order of benefit payments shall be as established in paragraphs (a) through (c) of this subsection.

(a) The primary plan shall pay or provide its benefits as if the secondary plan or plans did not exist.

(b) A plan that does not contain a coordination of benefits provision consistent with this administrative regulation shall ~~be~~ always be primary, except that coverage obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may state the supplementary coverage shall be secondary to the basic package of benefits provided by the contract holder.

(c) A plan may take the benefits of another plan into account only if it is secondary to that other plan.

(2) Order of Benefit Determination. The following requirements shall be applied in the following priority, alphabetically to determine the order of plan payment:

(a) Nondependent or dependent.

1. The plan that covers a person other than as a dependent shall be primary.

2. The plan that covers a person as a dependent shall be secondary, unless the person is a Medicare beneficiary, in which case the order of benefits is determined in accordance with 42 U.S.C. 1395.

(b) Dependent child covered under more than one (1) plan. Unless a court decree determines otherwise, or a parent has made an election within the first thirty-one (31) days of birth to add a newborn as a dependent to one parent's plan, plans covering a dependent child, including a newborn subject to KRS 304.17-042 and 304.18-032, shall determine the order of benefits as established in subparagraphs 1. through 4. of this paragraph.

1. The primary plan shall be the plan of the parent whose birthday is earlier in the year if:

a. The parents are married;

b. The parents are not separated, whether or not they have ever been married [~~whether or not they ever have been married~~]; or

c. A court decree awards joint custody without establishing that one (1) parent has the responsibility to provide health care coverage.

2. If both parents have the same birthday, the plan that has covered either of the parents longer shall be primary.

3. If a court decree states that one (1) parent is responsible for the child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan shall be primary. If the parent with responsibility has no coverage for the child's health care services or expenses, but the responsible parent's spouse does, the spouse's plan shall be primary.

4. If the parents are divorced, separated, or not married, and there is no court decree allocating responsibility for the child's health care services or expenses, the order of benefit determination among the plans of the parents and the parents' spouses, ~~[(if any,)]~~ shall be the plan of the:

a. Custodial parent;

b. Spouse of the custodial parent;

c. Noncustodial parent; and

d. Spouse of the noncustodial parent.

(c) Active or inactive employee. The plan that covers a person as an active employee, neither laid off nor retired, or as an active employee's dependent, shall be primary. The plan covering the same person as a retired or laid-off employee, or as a dependent of a retired or laid-off employee, shall be the secondary plan.

(d) Continuation coverage. If a person has coverage provided pursuant to a right of continuation pursuant to federal or state law and is also covered under another plan, the continuation coverage shall be secondary.

(e) Longer or shorter length of coverage. If the preceding requirements established in paragraphs (a) through (d) of this subsection, respectively, do not determine the order of benefits, the plan that covered the person for the longer period of time shall be primary:

1. To determine the length of time a person has been covered under a plan, two (2) plans shall be treated as one (1) if the covered person was eligible under the second within twenty-four (24) hours after the first ended;

2. Changes during a coverage period that do not constitute the start of a new plan include:

a. A change in scope of a plan's benefits;

b. A change in the entity that pays, provides, or administers the plan's benefits; or

c. A change from one (1) type of plan to another; and

3. The person's length of time covered under a plan shall be measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding requirements established in paragraphs (a) through (e) of this subsection, respectively,

determines the primary plan, the allowable expenses shall be shared equally between the plans.

Section 3. Procedure to be followed by Secondary Plan to Calculate Benefits and Pay Claim.

(1) A secondary plan shall reduce its benefits so that the total benefits paid or provided by all plans shall not be more than 100 percent of total allowable expenses.

(2) If a person is covered by more than one (1) secondary plan, the order of benefit determination requirements of this administrative regulation shall decide the order in which secondary plans benefits shall be determined in relation to each other.

(3) The secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

Section 4. Notice to Covered Persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one (1) health benefit plan, you should file all your claims with each plan."

Section 5. Miscellaneous Provisions. (1) Provision of Services. A secondary plan that provides benefits in the form of services shall only recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan.

(2) Non-Complying Plan Coordination.

(a) A plan with order of benefit determination requirements that comply with this administrative regulation may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination requirements that do not comply with those contained in this administrative regulation if the:

1. Complying plan is the primary plan, it shall pay or provide its benefits first;

2. Complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In that situation, the payment shall be the limit of the complying plan's liability; and

3. Noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own[,] and shall pay its benefits accordingly. If, within two (2) years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it shall adjust payments accordingly.

(b) If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan, and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation as established in paragraph (c)[(3)1. through 4.] of this subsection, then the complying plan shall advance to or on behalf of the covered person an amount equal to the difference.

(c) The complying plan shall not advance more than the complying plan would have paid had it been the primary plan, less any amount it previously paid for the same expense or service, and:

1. In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan; and

2. The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

(3) Coordination of benefits differs from subrogation. Provisions for one (1) may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

(4) If the plans cannot agree on the order of benefits within thirty (30) calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities

following payment, except that a plan shall not be required to pay more than it would have paid had it been the primary plan.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, February 7, 2022)**

810 KAR 6:001. Definitions for 810 KAR Chapter 6.

RELATES TO: KRS Chapter 230.13

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 6.

Section 1. Definitions.

(1) "Added money" means:

(a) Cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race; or

(b) In the context of pari-mutuel wagering, any amounts provided by an association in addition to the amounts wagered by patrons and any carryover amounts.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.

(4) "Appaloosa racing" is defined by KRS 230.210(3).

(5) "Arabian horse" means "arabian" as defined by KRS 230.210.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to 810 KAR Chapter 6.

(7) "Association" is defined by KRS 230.210(5).

(8) "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey by virtue of notarized appointment of agency filed with the commission.

(9) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager can be placed.

(10) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(11) "Breakage" means the net pool minus payout.

(12) "Breeder" means the owner of the dam of a horse when the horse was foaled. A horse is "bred" at the place of its foaling.

(13) "Calendar days" means consecutive days counted irrespective of number of racing days.

(14) "Carryover" means nondistributed pool monies that[which] are retained and added to a corresponding pool in accordance with 810 KAR 6:020.

(15) "Claiming race" means any race in which every horse running in the race can be transferred in conformity with 810 KAR 4:050.

(16) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(17) "Commission" means:

(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, KRS 230.750, and KAR Title 810. This meaning can also refer to "takeout" as defined by subsection (83) of this section.

(18) "Communications Technology" means the methods used and the components employed to facilitate the transmission of information, such as electronic communications, and transmission and reception systems based on wire, cable, radio, microwave, light, optics, or computer data networks or any similar electronic agent.

(19) "Control Program" means any software, source language, or executable code that controls the entertaining award display, such as software, source language, or executable code associated with:

- (a) Race selection or related events;
- (b) Accounting and reporting meter and log information;
- (c) Operation of totalizators; and
- (d) Any other processes established[outlined] in the internal controls or as approved by the commission.

(20)[(48)] "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(21)[(49)] "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(22)[(20)] "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 6.

(23)[(24)] "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on historical horse races.

(24)[(22)] "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money;
- (g) Forfeiture of purse money; or
- (h) Any combination of paragraphs (a) through (g) of this subsection.

(25)[(23)] "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(26)[(24)] "Driver" means a person who is licensed to drive a horse in a harness race.

(27) "Entertaining Award Display" or "Interactive Award Display" means an entertaining system utilizing mechanical or digital components to display the outcome of a pari-mutuel wager through the use of spinning reels, wheels, games, or other types of interactive components that are represented by animations or audio cues. An Entertaining or Interactive Award Display is[must be] connected to a totalizator approved by the commission. Entertaining or interactive displays are[shall] only [be] used in conjunction with pari-mutuel wagering on a historical horse race or races.

(28)[(25)] "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(29)[(26)] "Equipment" means:

(a) Accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes; or[-]

(b) Racing system components or other equipment found suitable by the commission or its designee that is required to operate entertaining or interactive award displays and interactive terminals.

(30)[(27)] "Exhibition race" means a race between horses of

diverse ownership for which a purse is offered by the association, but on which pari-mutuel wagering is not permitted.

(31)[(28)] "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race or races other than a win, place, or show wager placed on a live horse race.

(32)[(29)] "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that is not a mutuel entry.

(33)[(30)] "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(34)[(34)] "Free handicap" means a handicap for which a nominating fee is not required to be weighted, but an entrance or starting fee can be required for starting in the race.

(35)[(32)] "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(36)[(33)] "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(37)[(34)] "Historical horse race" means any horse race that:

- (a) Was previously run at a licensed pari-mutuel facility located in the United States;
- (b) Concluded with official results; and
- (c) Concluded without scratches, disqualifications, or dead-heat finishes.

(38)[(35)] "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding).

(39)[(36)] "Ineligible" means a horse or person not qualified under 810 KAR Chapter 6 or conditions of a race to participate in a specified racing activity.

(40)[(37)] "Initial seed pool" means a nonrefundable pool of money that can be funded by an association in order to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race in the event of a minus pool.

(41) "Interactive terminal" or "HHR terminal" means "terminal" as defined by subsection (89)(b) of this section.

(42) "Internal controls," "minimum internal control standards," or "control standards" means[refers to] the system of internal procedures, as well as administrative and accounting controls related to the integrity of pari-mutuel wagering. This type of system can[any such system may] be required by the commission as a condition to conduct live horse racing, simulcasting, and pari-mutuel wagering.

(43)[(38)] "Jockey" means a rider currently licensed to ride in races other than harness races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(44)[(39)] "Judge" means a duly appointed racing official with powers and duties established in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(45)[(40)] "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(46)[(41)] "Licensed premises" is defined by KRS 230.210.

(47)[(42)] "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(48)[(43)] "Maiden" means a horse that has never won a race on the flat at a recognized meeting in any country. A maiden that was disqualified after finishing first remains a maiden. Race conditions referring to maidens are[shall be] interpreted as meaning maidens at the time of starting.

(49)[(44)] "Match race" means a race that is between two (2) horses and for which other horses are not eligible.

(50)[(45)] "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

- (a) Begins at 10 a.m. of the first racing day; and
- (b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

(51)[(46)] "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the

amount of money contained in that pari-mutuel pool.

(52)[(47)] "Month" means calendar month.

(53)[(48)] "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(54)[(49)] "Net pool" means the total amount wagered less refundable wagers and takeout.

(55)[(50)] "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(56)[(51)] "Nominator" means the person in whose name a horse is entered for a race.

(57)[(52)] "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(58)[(53)] "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" is defined by KRS 230.210.

(59)[(54)] "Pari-mutuel pool" means any pool into which pari-mutuel wagers made by patrons are placed. For every wager placed into a pari-mutuel pool by a patron, that patron is eligible to receive at least a minimum payout on a winning wager.

(60)[(55)] "Patron" means an individual present at a track, licensed premises, or a simulcast facility who observes or wagers on live or historical horse races.

(61)[(56)] "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(62)[(57)] "Place," if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest that finished first or second in a race; or if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first or second.

(63)[(58)] "Player-funded pool" means a pool of money funded by patrons wagering on a live or historical horse race or races that is only used to ensure that a patron will receive a payout on a winning wager in the event of a "minus pool" as defined in this administrative regulation.

(64)[(59)] "Post" means the starting point of a race.

(65)[(60)] "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(66)[(61)] "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(67)[(62)] "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(68)[(63)] "Purse" means the gross cash portion of the prize for which a race is run.

(69)[(64)] "Quarter horse" is defined by KRS 230.210.

(70)[(65)] "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(71)[(66)] "Race" means a running contest between horses, ridden by jockeys or driven by drivers, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(72)[(67)] "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(73)[(68)] "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(74)[(69)] "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries that are regulated by a racing authority that has reciprocal relations with The Jockey Club and whose race records can be provided to an association by The Jockey Club.

(75)[(70)] "Registration certificate" means, with respect to thoroughbreds:

(a) The document issued by The Jockey Club certifying the name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club; or

(b) The document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate if a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(76)[(71)] "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(77)[(72)] "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(78)[(73)] "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(79)[(74)] "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(80)[(75)] "Secretary" means the duly appointed and currently serving secretary of the commission.

(81)[(76)] "Simulcasting" is defined by KRS 230.210.

(82)[(77)] "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(83)[(78)] "Stakes" means all fees:

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race; and

(b) Included in the purse.

(84)[(79)] "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" excludes races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).

(85)[(80)] "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(86)[(81)] "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(87)[(82)] "Subscription" means nomination or entry of a horse in a stakes race.

(88)[(83)] "Takeout" means "commission" as defined by subsection (17)(b) of this section

(89)[(84)] "Terminal" means:

(a) Any commission approved self-service device or other totalizer-based peripheral equipment[totalizer-machine-or-other mechanical equipment] used by a patron to place a pari-mutuel wager on a live or historical horse race or races; or

(b) Any commission approved mechanical, electrical, or other device, contrivance, or machine that, upon funding of any pari-mutuel wager on a historical horse race or races, is capable of placing a pari-mutuel wager on that historical horse race or races.

These devices can[All such devices may] provide handicapping methods approved by the commission, in addition to manual handicapping. In the event of a winning wager, a terminal displays and either delivers or entitles the patron to receive a payout pursuant to 810 KAR 6:030. Payouts are[Any such payouts may be] issued by the terminal itself or by the licensed association approved to operate the interactive terminal and related pari-mutuel pool.

[(c) The commission must approve any such terminal and the commission may revoke that approval at any time.]

(90)[(85)] "Thoroughbred racing" is defined by KRS 230.210.

(91)[(86)] "Totalizer" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds

and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(92)(87) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(93)(88) "Wagering pool" means "pari-mutuel pool" as defined by this administrative regulation subsection (54) of this subsection.

(94)(89) "Walkover" means a race in which the only starter or all starters represent single ownership.

(95)(90) "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(96)(91) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(97)(92) "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as established in 810 KAR 4:020.

(98)(93) "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(99)(94) "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. If any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, February 7, 2022)

902 KAR 10:120. Kentucky public swimming and bathing facilities.

RELATES TO: KRS Chapter 13B, 211.015, 211.090, 211.210, 211.220[244.480], 211.990(2), 322.110, 323.020, 29 C.F.R. 1910.119, 15 U.S.C. 8003

STATUTORY AUTHORITY: KRS [Chapter 13B,] 194A.050(1), 211.180(1)[211.090(3), HB 492 (1988 Acts), EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet[HB 492 (1988 Acts) directs the Cabinet for Health Services to regulate the design and construction of water distribution and treatment systems for swimming pools]. KRS 211.180 authorizes[directs] the cabinet [for Health Services] to adopt administrative regulations relating to public facilities[,], and their operation and maintenance in a safe and[.] sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for public swimming pools and [other swimming or] bathing facilities. [The function of this administrative regulation is to assure the proper design and construction of new facilities as related to water distribution and treatment systems, and the proper operation and maintenance of all such facilities in a manner which will protect the public health. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Accessible" means having access[, if applied] to a fixture, connection, appliance or equipment, even if it

is necessary to remove[having access to it, but may require the removal of] an access panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.

(4) "Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).

(5) "Approved" means that which is acceptable to the cabinet.

(6) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(7) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(8) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(9) "Bather" means a person using a public swimming and bathing facility.

(10) "Cabinet" is defined by KRS 211.015(a).

(11) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(12) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that will need to[must] be periodically replaced.

(13) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(14) "Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which:

(a) Is sized to satisfy pump demand and prevent air lock or loss of prime; and

(b) Contains a float valve assembly and pop-up valve.

(15) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(16) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(17) "Filter aid" means an enhancement to the efficiency of the filter media.

(18) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(19) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

(20) "Filtration rate" means the rate of water flow through a filter while in operation.

(21) "Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.

(22) "Flow meter" means a device that measures the flow of water through piping.

(23) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(24) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(25) "Hydrojet" means a fitting which blends air and water, creating a high velocity, turbulent stream of air enriched water.

(26) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(27) "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank, and[, it] is often referred to as a "main drain".

(28) "Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.

(29) "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum

gutter.

(30) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(31) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

(32) "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.

(33) "Pop-up valve" means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.

(34) "Positive shutoff valve" means a valve that completely stops the flow of water.

(35) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(36) "Public swimming and bathing facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, **except for, it does not include** a pool at a private single family residence intended only for the use of the owner and guests.

(37) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(38) "Septum" means that part of the filter element consisting of cloth, **or** closely woven fabric, or other porous material on which the filter cake is deposited.

(39) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(40) "Spray pad" means an area **that**:

(a) **Has[with]** aquatic play features that spray or drop water for the purpose of wetting people;

(b) **Is[, and are]** designed so that there is no accumulation or ponding of water on the ground;**;** and

(c) Includes both recirculating and non-recirculating water systems.

(41) **"State Building Code" means the requirements established in 815 KAR Chapter 7.**

(42) **"State Plumbing Code" means the requirements established in 815 KAR Chapter 20.**

(43) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(44)~~(42)~~ "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.

(45)~~(43)~~ "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(46)~~(44)~~ "Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.

(47)~~(45)~~ "Total discharge head" means the amount of water that a pump will raise water above its center line.

(48)~~(46)~~ "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(49)~~(47)~~ "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, **which[and]** is composed of the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in **facility[swimming pool]** water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

(50)~~(48)~~ "Total suction head" means the amount of water that a pump will lift by suction.

(51)~~(49)~~ "Turnover rate" means the time **requirements**, in hours or minutes, **[required]** for the circulation system to filter and recirculate a volume of water equal to the facility volume.

~~(52)~~~~(50)~~ "Wading pool" means a pool or area within a pool where the water depth is twenty-four (24) inches or less.

~~(53)~~~~(41)~~ "Weir box" means an overflow system placed at normal operating water surface level to remove surface debris and does not form a continuous loop around the pool perimeter.

Section 2. Submission of Plans and Specifications for Approval.

(1) **A[No]** person shall **not** construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.

(3) The front page of the plans submitted for review and approval shall contain the:

(a) Name of the swimming and bathing facility;

(b) Location by city and county;

(c) Name and contact information for the facility owner;

(d) Name of the installer; and

(e) Name of the engineer, architect, or person preparing the plans.

(4) Plans submitted by an engineer or architect shall bear the individual's official seal.

(5) Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet, shall be prepared by an engineer or architect registered in the State of Kentucky.

(6) The plans shall be:

(a) Drawn to scale;

(b) Accompanied by proper specifications to permit a comprehensive review of the plans, including the piping and hydraulic details; and

(c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment; and

4. Drawing of equipment room showing placement of equipment.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of recirculation piping system construction and prior to **the[such]** piping being **tested for** air pressure **[tested]** at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for inspection.

(9) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(10) The facility shall not be used before receiving a final inspection and written approval from the cabinet.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing:

(a) Sufficient quantities of water under pressure to all water-

using fixtures and equipment at the facility; and
(b) [be capable of providing] Enough water to raise the water level by at least one (1) inch in three (3) hours in:
1. Swimming, diving, or wave pools; and
2. Water slide plunge pools; at least one (1) inch in three (3) hours].

Section 4. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; or and]

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and

(b) There shall not be any[no] sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall not be any[no] discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 5. Sewage and Wastewater Disposal. (1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. This[Such] drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 6. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.

(2) An adequate number of refuse containers and with tight fitting lids shall be provided at readily accessible locations at all public swimming and bathing facilities.

(3) Refuse containers in women's restrooms shall be kept covered.

(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.

(5) Bulk refuse containers shall be:

(a) Of approved design and construction;

(b) Kept closed; and

(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 7. Facility Design and Construction. (1) All public swimming and bathing facilities, and attendant structures, such as bathhouses, dressing rooms, or restrooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at

least 100 feet. Within these[such] limits of safe swimming there shall not be any[no] boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility, if possible, and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;

2. At the point of change of slope between deep and shallow portions or [(transition point)];

3. At intermediate two (2) feet increments of water depth; and

4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.

Section 8. Facility Water Treatment Systems. (1)(a) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities, except bathing beaches.

(b) All system components, including piping, shall bear the **NSF International (NSF)**~~(National Sanitation Foundation)~~ potable water (NSF-pw) mark.

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.

(b) The turnover rate shall be:

Type of Facility	Turnover Required
Diving pools	8 hours or less
Wading pools, Spas, Therapy pools, Spray pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature	30 minutes or less
Wave pools, Lazy rivers, Water rides	2 hours or less
Vortex pools, Plunge pools	1 hour or less
All other pools	6 hours or less

(c) Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.

(d) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(e) The pump or pumps shall supply the required recirculation

rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(f) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(g) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(h) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(i) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(j) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(k) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided~~[;]~~ and **shall** be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be:

(a) Located so that the rate of recirculation may be easily read;

(b) Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and

(c) Installed on each recirculation system, spray pad feature, waterslide, any other type of spray feature, and on multiple filtration units.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be:

1. Provided for all facilities except beaches; and
2. Capable of reaching all parts of the facility bottom.~~[;]~~

(b) A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided.~~[;]~~

(c)1. If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:

a. Eight (8) to twelve (12) inches below the normal water level; and

b. With a cap or plug that is not removable by bathers.

2. Piping from this connection shall be:

a. To the suction side of the pump ahead of the hair and lint strainer;

b. At least one and one-half (1 1/2) inches in diameter; and

c. Equipped with a control valve near the junction with the pump suction line.

3. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning.~~[;]~~

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom.~~[; and]~~

(e) Vacuum systems shall only be used when the facility is closed to bathers.

(6) Piping, skimmer, and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;

2. Surge tank drain and overflow lines;

3. Pump discharge to waste lines; and

4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except ~~that in~~ facilities equipped with skimmers ~~[it]~~ shall **have a velocity of flow/be** in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots.

(d) Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.

(e) Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(f) Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.

(g) The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15).~~[;]~~ Any fraction thereof would represent one (1) additional inlet.

(h) Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid ~~shall~~**must** form a continuous loop with no reduction in loop pipe sizing.

(i) A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities, regardless of size.

(j) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(k) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.

(b) Openings and grates shall:

1. Conform to 15 U.S.C. 8003;

2. Be covered by a proper grating that is not removable by bathers;

3. Be at least four (4) times the area of the main outlet pipe;

4. Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow; and

5. Have a[The] maximum grate opening width of [grate openings shall be] one-fourth (1/4) inch.[;]

(c) Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series.[;]

(d) A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer.[; and]

(e) Main outlet piping shall be sized for water removal [of the water through it] at a rate of at least 100 percent of the design recirculation flow rate and at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;

2. Permit inspection, cleaning, and repair;

3. Be designed so that no ponding or retention of water occurs within any portion of the system;

4. Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;

5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;

6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;

7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;

8. Discharge to the recirculation system;

9. Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use;

10. Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and

11. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other.[;]

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.[;]

(d) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.[;]

(e) Each skimmer shall be provided with an equalizer line at least

one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003.[;]

(f) All overflow water shall pass through a basket that can be removed without the use of tools.[A basket that can be removed without the use of tools and through which all overflow water must pass; and]

(g) All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

a. Pressure gauges;

b. An observable free fall, or a sight glass installed on the backwash discharge line; and

c. A manual air-relief valve at the high point;

2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

3. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and

4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day, except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) The filter system shall be designed with necessary valves and piping to permit filtering to the pool.

(g) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(h) Diatomaceous earth filters shall comply with the following requirements:[;]

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoat;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods:

- a. Backwashing;
- b. Air-pump assist backwashing;
- c. Spray wash;
- d. Water pressure to wash vacuum filter; or
- e. Agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.

(i) Vacuum sand filters shall comply with the following requirements:

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(j) Cartridge filters shall comply with the following requirements:

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (e) of this subsection.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:

a. Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or

b. Three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section.

2. The equipment for supplying chlorine shall not be controlled by a day-date clock.

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank.

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems shall:

a. Shall be provided on all splash pads with a recirculating water system;

b. Shall be installed on a bypass line; and

c. Shall be equipped with a flow indicator; and

d. May be used on other facilities as supplemental disinfection.

6. Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the cabinet on a case-by-case basis.

7. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps, or ~~hypochlorinators,~~ are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the

volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.

(e) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

(15)(a) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of at least the following:

1. a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents shall ~~are~~ not be acceptable; and

2. At least five (5) chlorine color standards and five (5) pH color standards.

(b) Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).

(d) Both tests shall be accurate to within two-tenths (0.2) units.

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

Section 9. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one and five-tenths (1.5) ~~(4)~~ to five (5) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine;

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) ppm, superchlorination is required. During the superchlorination process and until the[such] time that[as] free chlorine levels return to five (5) ppm or less, the facility shall be closed.

(3) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times so that:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool; and

(b) The openings of the main outlet grate are clearly visible by an observer on the deck.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(6) Temperature.

(a) The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical

therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated~~[f.]~~ and that the variance will not jeopardize public health.

(b) Air temperature at an indoor facility shall be higher than the water temperature, except for spas.

(c) Water temperatures for any facility including spas shall not exceed 104 degrees Fahrenheit.

(d) All facilities with heated water shall have at least one (1) break proof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) The following~~[Alkalinity, cyanuric acid (if used)]~~ shall be checked weekly, or more often as needed:

1. Alkalinity; and

2. Cyanuric acid, if used.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 10. General Facility Operation and Maintenance. (1) All facilities shall be maintained:

(a) Free from sediment and debris; and

(b) In good repair.

(2) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly.

(3) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily.

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair.

(c) Floors shall be maintained in a nonslip condition.

(d) Soap dispensers shall be filled and operable.

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(8) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(9) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility.~~[f.]~~

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day.~~[f.] and]~~

(c) Recirculation pumps. The pump shall not be throttled on the suction side ~~[(except the bottom drain line valve)]~~ during normal operation, except for the bottom drain valve, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(11) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened, as necessary, to remove air which collects in the filter~~[f.]~~ and following each backwash.~~[f.] and]~~

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(12) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(13) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(14) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(15) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(16) Chlorinated cyanurates. The use of chlorinated cyanurates shall be/is] prohibited.

(17) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH.~~[f.]~~

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical.~~[f.]~~

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH.~~[f.]~~

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical.~~[f.] and]~~

(e) The cabinet shall be consulted if there are[in the event of]

unusual pH problems including corrosion, scaling, or wide fluctuations in pH.

(18) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose and removed by the suction cleaner and filtration system.

(19) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet.~~;~~**]**

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, and in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals.~~;~~**]**

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions.~~;~~**and]**

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(20) Equipment rooms shall comply with the following requirements:~~;~~**]**

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(21) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas~~;~~**]** and shall extend beneath the water of all wading and swimming areas.~~;~~**and]**

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high water turbidity, which may present safety hazards to bathers.

Section 11. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation of the facility on the DFS-352, Swimming Pool Log Sheet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records shall be kept showing daily or weekly results, as applicable, for:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level, ~~[(if applicable)]~~**]**; and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 12. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) Lifeguards shall be on duty at a facility that has 2,000

square feet or greater of water surface area at a rate of one (1) per 2,000 square feet or fraction thereof.

(b) Lifeguards shall be provided at all facilities, regardless of water surface area, that allow bathers seventeen (17) years of age or under to enter the facility area without a responsible adult present at a rate of one (1) lifeguard per 2,000 square feet of water surface area or fraction thereof.

(c) All facilities that are not required to provide lifeguards ~~shall~~**[must]** post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the facility area alone or swim alone."

(d) All beaches shall provide lifeguards at a rate of one (1) per 100 linear feet of beach front or fraction thereof, and a minimum of one (1) per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.

~~(e) This shall be~~**[is]** the minimum lifeguard coverage acceptable under this administrative regulation. Additional lifeguards shall be provided if necessary~~[may be required]~~ depending on bather load, bather activities, size, and configuration of the facility, and the amount of surface area for shallow and deep water areas, emergencies, and the lifeguard's ability to see bathers.

(f) Lifeguards shall comply with the following:

1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

2. Lifeguards shall be dressed in swimming attire; and

3. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:

~~a. Distract their attention from proper observation of persons in the facility area;~~**]** or

~~b. [that would]~~ Prevent immediate assistance to persons in distress in the water.

Section 13. Safety Equipment. (1) Facilities requiring lifeguards shall have a minimum of one (1) elevated lifeguard chair per on-duty lifeguard. A lifeguard chair shall be provided for each 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.

(3) One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or fraction thereof:

(a) A U.S. Coast Guard approved ring buoy no more than fifteen (15) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;

~~(b) Rescue tubes may be used when lifeguards are present;~~

~~(c) A shepherd's hook securely attached to a one piece pole not less than twelve (12) feet in length; and~~

~~(d)[(e)]~~ One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries.

(4) Facilities limited to small spas, with less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(5) In addition to subsection ~~[three]~~**(3)** of this section, a beach shall provide the following lifesaving equipment:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat~~;~~**]** and one (1) unit of lifesaving equipment; and

(c) A torpedo shaped buoy.

(6) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(7) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove ~~this[such]~~ equipment from its established location. This equipment at beaches shall be located at each lifeguard chair, with the lifeboat required by subsection (5)(b) of this section being located at the most centrally stationed lifeguard chair.

(8) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(9) All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.

(10)(a) All facilities shall have a non-pay landline telephone, **continuously connected to a power source and operational at all times**, capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. **A cordless telephone shall be prohibited.**

(b) A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.

(c) The **address of the facility and the** telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(11) All drownings and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.

Section 14. Spectator and Bather Administrative Regulations. (1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease ~~or~~~~i~~ infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) ~~[No]~~ Food, drink, gum, tobacco, or vapor producing **products shall not[product, will]** be allowed, other than in specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized;

(d) ~~[No]~~ Running and ~~[no]~~ boisterous or rough play **shall not be permitted, [except for supervised water sports] are permitted;**

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water **shall[is]** not **be** permitted;

(f) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water **shall[is]** not **be** permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Service animals may be allowed in the deck area but shall be excluded from the water[Animals shall be excluded from the facility area].

(3)(2) Due to the nature of bathing beaches, subsection (2)(c), and (f) of this section shall not apply. **[Subsection (2)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except subsections (2)(a)2. and 3., which shall be enforced at all facilities.]**

(4)(3) In addition to the requirements of subsection (2) of this section, a caution sign shall be mounted adjacent to all spas and contain the following warnings:

"CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high or low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa."

(5)(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 15. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 16. Facility Inspection. (1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation, except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.~~;~~ **and/**

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing ~~[(free available residual)]~~ and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing, ~~[(if cyanuric acid stabilizers are used)];~~

(e) Turbidity assessment;

(f) Temperature testing, ~~[(if heated water facility)];~~

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

(5) Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

(7) When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection, or DFS-350, Public Swimming and Bathing Facilities Beach Inspection Report, and a copy provided to the facility owner or operator. The inspection report shall:

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- (a) Set forth any violation observed;
- (b) Establish a specific and reasonable period of time for the correction of the violation observed; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 17. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak. These samples, and shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

- (a) Total coliform;
- (b) E. coli; and
- (c) Pseudomonad organisms.

(3) Multiple samples shall be collected at beaches to assure adequate representation of the entire facility water area.

(4) If a sample tests/is positive [test] for a contaminant, the test shall be repeated within one (1) to seven (7) days.

(5) For a facility other than a bathing beach, no more than two (2) consecutive samples shall be positive for:

- (a) More than two (2) coliform organisms per 100 milliliter (mL);
- (b) Pseudomonas organisms; or
- (c) E. coli.

(6) Beaches shall comply with the requirements of Section 4 of this administrative regulation prior to opening for the season and during the operating season.

(7) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 18. Bacteriological Quality of Facility Water. (1) For facilities other than beaches, no more than two (2) consecutive samples shall:

- (a) Contain more than 200 bacteria per mL;
- (b) Have a positive confirmatory test for coliform organisms in any of the five (5) ten (10) mL portions of a sample or more than two (2) coliform organisms per 100 mL when the membrane filter test is used;
- (c) Have a positive confirmatory test for pseudomonas organisms; or
- (d) Have a positive test for fecal coliform organisms.

(2) Beaches shall comply with the standards established/set forth in Section 4(3)(a) of this administrative regulation.

Section 19. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

- (a) There is an immediate danger to health or safety;
- (b) Violations of the Virginia Graham Baker Act;
- (c) The water does not conform to the bacteriological standards contained in this administrative regulation;

(d) [e] An environmental survey of the area shows evidence of sewage, [or] other pollutants, or toxic materials being discharged to waters tributary to a beach;

(e) [d] Turbidity levels of facility water do not meet the requirements of Section 9(4) of this administrative regulation;

(f) [e] The disinfectant residual is outside the range prescribed in this administrative regulation;

(g) [f] The pH is outside the range prescribed by this administrative regulation;

(h) [g] The cyanuric acid level exceeds fifty (50) ppm;

(i) [h] There is no pool operator available;

(j) [i] There has been a fecal accident in the pool;

(k) [j] [In any instance where] The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet who bear, bearing proper identification, in the performance of their duties;

(l) [k] If recirculation systems, filtration systems, or disinfectant

systems are not in operation, with exceptions for maintenance [,] and seasonal shut down; or

(m) [l] If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.

(6) In all other instances of a violation of the provisions of this administrative regulation, or 902 KAR 10:121 for the nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct the violation[same]. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation or 902 KAR 10:121 shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of the[such] notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet [,] by the owner or operator [,] within the ten (10) day period.

(7) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(8) Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(9)(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 20. Existing Facilities and Equipment. (1) [Notwithstanding the other provisions of this administrative regulation,] Existing facilities and equipment being used prior to August 1, 1996, that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

(a) Are in good repair;

(b) Are, [,] capable of being maintained in a sanitary condition;

(c) [,] Meet facility water quality standards; [,] and

(d) Create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 21. Effect on Local Administrative Regulations. Compliance with this administrative regulation shall/does not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

Section 22. Variances for Construction Requirements. (1) All

facilities shall be constructed or remodeled in compliance with the provisions of ~~this/these~~ administrative ~~regulation/regulations~~, except that an applicant may request a variance ~~if the cabinet determines/in those cases where it is determined~~ that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require ~~adequate~~ proof from the applicant ~~documenting~~ that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

Section 23. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "DFS-349, Public Swimming and Bathing Facilities Inspection" 5/2021;

(b) "DFS-350 Public Swimming and Bathing Facilities Beach Inspection Report" 5/2021; and

(c) "DFS-352 Swimming Pool Log Sheet" 5/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

[(1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction. "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Air induction system" means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).

(5) "Alkalinity or total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (p.p.m.).

(6) "Approved" means accepted or acceptable under the applicable specifications stated or cited in the administrative regulation or accepted as suitable for the proposed use by the State Building Code

(7) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(8) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(9) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(10) "Bather" means any person using a public swimming and bathing facility, and adjoining deck or beach area for the purpose of therapy, relaxation, recreation, competitive water sports or events, or related activities.

(11) "Bather load" means the maximum number of persons which may use the swimming and bathing facility as defined in the State Building Code.

(12) "Body feed" means the continuous addition of controlled amounts of filter aid during the operation of a diatomite type filter to maintain a permeable filter cake. If added as a slurry, this may be referred to as a slurry feed.

(13) "Cabinet" means the Cabinet for Health Services and its authorized agents.

(14) "Cartridge" means a replaceable porous filter element which can be the depth type or the surface type:

(a) "Depth type cartridge" means a filter cartridge with media not less than three-fourths (3/4) inch (.18 cm) thick which relies on

penetration of particulates into the media to achieve their removal and to provide adequate holding capacity for the cartridge; and

(b) "Surface type cartridge" means a filter cartridge with media less than three-fourths (3/4) inch (.18 cm) thick which relies on retention of particulates on the surface of the cartridge to achieve their removal.

(15) "Chemical feeder output rate" means the weight or volume of active ingredients delivered by a chemical feeder expressed in units of time.

(16) "Chemical feed rate indicator" means a mechanism which will produce reproducible results expressed in units of weight or volume of chemical per unit of time, or per unit of volume of water; the mechanism may be a direct reading instrument, or may require the use of a reference chart.

(17) "Circulation piping system" means the piping between the facility structure and the mechanical equipment.

(18) "Corrosion resistant" means capable of maintaining original surface characteristics under the prolonged influence of the environment in which it is used.

(19) "Design head" means the total head requirement of the circulation system at the design rate of flow.

(20) "Design rate of flow (design filter rate)" means the rate of flow in a system which is used for design calculation. (The volume of the facility in gallons divided by the number of minutes in the turnover time.)

(21) "Diving pool" means a pool designed and intended for use exclusively by divers.

(22) "Effective filter area" means:

(a) "Permanent media type" the effective filter area is the cross-section area of the filter surface that is perpendicular to the flow direction;

(b) "Diatomaceous earth type" the effective filter area of the septum is that part of the septum which will accept the full thickness of precoat and through which the design filter flow will be maintained during filtration; and

(c) "Cartridge filter" the total effective filter area is that cartridge area which is exposed to the direct flow of water. This excludes cartridge ends, seals, supports, and other areas where flow is impaired.

(23) "Factor of safety" means the ultimate load divided by the safe load or the ultimate strength divided by the allowable stress.

(24) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance (a filter media or element):

(a) "Permanent media filter" means a filter that utilizes a media that can be backwashed and reused;

(b) "Diatomaceous earth filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced; and

(c) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(25) "Filter aid" refers to any means used to enhance the efficiency of the filter media. Alum, as used on the bed of a sand filter, is also referred to as a filter aid.

(26) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(27) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support:

(a) "Permanent filter media" means finely graded material (such as sand, anthracite, etc.) which removes suspended filterable particles from the water.

(b) "Nonpermanent filter media" means any type of finely graded media used to coat a septum type filter usually diatomaceous earth, processed perlite or similar material for the purpose of removing fine particulates from the water.

(28) "Filter waste discharge piping" means piping that conducts wastewater from a filter to a drainage system. Connection to drainage system is made through an air gap or other approved method.

(29) "Filtration rate" means the rate of water flow through a filter while in operation, expressed in U.S. gallons per minute per square

foot (liters per minute per square meter) of effective filter area.

(30) "Flow balance valve" means a device to regulate the effluent from the skimmer housing of each of a combination of two (2) or more surface skimmers.

(31) "Flume" means an inclined channel which conveys the water and the bather from the top of the slide to the plunge pool of a water slide.

(32) "Friction loss" means the pressure drop expressed in feet (meters) of water or psi (pascals) caused by liquid flowing through the piping and fittings.

(33) "Handicap pool" means a swimming pool which is designed specifically for the use of persons who are physically or mentally disabled or impaired, and is equipped with devices, appliances, ramps and other means of assisted access to the pool.

(34) "Head loss" means the total pressure drop in psi (kilopascals) or feet (meters) or head between the inlet and the outlet of a component.

(35) "Hydrojet booster pump system" means a system whereby one (1) or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.

(36) "Hydrojets" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

(37) "Indirect waste pipe" means a pipe that does not connect directly with the drainage system, but conveys liquid wastes by discharging into a plumbing fixture, interceptor, or receptacle which is directly connected to the drainage system.

(38) "Inlet fitting" means a fitting or fixture through which filtered water enters a pool or spa.

(39) "Listed" means equipment or materials included in a list published by a listing agency that maintains periodic inspection on current production of listed equipment or materials, and whose listing states either that the equipment or material complies with approved standards or has been tested and found suitable for use in a specified manner.

(40) "Main outlet" means the outlet fitting(s) at the bottom of a facility through which passes water to a recirculating pump. It is often referred to as a "main drain."

(41) "Multiport valve" means a valve for various recirculation related operations, which combines in one (1) unit the function of two (2) or more single direct flow valves.

(42) "National Sanitation Foundation (NSF)" is based at 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. It publishes a list of manufacturers and their equipment which has been approved as having satisfied NSF standards.

(43) "Perimeter overflow systems" means a channel at normal water level which normally extends completely around the pool perimeter. Also, known as an overflow or scum gutter.

(44) "Person" means any individual, firm, association, club, organization, partnership, business trust, corporation, company, or any state or local governmental agency.

(45) "Precoat" means the process of depositing a layer of diatomaceous earth on filter septa at the start of a filter cycle.

(46) "Public swimming and bathing facility" means an natural or artificial body or basin of water which is modified, improved, constructed, or installed for the purpose of swimming or bathing under the control of any person and includes, but is not limited to, the following:

- (a) Beaches;
- (b) Swimming pools, wading pools, wave pools;
- (c) Competition swimming pools and diving pools;
- (d) Water slides and spray pools; and
- (e) Spas, therapeutic pools, hydrotherapy pools, and whirlpools.

It includes those operated by communities, subdivisions, apartment complexes, condominiums, clubs, camps, schools, institutions, parks, mobile home parks, hotels, recreational areas, or similar public facilities. It does not include any of the above facilities which are at private single family residences intended only for the use of the owner and guests.

(47) "Public swimming and bathing facilities operator" means any "person" as defined above or any employees of that person who are delegated responsibility for the proper operation and maintenance of the facility.

(48) "Pump discharge pressure" means the actual gauge reading measured in psi taken at the discharge outlet of a pump.

(49) "Receptor" means an approved plumbing fixture or device of material, shape, and capacity to adequately receive the discharge from indirect waste piping, constructed and located to be readily cleaned.

(50) "Recirculation system" means the interconnected system traversed by the recirculated water from the pool until it is returned to the pool.

(51) Residual chlorine shall mean the amount of measurable chlorine remaining in water following chlorination and is composed of the following components:

(a) Free available residual chlorine shall mean the amount of chlorine which is available to inactivate microorganisms and which has not reacted with ammonia, nitrogenous material, and other material in swimming pool water;

(b) Combined residual chlorine (also called "chloramine") shall mean the amount of chlorine which has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds;

(c) Total residual chlorine shall mean the arithmetic sum of free available residual chlorine and combined residual chlorine; and

(d) The word "disinfectant" may be substituted for "chlorine" in the above.

(52) "Return piping" means that part of the piping between the filter and the facility through which passes the filtered water.

(53) "Separation tank" means a device used to clarify filter rinse or wastewater.

(54) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(61) "Surface skimmer" means a device designed to continuously remove surface film and water (and return it through the filter) as part of the recirculation system, usually incorporating a self-adjusting floating weir, strainer basket, a collection tank, and a means to prevent air lock of the pump. It is sometimes referred to as a "recirculating overflow," a "mechanical" or an "automatic skimmer."

(55) "Spa" means a special facility designed for recreational and therapeutic use, and which is not drained, cleaned, or refilled after each individual use. It may include, but not be limited to, units designed for hydrojet circulation, hot water, cold water, mineral bath, air induction bubbles, or any combination thereof. Common terminology for a spa includes, but is not limited to, "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa."

(56) "Static suction lift" means the vertical distance in feet (meters) from the center line of the pump impeller to the level of water in the pool.

(57) "Spray pool" means an artificially constructed area over which water is sprayed but is not allowed to pool. Sprayed water flows to waste and is not recirculated.

(58) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(59) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of the pump and usually includes the following: main outlet piping, skimmer or gutter piping, vacuum piping, and surge tank piping.

(60) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available residual which is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(62) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(63) "Total discharge head" means the value in feet (meters) of water that a pump will raise water above its center line.

(64) "Total suction head" means the value in feet (meters) of water that a pump will lift by suction.

(65) "Total dynamic suction lift (TDSL)" means the arithmetical total of static suction lift, friction head loss, and velocity head loss working on the suction side of the pump.

(66) "Trimmer valve" means a flow-adjusting device which is used to proportion flow among multiple skimmers on a single line.

(67) "Turnover time" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(68) "Vacuum piping" means the piping from the suction side of a pump connected to a vacuum fitting located at the facility and below the water level to which underwater cleaning equipment may be attached.

(69) "Velocity" means a measurement of the motion of liquids expressed in feet per second.

(70) "Wading pool" means a pool intended only for small children. The maximum depth is less than twenty-four (24) inches.

(71) "Water slide" means a slide which consists of one (1) or more flumes, a plunge pool, a pump reservoir, and water treatment facilities, where water is pumped to the top of the slide and allowed to flow down the flume to the plunge pool.

(72) "Wave pool" means a swimming pool designed for the purpose of producing wave action in the water.

(73) "Working pressure" means the normal operating pressure recommended by the manufacturer.

Section 3. Submission of Plans and Specifications for Approval.

(1) No person shall begin construction, or construct, or substantially change alter or reconstruct any public swimming and bathing facility until plans and specifications, with supporting design data as required in this administrative regulation for the proposed review of the plans, have first been submitted in quintuplicate (five (5) sets) to the cabinet through the Department of Housing, Buildings and Construction and have been approved in writing by all state or local agencies having jurisdiction. All construction shall be in accordance with approved plans. The front page of the plans shall contain the name of the swimming and bathing facility, location by city and county, name of its owner and name of the engineer, architect, or person preparing the plans. Plans submitted by an engineer or architect shall bear his seal. Plans and specifications on public swimming and bathing facilities constructed by the state or political subdivision, or on facilities designed for a bather load of 100 or more, shall be prepared by an engineer or architect registered in the State of Kentucky and comply with the provisions of KRS 322.010 and 323.010. Plans and specifications, reports and other information shall be submitted in form and content as may be specified by the cabinet.

(2) The plans shall be drawn to scale and accompanied by proper specifications to permit a comprehensive engineering review of the plans including the piping and hydraulic details and shall include:

(a) A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

(b) A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

(c) The specifications shall contain details on all treatment equipment, including performance ranges of pumps, chlorinators, chemical feeders, filters, strainers, lights, skimmers, inlet and outlet fittings, diving boards, safety equipment and other related equipment;

(d) A statement of the design, bather load expected to use the facility at any given time; and

(e) Drawing of equipment room showing placement of equipment.

(3) Owners shall keep one (1) set of approved plans available for inspection at the job site in the possession of the actual builder of the facility.

(4) Upon completion of the recirculation piping system and prior to such piping being covered with dirt or concrete, the owner or builder shall contact affected agencies for inspection.

(5) Upon completion of the swimming and bathing facility, a notarized statement certifying completion of the facility in accordance with the approved plans and specifications and this administrative regulation shall be submitted to the cabinet by the engineer, architect, or person who prepared plans, and shall be accompanied by a request for inspection prior to occupancy. The facility shall not be used until final inspection by affected agencies demonstrates compliance with this administrative regulation.

(6) Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

(7) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet and all other agencies having jurisdiction.

Section 4. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Natural Resources and Environmental Protection Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility, and be capable of providing enough water to raise the water level in swimming, diving, or wave pools, and water slide plunge pools at least one (1) inch in three (3) hours.

Section 5. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; and

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 5:031, Section 6, recreational waters, as adopted by the Natural Resources and Environmental Protection Cabinet. Bacterial levels exceeding those standards shall be considered sufficient grounds to require additional investigation, survey, special analyses, and correction of any problems determined to be causing the high counts. Subsequent evaluation and satisfactory bacteriological results shall be obtained before approval for construction will be issued; and

(b) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall be no discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 6. Sewage and Wastewater Disposal. Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer. If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085, on-site sewage disposal systems administrative regulation.

(1) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions, which create an offensive odor, or which produce a stagnant wet area, or which produce an environment for the breeding of insects;

(2) Wash or backwash water from sand filters or diatomaceous earth filters shall be discharged to public sanitary sewers, or if unavailable to a system approved by the cabinet.

Section 7. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by Natural Resources and Environmental Protection Cabinet.

(2) Refuse containers of approved design and construction, with tight fitting lids, adequate in number, shall be provided at readily accessible locations at all public swimming and bathing facilities. These containers shall be mounted upon an approved rack or holder in all outdoor locations, and shall be maintained to prevent the creation of a health or safety hazard.

(3) Refuse containers in rest rooms or bather preparation and dressing areas may be of open-top or swing-lid design, except in women's rest rooms where swing-lid or other covered top containers shall be required.

(4) Bulk refuse storage areas shall be designed, constructed, drained, and maintained to prevent rodent and vermin harborage, breeding sites, or insanitary conditions. Bulk refuse containers shall be of approved design and construction, with tight fitting lids, adequate in number, and shall be placed upon an impervious surface within a suitable enclosure to prevent access by animals.

(5) If the facility is not in use after seasonal operation or for any other reason, the facility shall not be allowed to accumulate debris, give off objectional odors, become a breeding site for insects, or create any other nuisance situation.

Section 8. Facility Design and Construction. (1) All public swimming and bathing facilities and attendant structures such as bathhouses, dressing rooms, or rest rooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of the Kentucky State Building Code and the State Plumbing Code of the Department of Housing, Buildings, and Construction, Public Protection and Regulation Cabinet.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming there shall be no boating, underwater obstructions, or other hazards which may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility if possible and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;
2. At the point of change of slope between deep and shallow portions (transition point);
3. At intermediate two (2) foot increments of water depth; and
4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet or seven and five-tenths (7.5) m as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches (ten (10) cm) high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be visible plainly to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.

Section 9. Facility Water Treatment Systems. (1) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities except bathing beaches. All system components shall bear the seal of approval of the National Sanitation Foundation (NSF). (Pumps greater than seven and five-tenths (7.5)

HP which are not required to meet NSF testing standards shall be considered on a case-by-case basis.)

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control shall be provided in the recirculation pump discharge piping:

Turnover Rate. The turnover rate shall be as shown in the following table:	
Type of Facility	Turnover Required
Diving Pools	8 hours or less
Wading Pools, Spas	30 minutes or less
Water Slides, Handicap Pools	2 hours or less
Vortex Pools	1 hour or less
All Other Pools	6 hours or less
Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.	

(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems. The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters.

(c) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(d) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(e) A compound vacuum-pressure gauge shall be installed on the pump line. A vacuum gauge may be used for pumps with suction lift. A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(f) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(g) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are located downstream of the filter.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities. If a water heater is installed, the following shall apply:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control, which will prevent the introduction of water in excess of 100° Fahrenheit to swimming and diving pools and in excess of 104° Fahrenheit for spas shall be provided, and be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the applicable State Building Codes;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer's recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 BTU's/hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable

recognized testing agencies.

(4) A flow meter shall be located so that the rate of recirculation may be easily read. Flow meters shall be installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be provided for all facilities except beaches, and small indoor spas designed for six (6) or less bathers. A vacuum cleaning system capable of reaching all parts of the facility bottom shall be provided;

(b) A vacuum system may be provided which utilizes the attachment of a vacuum hose to the suction piping through the skimmer. Vacuumed water must pass through the skimmer's strainer basket;

(c) If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting(s) shall be provided eight (8) to twelve (12) inches below the normal water level and be provided with a cap or plug. Piping from this connection shall be to the suction side of the pump ahead of the hair and lint strainer, shall be at least one and one-half (1 1/2) inches in diameter and be equipped with a control valve near the junction with the pump suction line. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning;

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom; and

(e) Vacuum systems are to be used only when the facility is closed to bathers.

(6) Piping, skimmer and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water. All piping, valves, or fittings shall be color-coded, or suitably labeled, or marked to denote its purpose within the facility water treatment system.

(b) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping, and ten (10) feet per second in pressure piping. Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(c) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be flow adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers it shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and permanently directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots. Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat. Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(d) Inlets for swimming and diving pools, wave pools, large spas, and water slide plunge pools shall be spaced as follows:

1. Inlets shall be placed completely around the pool, each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool; and

2. If inlets are to be placed on the bottom of the pool, the number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15), any fraction thereof would represent one (1) additional inlet.

(e) Inlets for wading pools, and small spas for six (6) or less bathers, shall be at least two (2) in number, and placed so as to meet the requirements of paragraph (c) of this subsection.

(f) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(g) A continuous flume, tubing, or other arrangement near the pool water surface which serves as inlet supply piping and employs multiple "jet" inlets is approved provided the individual components of the system meet the requirements of paragraphs (a), (b) and (c) of this subsection and subsections (9)(a), (b) and (10) of this section.

(h) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities shall be provided with a main outlet at the deepest point to permit the facility to be completely and easily drained. Openings shall be covered by a proper grating which is not removable by bathers without the use of tools, and which cannot entrap their fingers. Openings of the grating shall be at least four (4) times the area of the main outlet pipe and have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow. The maximum width of grate openings shall be one-fourth (1/4) inch;

(b) Multiple outlets shall be provided in all facilities where the width of the facility is more than thirty (30) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series. All spas and wading pools shall have at least two (2) outlets;

(c) A hydrostatic relief valve may be provided for in-ground swimming and diving pools, wave pools, and water slide plunge pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer; and

(d) Main outlet piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (6)(b) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities other than pools designed and used exclusively for diving, having a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system. Swimming and bathing facilities less than 1,600 square feet in area and thirty (30) feet or less in width may use surface skimmers:

(b) A perimeter overflow system shall:

1. Extend completely around the facility;
2. Permit inspection, cleaning, and repair;
3. Be designed so that no ponding or retention of water occurs within any portion of the system; or the passage of small children into an enclosed chamber;
4. Be designed to prevent the entrapment of bather's arms, legs, and feet;
5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;
6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;
7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate. If the surge volume is to be stored in the perimeter overflow system, the system shall have the capacity to carry 100 percent of the design flow while maintaining the surge storage capacity;
8. Discharge to the recirculation system;
9. Be provided with sufficient drains and piping which will not allow the overflow channel to become "flooded" when the facility is in normal use; and
10. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities which have perimeter overflow systems shall be provided with a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, in the perimeter overflow system, in a surge tank, or a combination of these. Valving shall be provided where necessary, to automatically retain water during periods of facility use and to discharge water during the periods of nonuse so that the proper operating water level in the facility is maintained at all

times.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof; with a minimum of two (2) skimmers provided, except for small spas, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other;

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate;

(d) The surface skimmer piping shall have both a trimmer valve and a separate valve in the equipment room to permit adjustment of flow;

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve;

(f) A basket which can be removed without the use of tools and through which all overflow water must pass, shall be provided; and

(g) Skimmer equipped swimming and diving pools, wave pools, water slide plunge pools, and large spas shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to the facility to a surge tank, or a vacuum filter tank. If make-up water is added directly to the facility, the fill spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon or other protection as specified by the State Plumbing Code.

(13) Filtration:

(a) Filters shall comply with the following:

1. Pressure filters shall have pressure gauges;

2. Pressure filters shall have an observable free fall, or a sight glass shall be installed on the backwash discharge line;

3. Pressure filters shall have a manual air-relief valve at the high point;

4. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

5. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer;

6. Filter media shall meet NSF specifications;

7. Each facility shall have separate filtration and treatment systems;

8. Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season; and

9. Individual filters shall be designed with necessary valves and piping to permit isolation of individual filters for repairs while other units are in service.

(b) Rapid sand or gravity sand filters:

1. Rapid sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover. Open gravity type filters shall be designed for a filter rate not exceeding two (2) gallons per square foot per minute.

2. Filtering media shall consist of at least twenty (20) inches of graded, sharp filter sand with an effective size between four-tenths (0.4) and 0.55 mm and a uniformity coefficient not exceeding one and 1.75, supported by at least ten (10) inches of graded filter gravel. Anthracite with effective size of six-tenths (0.6) to eight-tenths (0.8) mm with a uniformity coefficient of not greater than one and eight-

tenths (1.8) may be used in lieu of the sand. A reduction in gravel depth or an elimination of gravel may be permitted where equivalent performance and service are demonstrated.

3. At least twelve (12) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains which serve as overflows during backwashing.

4. The filter system shall be designed with necessary valves and piping to permit:

a. Filtering to pool; and

b. Individual backwashing of filters to waste at a rate of not less than fifteen (15) gallons per minute per square foot of filter area. A backwash rate of eight (8) gallons per square foot per minute shall be provided for anthracite filters;

5. Each filter shall be provided with an access opening of not less than a standard eleven (11) inch by fifteen (15) inch manhole and cover.

6. The filter tank and its integral parts shall be constructed of substantial material capable of withstanding continuous anticipated usage and shall be designed for a pressure safety factor of four (4) based on the maximum shutoff head of the pump. This shutoff head for design purposes shall in no case be considered less than fifty (50) pounds per square inch.

(c) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(d) Diatomaceous earth filters:

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water; and

5. All filters shall be equipped for cleaning by one (1) or more of the following methods: backwashing; air pump assist backwashing; spray wash; water pressure to wash vacuum filter; or agitation.

(e) Vacuum sand filters:

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(f) Cartridge filters:

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed 0.15 gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders:

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (e) of this subsection.

(b) Equipment capacity:

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of eight (8) p.p.m. (two and seven-tenths (2.7) lbs/day chlorine gas or its equivalent for each 10,000 gallons of pool volume) for outdoor facilities and three (3) p.p.m. (one (1) lbs/day for chlorine gas or its

equivalent for each 10,000 gallons of pool volume) for indoor facilities based on the flow rates specified in subsection (2)(a) of this section;

2. The equipment for supplying chlorine shall not be controlled by a day-date clock;

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter;

4. Pot feeders for supplying bromo-chlorodimethylhydantoin sticks shall contain at least 0.50 pounds of bromo-chlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment;

5. Ozone may be used as a supplement to chlorination or bromination as required in subparagraph 1 or 4 of this paragraph. Ozonation equipment will be considered by the cabinet on a case-by-case basis for experimental use; and

6. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than .05 p.p.m. at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators:

1. The chlorine supply and gas feeding equipment shall be housed in a separate, relatively airtight room. The room shall be provided with an exhaust system which takes its suction not more than eight (8) inches from the floor and discharges out-of-doors in a direction to minimize exposure to toxic fumes. The fan shall be capable of producing one (1) air change per minute. Means for introducing a fresh air supply to the enclosure through appropriate openings such as filters, grill openings, or other similar openings, at a high point opposite the exhaust fan intake shall be provided. The room shall have a window at least eighteen (18) inches square, and shall have artificial lighting. Electrical switches for lighting and ventilation shall be outside and adjacent to the door. Scales for weighing chlorine cylinders in service shall be provided. Automatic changeover chlorinators may be substituted for scales.

2. Chlorine cylinders either full or empty shall be anchored, or chained in a vertical position. The valve protection hoods shall be kept in place, except when the cylinders are connected. Chlorine feed devices should be located directly on the tank if practical;

3. The chlorine feeding device shall be designed so that during interruptions of the flow of the water supply, gas feed is automatically terminated. In addition, the release of chlorine shall be terminated if the recirculation pump is shut off. If other than facility recirculated water is used, the supply line shall be equipped with an electric shut off valve wired to the recirculation pump and shall be equipped with an approved backflow preventer. If two (2) or more cylinders are in use, an automatic changeover valve shall be used;

4. Chlorinator vent lines shall be conducted to the out-of-doors similar to the chlorinator room exhaust system;

5. The gas chlorinator shall be the solution feed type capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere;

6. The water supply for the gas feeding equipment shall produce the flow rate and pressure required according to the manufacturer's specifications for proper operation of the equipment;

7. A self-contained breathing apparatus (SCBA) designed for use in a chlorine atmosphere and of a type approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH), shall be provided. This SCBA shall have sufficient capacity for the purpose intended. In addition a written respirator program shall be provided and employees shall be trained in the use and maintenance of such equipment to insure operability and safety. The SCBA shall be kept in a closed cabinet, accessible without a key, and located outside of the chlorine room. Installation of chlorinator equipment, and its

operation, shall be carried on by and under the supervision of personnel experienced with installation and operation of such equipment. A chlorine valve shut off wrench shall be kept on the cylinder valve stem that is in use; and

8. In the event of a chlorine leak, the fire department or an agency trained in the handling of chlorine spills shall be immediately contacted. The phone numbers of the fire department or above agency shall be posted on the outside of the chlorine room door.

(e) pH control feeders. At facilities with a volume greater than 100,000 gallons, or at facilities utilizing gas chlorine as a disinfectant, a chemical feeder of positive displacement type shall be installed for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate at least forty (40) gallons capacity shall be provided.

(f) Erosion type chlorine feeders shall be prohibited.

(15) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of at least the following:

(a) A DPD (Diethyl P-Phenylene Diamine) colorimetric test kit shall be provided, which will determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable;

(b) There shall be At least five (5) chlorine color standards and at least five (5) pH color standards. Chlorine standards shall range from one-tenth (0.1) to three (3.0) p.p.m. and pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4), as a minimum. **Both tests shall be accurate to within two-tenths (0.2) units;** and

(c) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 p.p.m.

Section 10. Operational Water Quality Standards.—(1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available chlorine.

(b) Bromine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one and five-tenths (1.5) to two and five-tenths (2.5) p.p.m. free available chlorine residual; and

3. Cyanuric acid concentration twenty-five (25) p.p.m. to fifty (50) p.p.m.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) p.p.m.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between one (1.0) two (2.0) p.p.m. and three (3.0) p.p.m. as free available chlorine;

(b) Bromine residual shall be maintained between two (2.0) p.p.m. and three (3.0) p.p.m. as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) p.p.m., superchlorination is required. During the superchlorination process and until such time as free chlorine levels return to three (3) p.p.m. or less, the facility shall be closed.

(3) pH. The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times to meet one (1) of the following:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool;

(b) The openings of the main outlet grate are clearly visible by an observer on the deck; and

(c) For wading pools the bottom of the pool shall be clearly visible.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 p.p.m., as determined by

suitable test kits.

(6) Temperature. The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated, and that the variance will not jeopardize public health. Air temperature at an indoor facility shall be higher than the water temperature, except for spas. In no instance will water temperatures for any facility including spas be permitted to exceed 104 degrees Fahrenheit. All facilities with heated water shall be provided with at least one (1) breakproof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity – daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) – weekly, or more often as needed.

(d) Temperature:

1. Spas – daily, or more often as needed; and
2. All other indoor facilities – daily.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 11. General Facility Operation and Maintenance. (1) Facility and facility area:

(a) All facilities shall be maintained free from sediment, lint, dirt, and hair. Cracks and other defects in the facility shall be repaired. The walls, ceilings, floors, and equipment shall be painted as often as necessary so that they are protected from deterioration. The bottom and sides of the facility shall be maintained so that they are free from deterioration;

(b) Decks shall be rinsed as necessary to be kept clean. Indoor decks shall be disinfected at least weekly. The walk areas, overflow gutters, counters, lockers, equipment, furniture, interior partitions, and walls shall be kept in good repair, clean, and sanitary; and

(c) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other obstacles which would restrict flow. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(3) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(4) Bather preparation facilities:

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily; and

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair. Floors shall be maintained in a nonslip condition. Soap dispensers shall be filled and operable. Adequate supplies of toilet tissue, disposable hand drying towels, roll-type cloth towels, or suitable hand drying devices shall be maintained.

(5) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(6) Safety. All public swimming facilities shall have adequate

enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(8) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(9) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(10) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) – one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(11) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(12) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(13) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(14) Gas chlorinators.

(a) Gas chlorinators shall be repaired only by a person trained in servicing these units. The facility operator shall determine the appropriate emergency personnel to contact in the event of a chlorine gas emergency and have the telephone number of said personnel conspicuously posted;

(b) Chlorine cylinders shall be stored indoors in the area designed for that purpose and away from a direct source of heat. Cylinders shall not be moved unless the protection cap is secured over the valve; and

(c) Chlorinator, gas line, injector, and cylinders shall be checked daily for leaks. Chlorine will produce a white smoke in the presence

of ammonia. In case of a chlorine leak, corrective measures shall be undertaken only by trained persons wearing proper safety equipment. All other persons shall leave the dangerous area until conditions are again safe.

(15) Self-contained breathing apparatus (SCBA).

(a) A record shall be kept of SCBA usage to insure that the unit will be serviceable when needed. The SCBA shall be kept in a closed cabinet, accessible without a key, located outside of the room in which the chlorinator is located, and preferably outside the entrance to the equipment room; and

(b) The SCBA shall be serviced regularly as per manufacturer's recommendations.

(16) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(17) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(18) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion or scaling or wide fluctuations in pH.

(19) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose, and removed by the suction cleaner and filtration system.

(20) Miscellaneous chemicals.

(a) Chemicals other than disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat and in a clean, dry, and well-ventilated place which prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) p.p.m.

(24) Equipment rooms.

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room which affords protection from the weather, prevents unauthorized access, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas mentioned

above shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(22) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and waterborne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas, and shall extend beneath the water of all wading and swimming areas; and

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis, and immediately after high water conditions for floating or sunken debris, and obstructions at diving areas and high water turbidity which may present safety hazards to bathers.

Section 12. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation, together with other data as may be required on form DFS-352—Swimming Pool Log Sheet furnished by the cabinet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Malfunctioning of equipment.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 13. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) A lifeguard or Lifeguards shall be provided at all facilities, regardless of square footage which allow bathers sixteen (16) years of age or under to enter the facility area without a responsible person seventeen (17) years of age or older present

(b) All facilities which do not provide a lifeguard must post and enforce the following rule: "No person may enter the facility area alone or swim alone."

(c) If lifeguards are required, lifeguards shall comply with the following:

1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross, YMCA, or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

2. More than one (1) lifeguard shall be on duty at large facilities or facilities with a large number of bathers. Lifeguards shall be provided at a ratio of one (1) per 200 bathers or one (1) per 2,000 square feet of water surface area, whichever is less;

3. Lifeguards shall be dressed in swimming attire; and

4. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would distract their attention from proper observation of persons in the facility area, or that would prevent immediate assistance to persons in distress in the water.

Section 14. Safety Equipment. (1) Facilities other than beaches having an area of more than 2,000 square feet of water surface area shall be provided with an elevated lifeguard chair. An additional lifeguard chair shall be provided for each additional 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.

(3) The following lifesaving equipment shall be provided:

(a) A U.S. Coast Guard approved ring buoy not more than fifteen (15) inches in diameter to which shall be attached a three-sixteenths (3/16) inch rope of length one and one-half (1 1/2) times the maximum pool width;

(b) A life pole or shepherd's crook type of pole having blunted ends with a minimum length of twelve (12) feet; and

(c) One (1) plywood backboard with straps, made to the specifications of the American Red Cross for back and neck injuries.

(4) The equipment listed in subsection (3) of this section shall be considered as one (1) unit (except paragraph (c)) and shall be considered as adequate for 2,000 square feet of facility water surface area. An additional unit shall be provided for each additional 2,000 square feet or major fraction thereof.

(5) Facilities limited to small spas, of less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(6) Bathing beach facilities shall provide the following lifesaving equipment in addition to that listed in subsection (3) of this section:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat, containing one (1) unit of lifesaving equipment and outfitted to meet state water safety administrative regulations; and

(c) A torpedo shaped buoy.

(7) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent, which shall be kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(8) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove such equipment from its established location. This equipment at beaches shall be located at each lifeguard chair, with the lifeboat mentioned in subsection (6)(b) of this section being located at the most centrally stationed lifeguard chair.

(9) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(10) All facilities shall have a nonpay telephone on the premises which is readily accessible and conspicuously located; for isolated facilities two (2) way radio communication systems to a manned telephone system may be substituted. The telephone number of a police, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(11) All drownings and injuries requiring hospitalization shall be immediately reported to the cabinet.

Section 15. Spectator and Bather Administrative Regulations. (1) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and shall be enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility is refused to all persons having any contagious disease, infectious conditions as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition which has the appearance of being infectious. Persons with excessive sunburn, abrasions which have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind are not permitted. A person under the influence of alcohol or exhibiting erratic behavior shall not be permitted in the facility area;

(b) No food, drink, gum, tobacco will be allowed in other than specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized. No running and no boisterous or rough play (except supervised water sports) are permitted;

(d) People in street shoes and other spectators are not allowed in the facility, on the deck, and in the "wet" areas of the bathhouse, except those engaged in official duties;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water is not permitted;

(f) Glass, soap, or other material which might create hazardous conditions or interfere with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water is not permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Animals shall be excluded from the facility area.

(2) Due to the nature of bathing beaches, subsection (1)(c), (d), and (g) of this section shall not apply. Subsection (1)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except for parts dealing with those persons with excessive sunburn or those under the influence of alcohol or exhibiting erratic behavior, which shall be enforced at all facilities.

(3) In addition to the requirements of subsection (1) of this section, a caution sign shall be mounted adjacent to all spas which contain the following warnings:

CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high/low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa.

(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 16. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 17. Facility Inspection. (1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet, at its discretion, may require one (1) of the full facility inspections to be performed prior to a facility's opening; and

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation (indoor) facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of the following:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in p.p.m.;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

- (e) Turbidity assessment;
- (f) Temperature testing (if heated water facility);
- (g) Review of operator's daily log;
- (h) Visual scanning for algae or debris; and
- (i) Other checks as necessary.

(5) Beaches shall receive monitoring inspections once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(7) If an agent of the cabinet makes an inspection of a public swimming and bathing facility, he shall record his findings on an official cabinet inspection report form DFS-349 - Public Swimming and Bathing Facilities Inspection or DFS-350 - Public Swimming and Bathing Facilities Beach Inspection Report and provide the facility owner or the operator with a copy. The inspection report shall:

- (a) Set forth any violation(s) if found;
- (b) Establish a specific and reasonable period of time for the correction of the violation(s) found; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 18. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Health Services Laboratory or other laboratory licensed by the Natural Resources and Environmental Protection Cabinet for analysis. Samples shall be collected in approved containers and by approved sampling procedures.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

- (a) Total coliform;
- (b) Fecal coliform; and
- (c) Pseudomonad organisms.

(3) Multiple samples may be collected at bathing beaches to assure adequate representation of the entire facility water area.

(4) Need for additional samples at other times shall be triggered by the results of monitoring inspections, reported disease outbreaks associated with the facility, or failure of previous samples to meet the standards outlined in Sections 5 and 19 of this administrative regulation. If a sample shows a positive test for contaminants as specified in subsection (2)(a), (b), and (c) of this section, the sample shall be repeated within one (1) to seven (7) days.

Section 19. Bacteriological Quality of Facility Water. (1) For facilities other than bathing beaches, no more than two (2) consecutive samples shall contain either:

- (a) More than 200 bacteria per milliliter, as determined by the standard (thirty-five (35) degrees Centigrade) agar plate count;
- (b) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 ml when the membrane filter test is used;

(c) Show a positive test (confirmed test) for pseudomonas organisms; or

- (d) Show a positive test for fecal coliform organisms.

(2) Bathing beaches shall comply with the standards set forth in Section 5(3)(a) of this administrative regulation.

Section 20. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) If the cabinet finds any of the following conditions, it may immediately order by written notice the owner or operator to close the facility and to prohibit any person from using the facility:

- (a) If conditions at a facility and appurtenances, including bathhouse facilities, upon inspection and investigation by a representative of the cabinet, create an immediate danger to health or safety;
- (b) If the cabinet upon review of results of bacteriological

analyses of water samples collected from a facility, finds that the water does not conform to the bacteriological standards promulgated by the cabinet for proper swimming and bathing water quality;

(c) If an environmental survey of an area shows evidence of sewage or other polluttional or toxic materials being discharged to waters tributary to a beach creating an immediate danger to health or safety;

(d) If Turbidity levels of facility water do not meet the requirements of Section 10(4) of this administrative regulation;

(e) If in such cases as it is required, the presence of a satisfactory disinfectant residual, prescribed by the cabinet is absent;

(f) In any instance where the owner, operator, or any other employee or representative of the owner interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(g) If recirculation system(s), filtration system(s), or disinfectant system(s) are not in operation (with exceptions for maintenance, and seasonal shut down); or

(h) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order is entitled, upon written request on form DFS-212 - Request for Hearing to the cabinet, to a hearing in accordance with 902 KAR 1:400.

(4) If the conditions are abated or if the results of analyses of water samples collected from the facility, in the opinion of the cabinet, comply with the cabinet's bacteriological standards for acceptable water quality, or if the turbidity decreases to the permissible limit, or if the disinfectant residual reaches a satisfactory level as prescribed by administrative regulation, the cabinet may authorize reopening the facility. If sources of sewage, pollution, or toxic materials discovered as a result of an environmental survey are eliminated the cabinet may authorize reopening of such beach.

(5) In all other instances of violation of the provisions of this administrative regulation, including nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. If an owner or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the owner or operator shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the owner or operator, within such ten (10) day period.

(6) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

(7) Any person whose facility has been closed may, at any time make application for a reinspection on form DFS-215 - Application for Reinstatement of Suspended Permits for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(8) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a hearing has been provided in accordance with 902 KAR 1:400. Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a hearing is filed with the cabinet by the owner or operator, within such ten (10) day period.

Section 21. Existing Facilities and Equipment. (1) Notwithstanding the other provisions of this administrative regulation, existing facilities and equipment being used prior to the effective date of this administrative regulation, which do not fully meet the design, construction, and materials requirements of this administrative

regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, meet facility water quality standards, and create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 22. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve any person from compliance with any other state or local laws, dealing with pool operation and maintenance matters, or zoning requirements which may also be applicable.

Section 23. Variances. (1) All facilities shall be constructed or remodeled in compliance with the provisions of these administrative regulations, except that an applicant may request and the cabinet may grant a variance in those cases where it is determined that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.]

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, February 7, 2022)**

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

RELATES TO: KRS ~~[13A.010,]~~ Chapter 13B, 211.015, 211.180

STATUTORY AUTHORITY: KRS 194A.050(1), 211.205

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.205 requires the cabinet to promulgate an administrative regulation to set the standards for the operation and maintenance of splash pads operated by local governments. This administrative regulation establishes the procedures for splash pads.

Section 1. Definitions. (1) "Accessible" means ~~[if applied to a fixture, connection, appliance or equipment,]~~ having access to a fixture, connection, appliance, or equipment, possibly with[if, but may require the] removal of an access panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.

(4) "Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).

(5) "Approved" means that which is acceptable to the cabinet in

accordance with the requirements established in this administrative regulation.

(6) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(7) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(8) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(9) "Cabinet" is defined by KRS 211.015(1)(a).

(10) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(11) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced.

(12) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(13) "Equalizer line" means the connection from the skimmer housing to the holding tank below the weir box, which is sized to satisfy pump demand and prevent air lock or loss of prime, and contains a float valve assembly and pop-up valve.

(14) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(15) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(16) "Filter aid" means an enhancement to the efficiency of the filter media.

(17) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(18) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

(19) "Filtration rate" means the rate of water flow through a filter while in operation.

(20) "Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.

(21) "Flow meter" means a device that measures the flow of water through piping.

(22) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(23) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(24) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(25) "Local government" is defined by KRS 13A.010(11).

(26) "Main outlet" means an outlet fitting at the horizontal bottom of a pool through which water passes to a recirculating pump ~~[or surge tank]~~. It is often referred to as a "main drain."

(27) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(28) "Pop-up valve" means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.

(29) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(30) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(31) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(32) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(33) "Splash pad" is defined by KRS 211.205(1)[Ky Acts Ch. 452].

(34) "State Building Code" means the requirements established in 815 KAR Chapter 7.

(35) "State Plumbing Code" means the requirements

established in 815 KAR Chapter 20.

(36) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(37)~~(35)~~ "Suction piping" means the portion of the circulation piping located between the facility structure and the inlet side of a pump.

(38)~~(36)~~ "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(39)~~(37)~~ ~~"Surge tank" means a storage vessel within the recirculation system used to retain the water displaced by bathers.~~

(38) "Total discharge head" means the amount of water that a pump will raise water above its center line.

(40)~~(38)~~~~(39)~~ "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(41)~~(39)~~~~(40)~~ "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, and is composed of the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in swimming pool water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

(42)~~(40)~~~~(41)~~ "Total suction head" means the amount of water that a pump will lift by suction.

(43)~~(41)~~~~(42)~~ "Turnover rate" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(44)~~(42)~~~~(43)~~ "Weir box" means an overflow system placed at normal operating water surface level to remove surface debris.

Section 2. Submission of Plans and Specifications for Approval.

(1) A local government shall not construct, alter, or reconstruct a splash pad until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.

(3) The front page of the plans submitted for review and approval shall contain the:

- (a) Location by city and county;
- (b) Name and contact information for the facility operator;
- (c) Name of the installer; and
- (d) Name of the engineer, landscape architect, or architect.

(4) Plans submitted by an engineer or architect shall bear that individual's official seal.

(5) Plans and specifications for splash pads constructed by a local government shall be prepared by an engineer, landscape architect, or architect registered in the State of Kentucky.

(6) The plans shall be:

- (a) Drawn to scale;
- (b) Accompanied by proper specifications to permit a comprehensive review of the plans including the piping and hydraulic details; and
- (c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, safety equipment, and other related equipment; and

4. Drawing of equipment room showing placement of equipment, as applicable.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of the construction of the recirculation piping system, and prior to the[such] piping being covered and air pressure tested at ten (10) pounds per square inch of pressure for fifteen (15) minutes, the facility operator or builder shall contact the cabinet for inspection.

(9) Upon completion of construction, a notarized statement certifying the splash pad was constructed in accordance with the approved plans and this administrative regulation shall be submitted by the local government to the cabinet.

(10) The splash pad shall not be used before receiving a final inspection and written approval from the cabinet.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) [No change in] Location, construction, design, materials, or equipment changes shall not be made to approved plans or the splash pad without the written approval of the cabinet.

Section 3. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all splash pad features. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all splash pad fixtures and equipment at the facility.

Section 4. Sewage and Wastewater Disposal. (1) Sewage and wastewater generated from the operation of a splash pad shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. The[Such] drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 5. Refuse Disposal. (1) All refuse at a splash pad shall be disposed of in a manner approved by the Energy and Environment Cabinet.

(2) An adequate number of refuse containers [with tight fitting lids] shall be provided at readily accessible locations at all splash pads.

Section 6. Facility Design and Construction. All splash pads and attendant structures, as applicable, shall meet the design, materials, fixture, and construction requirements of the State Building Code.

Section 7. Facility Water Treatment Systems. (1)(a) A recirculation system, consisting of a holding tank, pumps, piping, filters, water conditioning, disinfection equipment, skimmers, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all recirculating splash pads;

(b) All system components, including piping, shall bear the NSF International (NSF)~~[National Sanitation Foundation]~~ potable water (NSF-pw) mark; and

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Holding tanks.

(a) Holding tanks shall be sized at a minimum of five (5) times the manufacturer's requirement for each feature at maximum flow plus the volume of water contained within the recirculation system piping and the drain pipe from the splash pad back to the holding tank.

(b) Holding tanks shall be equipped with an inspection hatch designed to allow for inspection without endangering the inspector [meeting Occupational Safety and Health Administration requirements].

(c) Holding tanks shall be kept locked and inaccessible to the public.

(3) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain a thirty (30) minute turnover rate.

(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(c) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(d) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(e) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(f) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(g) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(h) The manufacturer's pump curve shall be laminated and posted above the recirculation system pump.

(i) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(j) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(4) Water heaters shall be installed at all indoor splash pads[,] and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) At least one (1) break proof thermometer shall be:

1. Provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

2. Located in a conspicuous location; and

3. Securely mounted to prevent tampering;

(d) Heaters for indoor splash pads shall be capable of maintaining an overall water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(e) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to all splash pad features shall be provided[,] and shall be accessible only to the facility operator;

(f) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(g) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor splash pads shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall be NSF or UL listed.

(5) A flow meter, if provided, shall be:

(a) Located so that the rate of recirculation may be easily read;

(b) Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream[,] and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence

except for those specifically designed without distance requirements; and

(c) Installed on each recirculation system, spray pad feature, [waterslide,] any other type of spray feature, and on multiple filtration units.

(6) Vacuum cleaning system shall be:

(a) Provided on all recirculating splash pad holding tanks; and

(b) Capable of reaching all parts of the bottom of the holding tank.

(7) Piping, skimmer, and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping[,] and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the holding tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Holding tank drain and overflow lines; and
3. Pump discharge to waste lines.

(8) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers, which shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire holding tank without the existence of dead spots.

(d) Inlets shall be placed completely around the holding tank with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the holding tank.

(e) A minimum of two (2) inlets is required on all holding tanks regardless of size.

(9) Outlets.

(a) Main suction piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (7)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(b) At least one (1) skimmer shall be provided for all holding tanks with a minimum of two (2) skimmers provided, except for holding tanks with a water surface area of 144 square feet or less, which shall require[where] a minimum of one (1) skimmer[shall be required].

(c) Skimmers shall be located to minimize interference with each other.

(d) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.

(e) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.

(f) Skimmers equipped with an equalizer line shall be sized at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and provided with a self-closing valve and cover.

(g) All overflow water shall pass through a basket that can be removed without the use of tools.[A basket that can be removed without the use of tools and through which all overflow water must pass.]

(10) All recirculated splash pads shall be equipped for the addition of make-up water from a potable water source that discharges through:

(a) An air gap of at least six (6) inches; and

(b) Piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

(11) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

- a. Pressure gauges;
- b. An observable free fall or a sight glass installed on the backwash discharge line; and
- c. A manual air-relief valve at the high point;
- 2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;
- 3. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and
- 4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(g) Diatomaceous earth filters.

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoat;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods:

- a. Backwashing;
- b. Air-pump assist backwashing;
- c. Spray wash;
- d. Water pressure to wash vacuum filter; or
- e. Agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it **shall[may]** not be substituted for diatomaceous earth without NSF listing.

(h) Vacuum sand filters.

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(i) Cartridge filters.

- 1. Cartridge filters shall only be used on indoor splash pads;
- 2. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and
- 3. A clean duplicate set of cartridges shall be maintained at the facility.

(12) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (d) of this subsection.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:

a. Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine for each 10,000 gallons of holding tank volume for outdoor facilities; or

b. Three (3) ppm or one (1) pound per day for chlorine for each 10,000 gallons of holding tank volume for indoor facilities based on the flow rate specified in subsection (3)(c) of this section.

2. The equipment for supplying chlorine shall not be controlled by an automatic day-date clock.

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter **[unless the chlorine injection point is located within the surge tank]**.

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.5) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems shall be provided on all splash pads with a recirculating water system. UV systems should be installed on a bypass line and shall be equipped with a flow indicator.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

(13)(a) Testing equipment shall be provided at all recirculating splash pads, maintained with fresh reagents, and consist of a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents **shall[are]** not **be** acceptable;

(b) Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm;

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4);

(d) Both tests shall be accurate to within two-tenths (0.2) units; and

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

Section 8. Operational Water Quality Standards. (1) Disinfectant residuals for holding tanks:

(a) Chlorine residual shall be maintained between one (1.0) and five (5.0) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2.0) and six (6.0) ppm as free available disinfectant.

(c) Holding tanks stabilized with cyanuric acid shall meet the following criteria:

- 1. Be an outdoor facility;
- 2. Maintain one **and five-tenths (1.5)[(4.0)]** to five (5.0) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(3) Turbidity. Facility water shall have sufficient clarity at all times so that the bottom of the holding tank is clearly visible by an observer on the deck.

(4) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(5) The air temperature at an indoor facility shall be higher than the water temperature.

(6) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at least three (3) times daily with a greater frequency if usage or climatic conditions warrant.

(b) Turbidity shall be checked daily ~~[6]~~ or more often, as needed.

(c) Alkalinity, cyanuric acid (if used) shall be checked weekly ~~[6]~~ or more often, as needed.

Section 9. General Facility Operation and Maintenance. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all splash pads. The operator shall be available at all times when the facility is open for use.

(2) Facility and facility area.

(a) All facilities shall be maintained free from sediment and debris ~~[6]~~ and ~~[be maintained]~~ in good repair;

(b) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly. All areas of the facility shall be kept in good repair, clean, and sanitary; and

(c) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(3) Automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities, if provided, shall meet the following:

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily;

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair;

(c) Floors shall be maintained in a nonslip condition;

(d) Soap dispensers shall be filled and operable; and

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Shoes of any kind, including water shoes, shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with **815 KAR 35:020**~~[the National Electrical Code]~~ and shall be approved by a certified electrical inspector.

(8) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the

suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(9) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened, as necessary, to remove air which collects in the filter ~~[6]~~ and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoat before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoat operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(10) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(11) Flow meters. Flow meters, if used, shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(12) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(13) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(14) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(15) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted **if there are**~~[in the event of]~~ unusual pH problems, including corrosion ~~[or]~~ scaling, or wide fluctuations in pH.

(16) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this

treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose~~[,]~~ and removed by the suction cleaner and filtration system.

(17) Miscellaneous chemicals.

(a) Chemicals, other than approved disinfectants, shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(18) Equipment rooms.

(a) Equipment necessary for splash pad operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) **If not provided in the equipment room, storage space shall be:**

1. Provided where the following items can be acquired by the facility operator without leaving the premises:

a. Chemicals;

b. Tools;

c. Equipment;

d. Supplies; and

e. Records; and

2. Dry and protected from unauthorized access; and [Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and]

(e) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

Section 10. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation, together with other data as may be required on form DFS-352, Swimming Pool Log Sheet, incorporated by reference in 902 KAR 10:120. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results, as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

(3) All injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.

Section 11. Spectator and User Administrative Regulations. (1) Rules governing the use of the splash pad and instructions to users shall be displayed on placards at the entrance to the splash pad and enforced by the facility operator.

(2) Admission to the splash pad shall be refused to a person:

(a) Having any contagious disease~~[,]~~ infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, **or** ear discharges~~[,]~~ or any other condition that has the appearance of being infectious;

(b) Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

(c) Under the influence of alcohol, illegal substances, or exhibiting erratic behavior.

(3) **[No]** Food, drink, gum, tobacco, or vapor producing **products shall not [product, will]** be allowed.

(4) Personal conduct shall assure that the safety of self and others is not jeopardized.

(5) **[No]** Running and **[no]** boisterous or rough play **shall not be [is]** permitted.

(6) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the splash pad water **shall [is]** not **be** permitted.

(7) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the splash pad shall not be permitted in the facility or on the deck.

(8) All apparel worn shall be clean.

(9) Animals shall be excluded from the splash pad and deck area.

Section 12. Facility Inspection. (1) Seasonal facilities.

(a) All operators of seasonal splash pads, prior to opening to the public, shall certify to the cabinet, in writing, that the splash pad is in compliance with the requirements of this administrative regulation, **unless [except in instances where]** the cabinet has made an inspection prior to its opening.

1. For seasonal splash pads, the cabinet shall make at least two (2) full inspections during the operating season.

2. The cabinet~~[, at its discretion,]~~ may require one (1) of the full inspections to be performed prior to opening.

(b) The facility operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor splash pads shall receive a full inspection by the cabinet at least once each six (6) months.

(3) New splash pads shall receive final construction approval inspections by the cabinet and other affected state and local regulatory agencies prior to placing the splash pad in operation. It shall be the facility operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Splash pads shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing **[(free available residual)]** and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris in the holding tank; and

(i) Other checks as necessary.

(5) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(6) If an agent of the cabinet makes an inspection of a splash pad, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection, incorporated by reference in 902 KAR 10:120, and a copy provided to the facility operator. The inspection report shall:

(a) Set forth any violation observed;

(b) Establish a specific and reasonable period of time for the correction of the violation observed; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 13. Water Sampling and Testing. (1) A water sample may be collected from the splash pad if inspection or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted

to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

- (a) Total coliform;
- (b) E. coli; and
- (c) Pseudomonad organisms.

(3) If a sample is positive test for a contaminant, the test shall be repeated within one (1) to seven (7) days.

(4) For a facility, no more than two (2) consecutive samples shall be positive for:

- (a) More than two (2) coliform organisms per 100 milliliter (mL);
- (b) Pseudomonas organisms; or
- (c) E. coli.

(5) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 14. Bacteriological Quality of Facility Water. No more than two (2) consecutive samples shall:

(1) Contain more than 200 bacteria per mL;

(2) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 mL when the membrane filter test is used;

(3) Show a positive test (confirmed test) for pseudomonas organisms; or

(4) Show a positive test for fecal coliform organisms.

Section 15. Conditions requiring Closure of a Splash Pad and Enforcement Provisions. (1) The cabinet shall order the immediate closure of a splash pad and prohibit any person from using the splash pad by written notice to the facility operator if:

(a) There is an immediate danger to health or safety;

(b) The water does not conform to the bacteriological standards contained in this administrative regulation;

(c) Turbidity levels do not meet the requirements of this administrative regulation;

(d) The disinfectant residual is outside the range prescribed in this administrative regulation;

(e) The pH is outside the range prescribed by this administrative regulation;

(f) The cyanuric acid level exceeds fifty (50) ppm;

(g) The facility operator is not available;

(h) There has been a fecal accident in the splash pad;

(i) In any instance where the facility operator, an employee, or representative of the operator interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(j) If recirculation systems, filtration systems, or disinfectant systems are not in operation (with exceptions for maintenance, and seasonal shut down); or

(k) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the splash pad and a copy of the notice shall be posted conspicuously at the splash pad by the operator.

(3) Any owner or operator affected by an order is entitled, upon written request on form DFS-212, Request for a Conference, incorporated by reference in 902 KAR 1:400, to a conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) In all other instances of a violation of the provisions of this administrative regulation, or 902 KAR 10:121 for the nonpayment of fees, the cabinet shall issue a written notice specifying the violation in question and afford a reasonable opportunity to correct same. If the facility operator fails to comply with any written notice issued under the provisions of this administrative regulation or 902 KAR 10:121, the facility operator and local government shall be notified in writing that the splash pad shall be closed at the end of ten (10) days following service of the[such] notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet, by

the local government, within the ten (10) day period.

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) A local government whose splash pad has been closed may, at any time make application for a reinspection on form DFS-215, Application for Reinstatement, incorporated by reference in 902 KAR 45:005, for the purpose of reopening the splash pad. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the splash pad is found to be in compliance with the requirements of this administrative regulation, it shall be reopened.

(8) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the splash pad may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400. Prior to the action, the cabinet shall notify the facility operator and local government, in writing, stating the reasons for which the splash pad is subject to closure and advising that it shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator within the ten (10) day period.

Section 16. Effect on Local Administrative Regulations. Compliance with this administrative regulation shall[does] not relieve a local government from compliance with any other state or local laws~~[,]~~ dealing with:

(1) Splash pad operation and maintenance matters;[,] or

(2) Applicable zoning requirements~~[—that may also be applicable].~~

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Program Quality and Outcomes
(As Amended at ARRS, February 7, 2022)

907 KAR 17:005. Definitions for 907 KAR Chapter 17.

RELATES TO: KRS Chapter 13B, 194A.025(3), 199.555(2), Chapter 202A, 205.8451-205.8483, 311.550(12), 314.011(7), 387.510(15), 620.020(5), 42 U.S.C. 1382c, 1395tt, 1396-1396w-5, 20 C.F.R. 416.2101, 42 C.F.R. 400.203, 405.2401(b), 412.62, Part 438, 440.40(b), 447.280, 482.58

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 require specific standards[establish requirements] relating to managed care. This administrative regulation establishes the definitions for 907 KAR Chapter 17.

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(3) "Adverse action" means the:

(a) [The] Denial or limited authorization of a requested service,

including the type or level of service;

(b) ~~[The]~~Reduction, suspension, or termination of a previously authorized service;

(c) ~~[The]~~Denial, in whole or in part, of payment for a service;

(d) ~~[The]~~Failure to provide services in a timely manner; or

(e) ~~[The]~~Failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(4) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(5) "Authorized representative" means:

(a) For an enrollee who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the enrollee; or

(b) A legal guardian.

(6) "Behavioral health service" means a clinical, rehabilitative, or support service in an inpatient or outpatient setting to treat a mental illness, emotional disability, or substance use disorder.

(7) "Blind" is defined by 42 U.S.C. 1382c(a)(2).

(8) "Capitation payment" means the total per enrollee, per month payment amount the department pays an MCO.

(9) "Care coordination" means the integration of all processes in response to an enrollee's needs and strengths to ensure the:

(a) Achievement of desired outcomes; and

(b) Effectiveness of services.

(10) "Case management" means a collaborative process that:

(a) Assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an enrollee's health and human service needs;

(b) Is characterized by advocacy, communication, and resource management;

(c) Promotes quality and cost-effective interventions and outcomes; and

(d) Is in addition to and not in lieu of targeted case management for individuals pursuant to 907 KAR Chapter 15.

(11) "CHFS OIG" means the Cabinet for Health and Family Services, Office of Inspector General.

(12) "Child" means a person who:

(a)1. Is under the age of eighteen (18) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D);

(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient; or

(d) Is under the age of twenty-one (21) years for EPSDT.

(13) "Complex or chronic condition" means a physical, behavioral, or developmental condition that:

(a) ~~Seems to~~**May** have no known cure;

(b) Is progressive; or

(c) Can be debilitating or fatal if left untreated or under-treated.

(14) "Court-ordered commitment" means an involuntary commitment by an order of a court to a psychiatric facility for treatment pursuant to KRS Chapter 202A.

(15) "DAIL" means the Department for Aging and Independent Living.

(16) "DCBS" means the Department for Community Based Services.

(17) "Department" means the Department for Medicaid Services or its designee.

(18) "Disabled" is defined by 42 U.S.C. 1382c(a)(3).

(19) "DSM-IV" means **the Diagnostic and Statistical Manual of Mental Disorders, Fourth Editions, [a manual]** published by the American Psychiatric Association that covers all mental health disorders for both children and adults.

(20) "Dual eligible" means an individual eligible for Medicare and Medicaid benefits.

(21) "Early and periodic screening, diagnosis, and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(22) "Emergency service" means "emergency services" as defined by 42 U.S.C. 1396u-2(b)(2)(B).

(23) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(24) "Family planning service" means a counseling service, a medical service, or a pharmaceutical supply or device to prevent or delay pregnancy.

(25) "Federally qualified health center" or "FQHC" is defined by 42 C.F.R. 405.2401(b).

(26) "Federally qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services to be a federally qualified health center look-alike.

(27) "Fee-for-service" means a reimbursement model in which a health insurer reimburses a provider for each service provided to a recipient.

(28) "Foster care" is defined by KRS 620.020(5).

(29) "Fraud" means any act that constitutes fraud under applicable federal law or KRS 205.8451 **through**~~to~~ KRS 205.8483.

(30) "Grievance" is defined by 42 C.F.R. 438.400(b).

(31) "Homeless individual" means an individual who:

(a) Lacks a fixed, regular, or nighttime residence;

(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;

(c) Has a primary nighttime residence at a:

1. Publicly or privately operated shelter designed to provide temporary living accommodations; or

2. Public or private place not designed as regular sleeping accommodations; or

(d) Lacks access to **routine**~~normal~~ accommodations due to violence or the threat of violence from a cohabitant.

(32) "Individual with a special health care need" or "ISHCN" means an individual who:

(a) Has, or is at a high risk of having, a chronic physical, developmental, behavioral, neurological, or emotional condition; and

(b) **Might**~~May~~ require a broad range of primary, specialized, medical, behavioral health, or related services.

(33) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

(34) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(35) "Maternity care" means prenatal, delivery, and postpartum care and includes care related to complications from delivery.

(36) ~~"Medicaid works individual" means an individual who:~~

~~(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving SSI benefits;~~

~~(b) Is at least sixteen (16), but less than sixty-five (65), years of age;~~

~~(c) Is engaged in active employment verifiable with:~~

~~1. Paycheck stubs;~~

~~2. Tax returns;~~

~~3. 1099 forms; or~~

~~4. Proof of quarterly estimated tax;~~

~~(d) Meets the income standards established in 907 KAR 20:020; and~~

~~(e) Meets the resource standards established in 907 KAR 20:025.~~

~~(37)]~~ "Medical record" means a single, complete record that documents all of the treatment plans developed for, and medical services received by, an individual.

~~(37)]~~~~(38)]~~ "Medicare qualified individual group 1 (QI-1)" means an eligibility category that includes, pursuant to 42 U.S.C. 1396a(a)(10)(E)(iv), an individual who would be a Qualified

Medicaid beneficiary but for the fact that the individual's income:

(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and

(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who is not otherwise eligible for Medicaid under the state plan.

(38)[(39)] "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(39)[(40)] "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396(b), (c), and (d) and 42 C.F.R. 447.280 and 482.58.

(40)[(41)] "Olmstead decision" means the court decision of *Olmstead v. L.C. and E.W.*, U.S. Supreme Court, No. 98–536, June 26, 1999, in which the U.S. Supreme Court ruled, "For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

(41)[(42)] "Open enrollment" means an annual period during which an enrollee can choose a different MCO.

(42)[(43)] "Out-of-network provider" means a person or entity that has not entered into a participating provider agreement with an MCO or any of the MCO's subcontractors.

(43)[(44)] "Physician" is defined by KRS 311.550(12).

(44)[(45)] "Post-stabilization services" means covered services related to an emergency medical condition that are provided to an enrollee:

(a) After an enrollee is stabilized in order to maintain the stabilized condition; or

(b) Under the circumstances described in 42 C.F.R. 438.114(e) to improve or resolve the enrollee's condition.

~~[(46)] "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.]~~

(45)[(47)] "Primary care provider" or "PCP" means a licensed or certified health care practitioner who meets the description as established in 907 KAR 17:010, Section 6(6).

(46)[(48)] "Prior authorization" means the advance approval by an MCO of a service or item provided to an enrollee.

(47)[(49)] "Provider" means any person or entity under contract with an MCO or its contractual agent that provides covered services to enrollees.

(48)[(50)] "Provider network" means the group of physicians, hospitals, and other medical care professionals that a managed care organization has contracted with to deliver medical services to its enrollees.

(49)[(51)] "QAPI" means the Quality Assessment and Performance Improvement Program established in accordance with 42 C.F.R. 438 Subpart D, 438.206 to 438.242.

(50)[(52)] "Qualified alien" means an alien who, at the time of applying for or receiving Medicaid benefits, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(51)[(53)] "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(52)[(54)] "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(53)[(55)] "Recipient" is defined by KRS 205.8451(9).

(54)[(56)] "Rural area" means an area not in an urban area.

(55)[(57)] "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(56)[(58)] "Specialist" means a provider who provides specialty care.

(57)[(59)] "Specialty care" means care or a service that is provided by a provider who is not:

(a) A primary care provider; or

(b) Acting in the capacity of a primary care provider while providing the service.

(58)[(60)] "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(59)[(61)] "State fair hearing" means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B.

(60)[(62)] "State plan" is defined by 42 C.F.R. 400.203.

(61)[(63)] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services.

(62)[(64)] "State-funded adoption assistance" is defined by KRS 199.555(2).

(63)[(65)] "Supplemental security income benefits" or "SSI benefits" is defined by 20 C.F.R. 416.2101(c).

(64)[(66)] "Third party liability resource" means a resource available to an enrollee for the payment of expenses:

(a) Associated with the provision of covered services; and

(b) That does not include amounts exempt under Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396w-5.

(65)[(67)] "Transport time" means travel time:

(a) Under normal driving conditions; and

(b) With no extenuating circumstances.

(66)[(68)] "Urban area" is defined by 42 C.F.R. 412.62(f)(1)(ii).

(67)[(69)] "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

(68)[(70)] "Ward" is defined by KRS 387.510(15).

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Program Quality and Outcomes

(As Amended at ARRS, February 7, 2022)

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

RELATES TO: KRS Chapter 13B, 194A.025(3), 205.624, 311.621-311.643, 387.500-387.800, 42 U.S.C. 1396a, 1396n, 1396u-2, 42 C.F.R. 422.112, 422.113, 431.51, 431.200-431.250, 433.138, Part 438, 45 C.F.R. 233.100

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 require specific standards[establish requirements] relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

Section 1. Enrollment of Medicaid or KCHIP Recipients into Managed Care. (1) Except as established[provided] in subsection (3) of this section, enrollment into a managed care

organization shall be mandatory for a Medicaid or KCHIP recipient.

(2) The provisions in this administrative regulation shall be applicable to a:

- (a) Medicaid recipient; or
- (b) KCHIP recipient.

(3) The following recipients shall not be required to enroll, and shall not enroll, into a managed care organization:

(a) A recipient who resides in:

- 1. A nursing facility for more than thirty (30) calendar days; or
- 2. An intermediate care facility for individuals with an intellectual disability; or

(b) A recipient who is:

- 1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;
- 2. Receiving:

a. Services through the breast and cervical cancer program pursuant to 907 KAR 20:055;

b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 20:020;

c. Services through a 1915(c) home and community based services waiver program; or

d. Hospice services in a nursing facility or intermediate care facility for individuals with an intellectual disability; [or

e. Medicaid benefits as a Medicaid Works individual;]

3. A Qualified Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

4. A specified low-income Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

5. A Medicare qualified individual group 1 (QI-1) individual;

6. A qualified disabled and working individual;

7. A qualified alien eligible for Medicaid benefits for a limited period of time; or

8. A nonqualified alien eligible for Medicaid benefits for a limited period of time.

(4)(a) The department shall assign a recipient to an MCO based upon an algorithm that considers:

- 1. Continuity of care; and
- 2. Enrollee preference of an MCO provider.

(b) An assignment shall focus on a need of a child or an individual with a special health care need.

(5)(a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two (2) months shall have an opportunity to choose an MCO during the eligibility application process.

(b) If a recipient does not choose an MCO during the eligibility application process, the department shall assign the recipient to an MCO in accordance with subsections (4) and (6) of this section.

(6) Each member of a household shall be assigned to the same MCO.

(7) The effective date of enrollment for a recipient **established[described]** in subsection (5) of this section shall be the date of Medicaid eligibility.

(8) A recipient shall be given a choice of MCOs.

(9) A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility.

(10) A newborn who has been deemed eligible for Medicaid shall be automatically enrolled with the newborn's mother's MCO as an individual enrollee for up to sixty (60) calendar days.

(11)(a) An enrollee may change an MCO for any reason, regardless of whether the MCO was selected by the enrollee or assigned by the department:

1. Within ninety (90) calendar days of the effective date of enrollment;

2. Annually during an open enrollment period;

3. Upon automatic enrollment under subsection (9) of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in subparagraph 2. of this paragraph; or

4. **[When]** the Commonwealth of Kentucky imposes an intermediate sanction **established[specified]** in 42 C.F.R. 438.702(a)(3).

(b) An MCO shall accept an enrollee who changes MCOs under this section.

(12) Only the department may enroll a Medicaid recipient with an MCO in accordance with this section.

(13) Upon enrollment with an MCO, an enrollee shall receive an identification card issued by the MCO.

(14)(a) Within five (5) business days after receipt of notification of a new enrollee, an MCO shall send, by a method that shall not take more than three (3) calendar days to reach the enrollee, a confirmation letter to an enrollee.

(b) The confirmation letter shall include at least **[the following information]**:

- 1. The effective date of enrollment;
- 2. The name, location, and contact information of the PCP;
- 3. How to obtain a referral;
- 4. Care coordination;
- 5. The benefits of preventive health care;
- 6. The enrollee identification card;
- 7. A member handbook; and
- 8. A list of covered services.

(15) Enrollment with an MCO shall be without restriction.

(16) An MCO shall:

- (a) Have continuous open enrollment for new enrollees; and
- (b) Accept enrollees regardless of overall enrollment.

(17)(a) Except as **established[provided]** in paragraphs (b) through (e) of this subsection, a recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid.

(b) A newborn shall be enrolled beginning with the newborn's date of birth.

(c) An unemployed parent shall be enrolled beginning with the date the unemployed parent met the definition of unemployment in accordance with 45 C.F.R. 233.100.

(d)1. Except as **established[provided]** in paragraph (e) of this subsection, if an enrollee is retroactively determined eligible for Medicaid, the retroactive eligibility shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.

2. An MCO shall be responsible for reimbursing for covered services provided to a retroactively determined eligible individual **established[referenced]** in subparagraph 1. of this paragraph during the individual's retroactive eligibility period.

(e) If an enrollee is retroactively determined eligible for Medicaid as a result of being determined retroactively eligible for SSI benefits:

1. The individual's enrollment date with an MCO shall be the first of the month following the month in which the department is notified of the individual's retroactive eligibility for SSI benefits; and

2. The department shall be responsible for reimbursing for any services provided during the retroactive eligibility period for an individual determined to be retroactively eligible for SSI benefits.

(18) For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin **on the first day of the month of:**

(a) **[On the first day of the month of]**The original application for eligibility; or

(b) **[On the first day of the month of]**Retroactive eligibility as referenced in subsection (17)(d) or (e) of this section, if applicable.

(19) A provider shall be responsible for verifying an individual's eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 2. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.

(2) Only the department may disenroll a recipient from an MCO.

(3) A disenrollment of a recipient from an MCO shall occur:

(a) If the enrollee:

- 1. Becomes incarcerated or deceased; or
- 2. Is exempt from managed care enrollment in accordance with Section 1(3) of this administrative regulation; or

(b) In accordance with 42 C.F.R. 438.56.

(4) An MCO may recommend to the department that an

enrollee be disenrolled if the enrollee:

(a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid Program;

(b) Is abusive or threatening but not for uncooperative or disruptive behavior resulting from his or her special needs (except if his or her continued enrollment in the MCO seriously impairs the entity's ability to provide[furnish] services to either this particular enrollee or other enrollees) pursuant to 42 C.F.R. 438.56(b)(2); or

(c) Becomes deceased.

(5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in the enrollee's health.

(6)(a) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R. 438.56(e)(1).

(b) If the department fails to make a determination within the timeframe established[specified] in paragraph (a) of this subsection, the disenrollment shall be considered approved in accordance with 42 C.F.R. 438.56(e)(2).

(7) If an enrollee is disenrolled from an MCO, the:

(a) Enrollee shall be enrolled with a new MCO if the enrollee is:

1. Eligible for Medicaid; and
2. Not excluded from managed care participation; and

(b) MCO shall:

1. Assist in the selection of a new primary care provider, if requested;
2. Cooperate with the new primary care provider in transitioning the enrollee's care; and
3. Make the enrollee's medical record available to the new primary care provider in accordance with state and federal law.

(8) An MCO shall notify the department or Social Security Administration in an enrollee's county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 3. Enrollee Rights and Responsibilities. An MCO shall have written policies and procedures to protect the rights of an enrollee that meets the information requirements established in 42 C.F.R. 438.10.

Section 4. MCO Internal Appeal Process. (1) An enrollee may file a grievance orally or in writing with the MCO at any time.

(a) Within five (5) working days of receipt of a grievance, an MCO shall provide the enrollee with written notice that the grievance has been received and the expected date of its resolution.

(b) An investigation and final resolution of a grievance shall:

1. Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and
2. Include a resolution letter to the enrollee that shall include:
 - a. All information considered in investigating the grievance;
 - b. Findings and conclusions based on the investigation; and
 - c. The disposition of the grievance.

(2) An MCO shall have an internal appeal process in place that allows an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 438.424 and 42 U.S.C. 1396u-2(b)(4).

(3)(a) A provider shall not be an authorized representative of an enrollee without the enrollee's written consent for the specific action that is being appealed or that is the subject of a state fair hearing.

(b)1. For authorized representative purposes, written consent unique to an appeal or state fair hearing shall be required for the appeal or state fair hearing.

2. A single written consent shall not qualify as written consent for more than one (1):

- a. Hospital admission;
- b. Physician or other provider visit; or
- c. Treatment plan.

(4) A legal guardian of an enrollee who is a minor or an incapacitated adult or an authorized representative of an enrollee in accordance with subsection (3) of this section may file an appeal

on behalf of the enrollee.

(5) An enrollee shall have sixty (60) calendar days from the date of receiving a notice of adverse action from an MCO to file an appeal either orally or in writing with the MCO.

(6) Except as established in subsection 10 of this section, an MCO shall resolve an appeal within thirty (30) calendar days from the date the initial oral or written appeal is received by the MCO.

(7) An MCO shall have a process in place that ensures that an oral or written inquiry from an enrollee seeking to appeal an adverse action shall be/is treated as an appeal to establish the earliest possible filing date for the appeal.

(8) An oral appeal shall be followed by a written appeal that is signed by the enrollee or an individual listed in subsection (4) of this section within ten (10) calendar days.

(9)(a) Within five (5) working days of receipt of an appeal, an MCO shall provide the enrollee with written notice that the appeal has been received and the expected date of its resolution. A copy of this information shall also be sent to an individual listed in subsection (4) of this section, if applicable.

(b) An MCO shall confirm in writing receipt of an oral appeal unless an expedited resolution has been requested.

(10) An MCO shall extend the thirty (30) day timeframe for resolution of an appeal established in subsection (6) of this section by fourteen (14) calendar days if:

- (a) The enrollee requests the extension; or
- (b)1. The MCO demonstrates to the department that there is need for additional information; and
2. The extension is in the enrollee's interest.

(11) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the extension and the reason for the extension within two (2) working days of the decision to extend.

(12)(a) For an appeal, an MCO shall provide written notice of its decision within thirty (30) calendar days to an enrollee or a provider, if the provider filed the appeal.

(b) The provider shall:

1. Give a copy of the notice to the enrollee; or
2. Inform the enrollee of the provisions of the notice.

(13) An MCO shall:

(a) Continue to provide benefits to an enrollee, if the enrollee requested a continuation of benefits, until one (1) of the following occurs:

1. The enrollee withdraws the appeal;
2. Fourteen (14) calendar days have passed since the date of the resolution letter, if the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or
3. A state fair hearing decision adverse to the enrollee has been issued;

(b) Have an expedited review process for appeals if the MCO determines that allowing the time for a standard resolution could seriously jeopardize an enrollee's life or health or ability to attain, maintain, or regain maximum function;

(c) Except as established in paragraph (d) of this subsection, resolve an expedited appeal within three (3) working days of receipt of the request; and

(d) Extend the timeframe for an expedited appeal established in paragraph (c) of this subsection by up to fourteen (14) calendar days if:

1. The enrollee requests the extension; or
- 2.a. The MCO demonstrates to the department that there is need for additional information; and
- b. The extension is in the enrollee's interest.

(14) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the reason for the extension.

(15) If an MCO denies a request for an expedited resolution of an appeal, the MCO shall:

- (a) Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period shall begin on the date the MCO received the original request for appeal;
- (b) Give prompt oral notice of the denial; and
- (c) Follow up with a written notice within two (2) calendar days of the denial.

(16) An MCO shall document in writing an oral request for an expedited resolution and shall maintain the documentation in the enrollee case file.

(17) If an MCO takes adverse action at the conclusion of an internal appeal process, the MCO shall issue an adverse action letter to the enrollee that complies with KRS 13B.050(3)(d) and (e).

(18)(a) The requirements and policies **established/stated** in this section regarding an MCO appeal shall apply to an MCO.

(b) If a requirement or policy regarding an appeal or an MCO appeal stated in another Kentucky administrative regulation within Title 907 of the Kentucky Administrative Regulations contradicts a requirement or policy regarding an MCO appeal that is **established/stated** in this section, the requirement **for-policy** stated in the other administrative regulation shall not apply to an MCO.

Section 5. Department's State Fair Hearing for an Enrollee. (1) An enrollee may have a state fair hearing administered by the department in accordance with KRS Chapter 13B only after exhausting an MCO's internal appeal process.

(2) The department shall provide an enrollee with a hearing process that shall adhere to 907 KAR 1:563; 42 C.F.R. 438, Subpart F (438.400-438.424); and 42 C.F.R. 431, Subpart E (431.200-431.250).

(3)(a) An enrollee or authorized representative may request a state fair hearing by filing a written request with the department.

(b) If an enrollee or authorized representative requests a hearing, the request shall:

1. Be in writing and specify the reason for the request;
2. Indicate the date of service or the type of service denied; and
3. Be postmarked or filed within 120 calendar days from the date of the MCO adverse action letter issued at the conclusion of the MCO internal appeal process.

(4) A document supporting an MCO's adverse action shall be:

(a) Received by the department no later than five (5) calendar days from the date the MCO receives a notice from the department that a request for a state fair hearing has been filed by an enrollee; and

(b) Made available to an enrollee upon request by either the enrollee or the enrollee's legal counsel.

(5) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:

- (a) Comply with the requirements of:
 1. Section 4 of this administrative regulation; or
 2. Subsection (4) of this section; or
- (b) Participate in and present evidence at the state fair hearing.

Section 6. Enrollee Selection of Primary Care Provider. (1) Except for an enrollee **established/described** in subsection (2) of this section, an MCO shall have a process for enrollee selection and assignment of a primary care provider.

(2) The following shall not be required to have, but may request, a primary care provider:

- (a) A dual eligible;
- (b) A child in foster care;
- (c) A child under the age of eighteen (18) years who is disabled;

(d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 20:050; or

(e) An adult for whom the state is appointed a guardian.

(3)(a) For an enrollee who is not receiving supplemental security income benefits:

1. An MCO shall notify the enrollee within ten (10) calendar days of notification of enrollment by the department of the procedure for choosing a primary care provider; and

2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:

- a. Has historically provided services to the enrollee; and
- b. Meets the requirements of subsection (6) of this section.

(b) If **there is not a/no** primary care provider **that** meets the requirements of paragraph (a)2. of this subsection, an MCO shall assign the enrollee to a primary care provider who is within:

1. Thirty (30) miles or thirty (30) minutes from the enrollee's residence if the enrollee is in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from the enrollee's residence if the enrollee is in a rural area.

(4)(a) For an enrollee who is receiving supplemental security income benefits and is not a dual eligible, an MCO shall notify the enrollee of the procedure for choosing a primary care provider.

(b) If an enrollee has not chosen a primary care provider within thirty (30) calendar days, an MCO shall send a second notice to the enrollee.

(c) If an enrollee has not chosen a primary care provider within thirty (30) calendar days of the second notice, the MCO shall send a third notice to the enrollee.

(d) If an enrollee has not chosen a primary care provider within thirty (30) calendar days after the third notice, the MCO shall assign a primary care provider.

(e) Except for an enrollee who was previously enrolled with the MCO, an MCO shall not automatically assign a primary care provider within ninety (90) calendar days of the enrollee's initial enrollment.

(5)(a) An enrollee may select from at least two (2) primary care providers within an MCO's provider network.

(b) At least one (1) of the two (2) primary care providers **established/referenced** in paragraph (a) of this subsection shall be a physician.

(6) A primary care provider shall:

(a) Be a licensed or certified health care practitioner who functions within the provider's scope of licensure or certification, including:

1. A physician;
2. An advanced practice registered nurse;
3. A physician assistant; or
4. A clinic, including a primary care center, federally qualified health center, federally qualified health center look-alike, or rural health clinic;

(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;

(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and

(d) For an enrollee who has a gynecological or obstetrical health care need, a disability, or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care.

(7) Upon enrollment in an MCO, an enrollee may change primary care providers:

- (a) Within the first ninety (90) calendar days of assignment;
- (b) Once a year regardless of reason;
- (c) At any time for a reason approved by the MCO;
- (d) If, during a temporary loss of eligibility, an enrollee loses the opportunity provided by paragraph (b) of this subsection;
- (e) If Medicare or Medicaid imposes a sanction on the PCP;
- (f) If the PCP is no longer in the MCO provider network; or
- (g) At any time with cause, which shall include the enrollee:
 1. Receiving poor quality of care;
 2. Lacking access to providers qualified to treat the enrollee's medical condition; or
 3. Being denied access to needed medical services.

(8) A PCP shall not **be able to** request the reassignment of an enrollee to a different PCP for the following reasons:

- (a) A change in the enrollee's health status or treatment needs;
- (b) An enrollee's utilization of health services;
- (c) An enrollee's diminished mental capacity; or
- (d) Disruptive behavior of an enrollee due to the enrollee's special health care needs unless the behavior impairs the PCP's ability to provide services to the enrollee or others.

(9) A PCP change request shall not be based on race, color, national origin, disability, age, or gender.

(10) An MCO may approve or deny a primary care provider change.

(11) An enrollee shall be able to obtain the following services outside of an MCO's provider network:

- (a) A family planning service in accordance with 42 C.F.R. 431.51;
- (b) An emergency service in accordance with 42 C.F.R. 438.114;
- (c) A post-stabilization service in accordance with 42 C.F.R.

438.114 and 42 C.F.R. 422.113(c); or

(d) An out-of-network service that an MCO is unable to provide within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4) subject to any prior authorization requirements of the MCO.

(12) An MCO shall:

(a) Notify an enrollee within:

1. Thirty (30) calendar days of the effective date of a voluntary termination of the enrollee's primary care provider; or

2. Fifteen (15) calendar days of an involuntary termination of the enrollee's primary care provider; and

(b) Assist the enrollee in selecting a new primary care provider.

Section 7. Member Handbook. An MCO shall send a member handbook to an enrollee as required by 42 C.F.R. 438.10.

Section 8. Enrollee Non-Liability and Liability for Payment.

(1)(a) Except as **established[specified]** in Section 9 of this administrative regulation, an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee's MCO.

(b) An enrollee may be liable for the costs of services received during an appeal process in accordance with:

1. 42 C.F.R. 431.230; or

2. 42 C.F.R. 438.404.

(2) An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR 1:604.

Section 9. Recoupment of Payment from an Enrollee for Fraud, Waste, or Abuse. (1) If an enrollee is determined to be ineligible for Medicaid through an administrative hearing or adjudication of fraud by the CHFS OIG, the department shall recoup a capitation payment it has made to an MCO on behalf of the enrollee.

(2) An MCO shall request a refund from the enrollee **established[referenced]** in subsection (1) of this section of a payment the MCO has made to a provider for the service provided to the enrollee.

(3) If an MCO has been unable to collect a refund **established[referenced]** in subsection (2) of this section within six (6) months, the commonwealth may recover the refund from the enrollee.

Section 10. Third Party Liability and Coordination of Benefits.

(1) Medicaid shall be the payer of last resort for a service provided to an enrollee.

(2) An MCO shall:

(a) Exhaust a payment by a third party prior to payment for a service provided to an enrollee;

(b) Be responsible for determining a legal liability of a third party to pay for a service provided to an enrollee;

(c) Actively seek and identify a third party liability resource to pay for a service provided to an enrollee in accordance with 42 C.F.R. 433.138; and

(d) Assure that Medicaid shall be the payer of last resort for a service provided to an enrollee.

(3) In accordance with 907 KAR 20:005 and KRS 205.624, an enrollee shall:

(a) Assign, in writing, to the MCO the enrollee's rights to a medical support or payment from a third party for a medical service paid for by the MCO; and

(b) Cooperate with an MCO in identifying and providing information to assist the MCO in pursuing a third party that may be liable for care or services.

(4) If an MCO becomes aware of a third party liability resource after payment for a service provided to an enrollee, the MCO shall seek recovery from the third party resource.

Section 11. Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order may act on behalf of an enrollee who is under the age of eighteen (18)

years, a potential enrollee, or a former enrollee for the purpose of:

(a) Selecting a primary care provider;

(b) Filing a grievance or appeal; or

(c) Taking an action on behalf of the child regarding an interaction with an MCO.

(2)(a) A legal guardian who has been appointed pursuant to KRS 387.500 **through[te]** 387.800 may act on behalf of an enrollee who is a ward of the commonwealth.

(b) A person authorized to make a health care decision pursuant to KRS 311.621 **through[te]** 311.643 may act on behalf of an enrollee, potential enrollee, or former enrollee in making the health care decisions.

(c) An enrollee may:

1. Represent the enrollee; or

2. Use legal counsel, a relative, a friend, or other spokesperson.

Section 12. Enrollees with Special Health Care Needs. (1)(a) In accordance with 42 C.F.R. 438.208, the following shall be considered an individual with a special health care need:

1. A child in or receiving foster care or state-funded adoption assistance;

2. A homeless individual;

3. An individual with a chronic physical or behavioral illness;

4. A blind or disabled child;

5. An individual who is eligible for SSI benefits; or

6. An adult who is a ward of the Commonwealth in accordance with 910 KAR Chapter 2.

(b) In accordance with 42 C.F.R. 438.208, an MCO shall:

1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;

2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;

3. Include the use of appropriate health care professionals to perform an assessment; and

4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.

(c)1. An enrollee who is a child in foster care shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

2.a. The service plan referenced in subparagraph 1. of this paragraph shall be used by DCBS and the MCO to determine the enrollee's medical needs and to identify if there is a need for case management.

b. The MCO shall be available to meet with DCBS at least quarterly to discuss the health care needs of the child as identified in the service plan. The child's caretaker may attend each meeting held to discuss the health care needs of that child.

c. If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with the MCO to develop a case management plan of care.

d. The MCO shall consult with DCBS prior to developing or modifying a case management plan of care.

e. If the service plan accomplishes a requirement **established [stated]** in paragraph (b) of this subsection, the requirement **[stated in paragraph (b)]** shall be considered to have been met.

(2) A treatment plan **established[referenced]** in subsection (1)(b)4. of this section shall be developed:

(a) With participation from the enrollee or the enrollee's legal guardian as referenced in Section 11 of this administrative regulation; and

(b) By the enrollee's primary care provider, if the enrollee has a primary care provider.

(3) An MCO shall:

(a)1. Develop materials specific to the needs of an enrollee with a special health care need; and

2. Provide the materials **established[referenced]** in subparagraph 1. of this paragraph to the enrollee, caregiver, parent, or legal guardian;

(b) Have a mechanism to allow an enrollee identified as having a special health care need to directly access a specialist, as

appropriate, for the enrollee's condition and identified need; and

(c) Be responsible for the ongoing care coordination for an enrollee with a special health care need.

(4) The information established~~referenced~~ in subsection (3)(a) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.

(5)(a) An enrollee who is a ward of the commonwealth shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DAIL prior to being enrolled with the MCO.

(b) If the service plan established~~referenced~~ in paragraph (a) of this subsection identifies the need for case management, the MCO shall work with DAIL or the enrollee to develop a case management plan of care.

Section 13. Second Opinion. An enrollee may get a second opinion within the MCO's provider network for a surgical procedure or diagnosis and treatment of a complex or chronic condition.

Section 14. Managed Care Requirements. (1) All aspects of managed care shall be governed and controlled by the applicable federal and state laws, including 42 C.F.R. Part 438, 42 U.S.C. 1396n, and 42 U.S.C. 1396u-2, and the negotiated terms of the contract between a managed care organization and the department.

(2) The current MCO contracts shall be posted on the department's Web site at <https://chfs.ky.gov/agencies/dms/dpgo/Pages/mco-contracts.aspx> [<http://chfs.ky.gov/dms/contracts.htm>].

Section 15. Centers for Medicare and Medicaid Services Approval and 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 or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

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 Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, February 7, 2022)

907 KAR 20:001. Definitions for 907 KAR Chapter 20.

RELATES TO: KRS 194A.005(1), 205.8451(7), (9), 304.14-640(4), 311.550(12), 314.011, 620.020(5), 20 C.F.R. 416.2101, 42 C.F.R. 400.203, 405.2401(b), 435.4, 438.2, 438.408, 447.280, 8 U.S.C. 1101(a)(15), (17), 1641(b), [and](c), 38 U.S.C. 101(2), 42 U.S.C. 405(c)(2), 670 ~~–[to]~~ 679c, 1395tt, 1396b(x)(3)(A), 1396d(a)(2)(A), (B), 1396d(a)(9), 1396d(p)(1), 1396d(s), 1396l, 1396n(c), 1396p(d)(4)(B), 1396r-5(g), 1396r(b), (c), [and](d), 1397aa to jj [194A.025(3)]

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 20.

Section 1. Definitions. (1) "1915(c) home and community based service" means a service available or provided via a 1915(c) home and community based services waiver program.

(2) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(3) "ABD" means a person who is aged, blind, or disabled.

(4) "Adult scale" means the scale located in 907 KAR 20:020, Section 1(1), establishing Medicaid income limits by family size.

(5) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(6) "Adverse action" means:

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner; or

(e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(7) "After the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of a Medicaid eligible family.

(8) "Aid to Families with Dependent Children" or "AFDC" means an assistance program:

(a) In effect from 1935 through[to] 1996;

(b) For children whose families had low or no income; and

(c) Administered by the United States Department of Health and Human Services.

(9) "Ambulatory prenatal care" means health-related care furnished to a presumed eligible pregnant woman provided in an outpatient setting.

(10) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(11) "Applicant" means an individual applying for Medicaid.

(12) "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the applicant or recipient; or

(b) A legal guardian.

(13) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid.

(14) "Basic maintenance" means the amount of income that may be retained by the applicant for living and personal expenses.

(15) "Blind work expense" or "BWE" means an SSI program option in which expenses a blind individual incurs in order to earn income are deducted for an SSI eligibility purpose.

(16) "Cabinet" is defined by KRS 194A.005(1).

(17) "Caretaker relative" means:

(a) An individual:

1. Who is the caregiver of a child; or

2. On whose tax return the child is listed as a dependent; and

(b) Who has one (1) of the following relationships to the child:

1. A grandfather;

2. A grandmother;

3. A brother;

4. A sister;

5. An uncle;

6. An aunt;

7. A nephew;

8. A niece;

9. A first cousin;

10. A relative of the half-blood;

11. A preceding generation denoted by a prefix of:

a. Grand;

b. Great; or

c. Great-great; or

12. A stepfather, stepmother, stepbrother, or stepsister.

(18) "Categorically needy" means an individual with income below 300 percent of the supplemental security income (SSI) standard who has been receiving hospice or 1915(c) home and community based services for at least thirty (30) consecutive days.

(19) "Child" means a person who:

(a)1. Is under the age of nineteen (19) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D); or

(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient.

(20) "Community spouse" means the individual who is married to an institutionalized spouse who:

(a) Remains at home in the community; and

(b) Is not:

1. Living in a medical institution;

2. Living in a nursing facility; or

3. Participating in a 1915(c) home and community based services waiver program.

(21) "Community spouse maintenance standard" means the income standard to which a community spouse's otherwise available income is compared for purposes of determining the amount of the allowance used in the post-eligibility calculation.

(22) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30) consecutive days of receipt of a 1915(c) home and community based service or a combination of both.

(23) "Countable resources" means resources not subject to exclusion in the Medicaid Program.

(24) "DCBS" means the Department for Community Based Services.

(25) "Deemed eligible newborn" means an infant born to a mother who, at the time of the infant's birth, was a Medicaid recipient.

(26) "Department" means the Department for Medicaid Services or its designee.

(27) "Dependent child" means a biological child, a step child, or a child gained through adoption, who:

(a) Lives with a parent in the community; and

(b) Is claimed as a dependent by either parent under the Internal Revenue Service Code.

(28) "Dependent parent" means a parent:

(a) Of either member of a couple;

(b) Who lives with the community spouse; and

(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(29) "Dependent sibling" means a brother or sister of either member of a couple, including a half-brother, half-sister, or sibling gained through adoption, who:

(a) Resides with the community spouse; and

(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(30) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(31) "Excess shelter allowance" means an amount equal to the difference between the community spouse's verified shelter expenses and the minimum shelter allowance.

(32) "Fair market value" means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred based on:

(a) The most recent gross tax assessed value of the property as stated by the local property valuation administrator; or

(b) An independent, licensed appraiser; or

(c) The price brought on the property at a public auction conducted by a licensed auctioneer.

(33) "Family alternatives diversion payment" means a lump sum payment made to a Kentucky Transitional Assistance Program applicant:

(a) To meet short-term emergency needs; and

(b) Pursuant to 921 KAR 2:500.

(34) "First month of SSI payment" means the first month for

which an SSI-related Medicaid recipient is determined to be eligible for SSI payments.

(35) "Foster care" is defined by KRS 620.020(5).

(36) "Gross income" means non-excluded income that[which] would be used to determine eligibility prior to income disregards.

(37) "Homestead" means property:

(a) In which an individual has an ownership interest; and

(b) That[Which] an individual uses as the individual's principal place of residence.

(38) "ICF IID" means intermediate care facility for individuals with an intellectual disability.

(39) "Impairment related work expense" or "IRWE" means an SSI program option in which the United States Social Security Administration deducts the cost of items or services an individual needs, due to an impairment, in order to work.

(40) "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(41) "Income" means money received from:

(a) Statutory benefits (for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits);

(b) A pension plan;

(c) Rental property;

(d) An investment; or

(e) Wages for labor or services.

(42) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications that meet[which meets] the criteria established in 921 KAR 2:016.

(43) "Institutionalized" means:

(a) Residing in:

1. A nursing facility;

2. An intermediate care facility for an individual with an intellectual disability; or

3. A medical institution;

(b) Receiving hospice services; or

(c) Receiving 1915(c) home and community based services.

(44) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:

(a) An inpatient in:

1. A nursing facility;

2. An intermediate care facility for individuals with an intellectual disability; or

3. A medical institution;

(b) Receiving 1915(c) home and community based services; or

(c) Receiving hospice services.

(45) "Institutionalized spouse" means an institutionalized individual who:

(a) 1. Is in a medical institution, intermediate care facility for an individual with an intellectual disability, or nursing facility;

2. Participates in a 1915(c) home and community based services waiver program; or

3. Is receiving hospice services;

(b) Has a spouse who is not an institutionalized individual; and

(c) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse:

1. Is not receiving hospice services; and

2. Remains out of a medical institution, nursing facility, intermediate care facility for an individual with an intellectual disability, or 1915(c) home and community based services waiver program.

(46) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa through[te] j.

(47) "Kentucky Transitional Assistance Program" or "K[-]TAP" means:

(a) Kentucky's version of TANF; and

(b) A money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.

(48) "Keogh plan" means a full-fledged pension plan for self-

employed individuals in the United States of America.

(49) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).

(50) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).

(51) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by/in 42 C.F.R. 438.2.

(52) "Mandatory state supplement" is defined by 42 C.F.R. 435.4.

(53) ~~["Medicaid Works individual" means an individual who:~~

~~(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplemental security income;~~

~~(b) Is a least sixteen (16), but less than sixty-five (65), years of age;~~

~~(c) Is engaged in active employment verifiable with:~~

~~1. Paycheck stubs;~~

~~2. Tax returns;~~

~~3. 1099 forms; or~~

~~4. Proof of quarterly estimated tax;~~

~~(d) Meets the income standards established in 907 KAR 20:020; and~~

~~(e) Meets the resource standards established in 907 KAR 20:025.~~

(54) "Medical institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for individuals with an intellectual disability.

(54)(55) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(55)(56) "Medically needy" is defined by 42 C.F.R. 435.4.

(56)(57) "Medically-needy income level" or "MNIL" means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.

(57)(58) "Medicare Part A" means federal health insurance that covers:

(a) Inpatient hospital or skilled nursing facility services, including blood transfusions;

(b) Hospice services; and

(c) Home health services.

(58)(59) "Medicare qualified individual group 1 (QI-1)" means an eligibility category in which an individual would be a qualified Medicaid beneficiary but for the individual's income disqualifying the individual from being a qualified Medicare beneficiary due to the circumstances established/described in 42 U.S.C. 1396a(a)(10)(E)(iv).

(59)(60) "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.

(60)(61) "Minor" means the couple's minor child or the couple's minor individual older than a child who:

(a) Is under the age of twenty-one (21) years;

(b) Lives with a community spouse; and

(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(61)(62) "Modified adjusted gross income" or "MAGI" is defined by 42 U.S.C. 1396a(e)(14)(G).

(62)(63) "Month of separation" means the month in which an individual ceases living in the same household of a Medicaid eligible family.

(63)(64) "Monthly income allowance" means an amount:

(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and

(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards.

(64)(65) "NF" means nursing facility.

(65)(66) "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2.

(66)(67) "Non-recurring lump sum income" means money received at one (1) time that/which is normally considered as income, including:

(a) Accumulated back payments from Social Security, unemployment insurance, or workers' compensation;

(b) Back pay from employment;

(c) Money received from an insurance settlement, gift, inheritance, or lottery winning;

(d) Proceeds from a bankruptcy proceeding; or

(e) Money withdrawn from an IRA by an individual prior to the individual reaching the age at which a penalty is not/where no penalty is imposed for withdrawing the IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(67)(68) "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 [and 482.66].

(68)(69) "Old Age, Survivors, and Disability Insurance" or "OASDI" means the social insurance program:

(a) More commonly known as "Social Security"; and

(b) Into which participants make payroll contributions based on earnings.

(69)(70) "Optional state supplement" is defined by 42 C.F.R. 435.4.

(70)(71) "Other family member" means a relative of either member of a couple who is a:

(a) Minor or dependent child;

(b) Dependent parent; or

(c) Dependent sibling.

(71)(72) "Other family member's maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount.

(72)(73) "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state, and local taxes; child support payments; or other court ordered obligation.

(73)(74) "Patient status criteria" means the patient status criteria established in 907 KAR 1:022.

(74)(75) "Physician" is defined by KRS 311.550(12).

(75)(76) "Plan to Achieve Self Support" or "PASS" means an SSI program option that/which enables a disabled individual receiving SSI benefits to:

(a) Identify a work goal;

(b) Identify training, items, or services needed to reach the work goal; and

(c) Set aside money for installment payments or a down payment for items needed to reach the work goal.

(76)(77) "Presumptive eligibility" means Medicaid eligibility determined:

(a) By a provider authorized by 907 KAR 20:050 to make a presumptive eligibility determination; and

(b) In accordance with 907 KAR 20:050.[]

(78) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.[]

(77)(79) "Provider" is defined by KRS 205.8451(7).

(78)(80) "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(79)(81) "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(80)(82) "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(81)(83) "Qualified non-citizen" is defined by/in 8 U.S.C. 1641(b) and (c).

(82)[(84)] "Qualified provider" means a provider who:
 (a) Is currently enrolled with the department;
 (b) Has been trained and certified by the department to grant presumptive eligibility to pregnant women; and
 (c) Provides services of the type established~~[described]~~ in 42 U.S.C. 1396d(a)(2)(A) or (B) or 42 U.S.C. 1396d(a)(9).
 (83)[(85)] "Qualifying income trust" or "QIT" means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).
 (84)[(86)] "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.
 (85)[(87)] "Recipient" is defined by~~[in]~~ KRS 205.8451(9).
 (86)[(88)] "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization of the institutionalized spouse upon request by either spouse, of the joint resources of a couple if a member of the couple enters a medical institution or nursing facility, receives hospice services, or becomes a participant in a 1915(c) home and community based services waiver program.
 (87)[(89)] "Resources" mean cash money and other personal property or real property that:
 (a) An individual:
 1. Owns; and
 2. Has the right, authority, or power to convert to cash; and
 (b) Is not legally restricted for support and maintenance.
 (88)[(90)] "Retirement, Survivors, and Disability Insurance" or "RSDI" means an insurance benefit program:
 (a) Managed by the United States Social Security Administration;
 (b) Also known as Social Security Disability or Social Security Disability Insurance; and
 (c) That~~[Which]~~ aims to provide monthly financial support to individuals who have lost income due to retirement, disability, or death of a family provider.
 (89)[(91)] "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).
 (90)[(92)] "Satisfactory documentary evidence of citizenship or nationality" is defined by 42 U.S.C. 1396b(x)(3)(A).
 (91)[(93)] "Significant financial duress" means a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to allow~~[permit]~~ the community spouse to remain in the community.
 (92)[(94)] "Social Security" means a social insurance program administered by the United States Social Security Administration.
 (93)[(95)] "Social Security number" means a number issued by the United States Social Security Administration to United States citizens, permanent residents, or temporary working residents pursuant to 42 U.S.C. 405(c)(2).
 (94)[(96)] "Special income level" means the amount that~~[which]~~ is 300 percent of the SSI standard.
 (95)[(97)] "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).
 (96)[(98)] "Spend-down liability" means the amount of money in excess of the Medicaid income eligibility threshold to which incurred medical expenses are applied to result in an individual's income being below the income eligibility threshold.
 (97)[(99)] "Spousal protected resource amount" means resources deducted from a couple's combined resources for the community spouse in an eligibility determination for the institutionalized spouse.
 (98)[(100)] "Spousal share" means one-half (1/2) of the amount of a couple's combined countable resources, up to a maximum of \$60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).
 (99)[(101)] "Spouse" means a person legally married to another under state law.
 (100)[(102)] "SSI benefit" is defined by 20 C.F.R. 416.2101.
 (101)[(103)] "SSI essential person, spouse, or nonspouse"

means an individual necessary to an SSI recipient to enable the SSI recipient to be self-supporting.
 (102)[(104)] "SSI general exclusion" means the twenty (20) dollars disregard from income allowed by the Social Security Administration in an SSI determination.
 (103)[(105)] "SSI program" means the United States supplemental security income program.
 (104)[(106)] "SSI standard" means the amount designated by the Social Security Administration as the federal benefit rate.
 (105)[(107)] "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, with revisions of the official income poverty guidelines applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.
 (106)[(108)] "State plan" is defined by 42 C.F.R. 400.203.
 (107)[(109)] "State spousal resource standard" means the amount of a couple's combined countable resources determined necessary by the department for a community spouse to maintain himself or herself in the community.
 (108)[(110)] "Support right" means the right of an institutionalized spouse to receive support from a community spouse under state law.
 (109)[(111)] "Targeted low-income child" is defined by 42 C.F.R. 457.310(a).
 (110)[(112)] "Temporary Assistance for Needy Families" or "TANF" means a block grant program that~~[which]~~:
 (a) Succeeded AFDC; and
 (b) Is designed to:
 1. Assist needy families so that children can be cared for in their own homes;
 2. Reduce the dependency of needy parents by promoting job preparation, work, and marriage;
 3. Prevent out-of-wedlock pregnancies; and
 4. Encourage the formation and maintenance of two-parent families.
 (111)[(113)] "Title IV-E benefits" means benefits received via Social Security Act Title IV, Part 3, which is codified as 42 U.S.C. 670 through~~[to]~~ 679c.
 (112)[(114)] "Tobacco Master Settlement Agreement" means an agreement:
(a) Entered into in November 1998 between certain tobacco companies and states' attorneys general of forty-six (46) states; and;
(b)(1)(a) That~~[Which]~~ settled states' lawsuits against the tobacco industry for recovery of tobacco-related health care costs;
2.(b) That~~[Which]~~ exempted the tobacco companies from private tort liability regarding harm caused by tobacco; and
3.(c) In which the tobacco companies agreed to make various annual payments to the states to compensate for some of the medical costs incurred in caring for individuals with smoking-related illnesses.
 (113)[(115)] "Transferred resource factor" means an amount that is:
 (a) Equal to the average:
 1. Monthly cost of nursing facility services in the state at the time of application; and
 2. Of private pay rates for semi private rooms of all Medicaid participating facilities; and
 (b) Adjusted annually.
 (114)[(116)] "Trust" means a legal instrument or agreement valid under Kentucky state law in which:
 (a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and
 (b) A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.
 (115)[(117)] "Trusted source" means a source recognized by the federal government or department as a reliable source for verifying an individual's information.
 (116)[(118)] "Uncompensated value" means the difference between the:

- (a) Fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset; and
 (b) Amount received for the asset.
 (117)(149) "Undue hardship" means that:
 (a) Medicaid eligibility of an institutionalized spouse cannot be established on the basis of assigned support rights; and
 (b) The spouse is subject to discharge from the medical institution, nursing facility, or 1915(c) home and community based services waiver program due to inability to pay.
 (118)(120) "Valid immigrant status" is defined by/in:
 (a) 8 U.S.C. 1101(a)(15); or
 (b) 8 U.S.C. 1101(a)(17).
 (119)(124) "Veteran" is defined by/in 38 U.S.C. 101(2).

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, February 7, 2022)

907 KAR 20:020. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, 42 C.F.R. Part 130, Section 4735 of Pub.L. 105-33, [38 U.S.C. 5503,] 42 U.S.C. 1382a, 1383c(b), 1396-1396v, 1396p(d)(4), 1397j(b), [1396j(b), 1397aa, 9902(2)]

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396d, 1397aa, 1382a(b)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. 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 for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Income Limitations. (1)(a) Income shall be determined by comparing adjusted income as required by Section 2 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$2,820[2,600]	\$235[217]
2	3,492[3,200]	291[267]
3	4,056[3,700]	338[308]
4	5,028[4,600]	419[383]
5	5,904[5,400]	492[450]
6	6,672[6,100]	556[508]
7	7,452[6,800]	621[567]

(b) For each additional family member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) For a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e) a change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period, which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The special income limits and provisions established in this subsection shall apply for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary,

qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1).

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI program for a:

(a) ~~[A-]~~Child who lost eligibility for SSI benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) ~~[A-]~~Person with hemophilia who received a class action settlement as established in 42 C.F.R. Part 130.

(5) Income shall be limited to the allowable amounts for the mandatory or optional state supplement program for an individual established/described in 42 C.F.R. 435.135.[

~~(6) The following special income factors shall apply for a Medicaid Works individual:~~

~~(a) Income for a Medicaid Works individual's spouse shall not exceed \$45,000 per year;~~

~~(b) A Medicaid Works individual's unearned income shall be less than the SSI standard plus twenty (20) dollars monthly; and~~

~~(c) The combination of earned and unearned income for a Medicaid Works individual shall be less than 250 percent of the official poverty income guidelines.]~~

Section 2. Income Disregards. In comparing income with the scale established in Section 1 of this administrative regulation, gross income shall be adjusted as established in this section.

(1) In a TANF or family related Medicaid case:

(a) The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings;

(b) For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month; and

(c) Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) For an ABD Medicaid case ~~[or a Medicaid Works individual]~~, the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b) shall apply.

(3) For an individual in a Medicaid eligibility group subject to 42 U.S.C. 1396a(a)(10)(E)(i), (ii), or (iv) or 42 U.S.C. 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment causes an individual to be ineligible for Medicaid benefits:

(a) The individual's most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment shall be disregarded; and

(b) The disregard established/referenced in paragraph (a) of this subsection shall continue until the individual loses Medicaid eligibility for any other reason for three (3) consecutive months.

(4) ~~[(a)]~~ An ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

~~[(b) A Medicaid Works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).]~~

Section 3. Lump Sum Income. Except as established in Section 8 of this administrative regulation, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill a plan approved by the United

States Social Security Administration to achieve self support, IRWE deduction, or BWE deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver program.

(5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1) until after the month following the month in which the official poverty income guidelines promulgated by the United States Department of Health and Human Services are published.

(6) Any amount received from a victim's compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) pension benefit shall have ninety (90) dollars excluded as income in the:

(a) ~~[Excluded as income in the]~~ Medicaid eligibility determination; and

(b) ~~[Excluded as income in the]~~ Post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses and aid and attendance shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income that[which] is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC or SSI) shall be excluded.

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. Part 130, any payment received by a person with hemophilia from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

(16) All monies received by an individual from the Tobacco Master Settlement Agreement shall be excluded.

(17) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall be excluded.

Section 5. Consideration of Mandatory or Optional State Supplements. For an individual receiving a mandatory or optional

state supplement, that portion of the individual's income that[which] is in excess of the basic maintenance standard, established in Section 1(1) of this administrative regulation, shall be applied to the special need that[which] results in the supplement.

Section 6. Pass-through Cases. (1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement.

(b) An individual who would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 7 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount established[specified] in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 7. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2)(a) An individual with income in excess of the basic maintenance scale established in Section 1(1) of this administrative regulation shall qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(b) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined shall be used to offset excess income if the medical expenses:

1. Remain unpaid at the beginning of the quarter; and

2. Have not previously been used as spend-down expenses.

Section 8. Individual Retirement Account. (1)(a) If an individual reaches the point at which[where] the individual is eligible to begin withdrawing from an IRA without suffering a penalty, the individual shall begin withdrawing from the IRA at least the minimum amount determined by the financial institution holding the IRA.

(b) If an individual does not begin withdrawing from an IRA pursuant to paragraph (a) of this subsection, the individual shall be ineligible for Medicaid benefits.

(2) If an individual withdraws funds from an IRA prior to reaching the point at which[where] the individual would suffer no penalty for withdrawing funds, the withdrawal shall be considered non-recurring lump sum income.

(3) If an individual withdraws income pursuant to subsection (1)(a) of this section, the income shall be prorated over the period of time the income covers (for example monthly, quarterly, or annually).

Section 9. Applicability. The provisions and requirements of this administrative regulation shall:

(1) Apply to:

(a) A child in foster care;

(b) An aged, blind, or disabled individual; and

(c) An individual who receives supplemental security income benefits; and

(2) Not apply to an individual whose Medicaid eligibility is determined:

(a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(b) Pursuant to 907 KAR 20:075.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amended After Comments)

201 KAR 26:310. Telehealth and telepsychology.

RELATES TO: KRS 319.140

STATUTORY AUTHORITY: KRS 319.032(2), 319.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 requires a treating psychologist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation protects the health and safety of the citizens of Kentucky and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

Section 1. Definitions. (1) "Client" is defined by 201 KAR 26:145, Section 3.

(2) "Telehealth" means delivery of health care-related services, by a provider who is a health care provider licensed in Kentucky, to a client[patient] through a face-to-face encounter with access to real-time interactive audio and video technology, or audio-only technology if video is not technologically possible due to limited internet connectivity or limited bandwidth. Telehealth shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call and shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9.

(3) "Telepsychology" means the "practice of psychology", as defined by KRS 319.010(7), between the credential holder and the client[psychologist and the patient] that is provided using:

- (a) Electronic communication technology; or
- (b) Two (2) way, interactive, simultaneous audio and video.

(4) "Telehealth service" means any service that is provided via telehealth and is one (1) of the following:

- (a) Event;
- (b) Encounter;
- (c) Consultation;
- (d) Visit;
- (e) Remote patient monitoring;
- (f) Referral; or
- (g) Treatment.

Section 2. Client Requirements. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall, upon initial contact with the client:

- (1) Make reasonable attempts to verify the identity of the client;
- (2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the credential holder other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;

(5) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepsychology;

(b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;

(c) Potential risks of disruption in the use of telepsychology;

(d) When and how the credential holder will respond to routine electronic messages;

(e) The circumstances in which the credential holder will use

alternative communications for emergency purposes;

(f) Who else may have access to client communications with the credential holder;

(g) How communications can be directed to a specific credential holder;

(h) How the credential holder stores electronic communications from the client; and

(i) The reporting of clients required by 201 KAR 26:145, Section 7.

(7) Within forty-eight (48) hours of the telehealth service, the credential holder shall document within the client's medical record that a service was provided by telehealth, and follow all documentation requirements of the practice.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. (1) A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:

(a) Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;

(b) Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(c) Document the client's presenting problem, purpose, or diagnosis;

(d) Follow the record-keeping requirements of 201 KAR 26:145, Section 6;

(e) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data; and

(f) Document the client's written informed consent to the services being provided and the provision of those services via telehealth, including that the patient has the right to refuse telehealth consultation or services, has been informed of alternatives to telehealth services, that the client shall be entitled to receive information from the provider regarding the services rendered, that the client's information shall be protected by applicable federal and state law regarding patient confidentiality, that the client shall have the right to know the identity of all persons present at any site involved in the telehealth services, and to exclude any such person, and that the client shall have the right to be advised, and to object to, any recording of the telehealth consultation or services.

(2) The requirement of a written informed consent shall not apply to an emergency situation if the client is unable to provide informed consent and the client's legally authorized representative is not available.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall comply with:

(1) State law where the credential holder is credentialed and state law regarding the practice of psychology where the client is located at the time services are rendered; and

(2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver psychological services or who practices telepsychology:

(1) Shall not, by or on behalf of the credential holder, engage in false, misleading, or deceptive advertising of telepsychology; and

(2) Shall comply with 201 KAR 26:145.

BRENDA FUTRELL NASH, PhD, HSP, Board Chair

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a requirement that documentation of the telehealth appointment takes place within 48 hours. Additionally, in response to a comment, the amended after comments version of this administration regulation amends the definition of telehealth in this administrative regulation to clarify that telehealth can occur by use of or audio-only technology if video is not technologically possible due to limited internet connectivity or limited bandwidth.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect practitioners licensed by the Board who are practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients. As of February, 2022, there are approximately 1,900 practitioners licensed by the Board.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The only action required by this amendment is for the practitioner to document telehealth appointments within 48 hours.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of the telehealth requirements.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE Office of Agricultural Marketing (Amended After Comments)

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. 1639[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. 1639[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 [plot] 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" should 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. The applicant[; 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.]~~

~~(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 Web site~~[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 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 **from a location in Kentucky** 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 ~~allow~~**[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) 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 ~~and~~ ~~and~~

(e) The farm serial number, tract number, field number, and sub-field number **provided by FSA** for each lot **as(must be)** recorded by the license holder and **subsequently 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;~~[or];~~

(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 have [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 have[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.

(10) Universities and Colleges growing hemp for research purposes shall ensure the disposal of all noncompliant plants.

(11) Universities and Colleges growing hemp for research purposes shall also comply with the reporting requirements including reporting disposal of noncompliant plants.

(12) Universities and Colleges that handle cannabis varieties with known THC concentrations above the level acceptable for hemp shall follow the Controlled Substance Act requirements for handling marijuana.

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, for example 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) 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 **(3) or more** 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: February 14, 2022

FILED WITH LRC: February 15, 2022 at 11:10 a.m.

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 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. 1639p.

(2) State compliance standards. KRS 260.850-260.869

(3) Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1639p. 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 (Amended After Comments)

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. ~~1639[1739p]~~, 21 U.S.C. Chapter 9

STATUTORY AUTHORITY: KRS 260.862; 7 U.S.C. ~~1639[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 publically 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" should 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) [(h)] 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 **302 KAR Chapter 50[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 five (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 ~~allow~~~~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 302 KAR Chapter 50[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)[(40)] 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;~~or~~;

(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 ~~have~~**[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) or more 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~~ **[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: February 14, 2022

FILED WITH LRC: February 15, 2022 at 11:10 a.m.

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. 1639p.

(2) State compliance standards. KRS 260.850-260.869

(3) Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1639p. 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 the Consumer and Environmental Protection (Amended After Comments)

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. 1639p[1739p], 7 C.F.R. Part 990

STATUTORY AUTHORITY: KRS 260.862; 7 U.S.C. 1639p[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)[(a)][(e)] 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[defines-certain]** departmental reporting and record-retention duties.

Section 1. Definitions.

(1) "Department" or "KDA" is defined by KRS 260.850(3).

(2) "GPS" means Global Positioning System.

(3) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(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 (3) year retention period. For at least three (3) years, license holders shall retain and make available for inspection by the department (or USDA inspectors, auditors, or their representatives) during reasonable business hours:

(1) Records regarding acquisition of hemp plants;

(2) Records regarding production and handling of hemp plants;

(3) Records regarding storage of hemp plants; and

(4) 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 license 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].**

(2) 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:

1. The full name of the individual;

2.[.] The license number;

3.[.] The business address;

4.[.] The legal description (GPS location) of the land where hemp is produced;

5.[.] The telephone number;

6.[, and] The email address (if available);

7.[and] The status of each grower's license;

8.[.] The period covered by the report; and

9.[, 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:

1. The full name of the entity;

2.[.] The license number;

3.[.] The principal business location address;

4.[.] The legal description (GPS location) of the land where

hemp is produced;

5.[-,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;

6.[and] The status of each grower's license;

7.[-] The period covered by the report;[-,] and

8. 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;

1. The previously reported information;

2.[and] The new information; and

3.a. The status of each grower's license;

b.[-] The period covered by the report;[-,] and

c. 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 **Disposal[Producer]** Report in a digital format that is compatible with USDA's information sharing system **[whenever possible, or on USDA Form AMS-24]**.

(2) 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]**.

(2) 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]**.

(2) 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: February 14, 2022

FILED WITH LRC: February 15, 2022 at 11:10 a.m.

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. 1639p.

(2) State compliance standards. KRS 260.850-260.869

(3) Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1639p. 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:

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(Amended After Comments)

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. ~~1639p~~~~[1739p]~~, 7 C.F.R. Part 990

STATUTORY AUTHORITY: KRS 260.862, 7 U.S.C. ~~1639p~~~~[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. KRS 260.862(1)(c) authorizes the department to prescribe sampling and testing procedures to ensure that hemp and hemp products cultivated, handled, processed, or marketed do not exceed the federal law. 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. ~~1639~~, 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 ~~302[30s]~~ KAR 50:021, Section 1(37).

(3) "CBD" means cannabidiol.

(4) "Certified seed":

(a) 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; and

(b) [-(This)] Does not include a state's THC compliance verification program.[1]

(5) "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 includes[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 who has been properly trained by 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) [(40)] "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) [(44)] "MSU BVC" means the Breathitt Veterinary Center at the Murray State University in Hopkinsville.

~~(14)~~~~(42)~~ "Person" means an individual or business entity.

~~(15)~~~~(43)~~ "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 this administrative regulation~~[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)~~~~(44)~~ "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in this administrative regulation~~[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, as incorporated by reference in 302 KAR 50:080, 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. If [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 shall[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 shall[will] be subject to sampling and testing.

(5) A hemp licensee who has met all four (4) of the [below] compliance history requirements as established in this subsection 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 nine (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 shall[will] be sampled each year on a random basis.

(7) Hemp varieties appearing on the department's Summary of Varieties list available at https://www.kyagr.com/marketing/documents/HEMP_LH_Summary_of_Varieties_List.pdf and 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 shall[will] be sampled each year on a random basis.

Section 4. 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 available at https://apeda.gov.in/apedawebsite/Announcements/CODEX_method_for_sampling_for_determination_of_pesticides.pdf. In 2019, Kentucky's hemp testing program showed that 43% of the pre-harvest samples were above 0.30% THC; therefore "1" 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# HM-MT-001[HMP-LB-002] (Procedures for Measuring [Delta-9] THC Content in [Industrial] Hemp by Gas Chromatography with Flame Ionization Detection (GC/FID) 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, bale, 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)[(c)] 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) of this subsection 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; **and**

(f) "Inspection and Sample Collection Form", 1/2022.

(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.

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RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: February 14, 2022

FILED WITH LRC: February 15, 2022 at 11:10 a.m.

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 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 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. 1639p.

(2) State compliance standards. KRS 260.850-260.869

(3) Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1639p. 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 the Consumer and Environmental Protection
(Amended After Comments)

302 KAR 50:080. Materials incorporated by reference.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 1639p[1739p]
STATUTORY AUTHORITY: KRS 260.850-260.869, 7 U.S.C.

1639p[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]", 2022[2021][2020];

(b) "Hemp Grower License Application Packet", 2022;

(c) "Field Planting Report", October 2021[2020];

(d)(e) "Greenhouse/Indoor Planting Report", October 2021[2020];

(e)(d) "Harvest Report", October 2021[2020];

(f)(e) "New Hemp Variety or Strain Request", May 2021: ["New Hemp Variety or Strain Request", 2020 "Site Modification Request", 2020];

(g)(f) "Site Modification Request", August 2021;

(h)(g)(f) "Processor/Handler License Application[Packet]", 2022[2021][2020];

(i) "Processor/Handler License Application Packet", 2022;[and]

(j)(h)(g) "University/College Application[Packet]", 2022[2021][2020]; and

(k) "University/College Application Packet", 2022.

(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/.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: February 14, 2022

FILED WITH LRC: February 15, 2022 at 11:10 a.m.

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, Staff Attorney

(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. 1639p.

(2) State compliance standards. KRS 260.850-260.869

(3) Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1639p. 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:

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

(Amended After Comments)

501 KAR 6:290. Southeast State Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Southeast State Correctional Complex.

Section 1. Incorporation by Reference. (1) " Southeast State Correctional Complex policies and procedures", **February 14, 2022**[November 3, 2021], are incorporated by reference. Southeast State Correctional Complex policies and procedures include:

SSCC 01-06-01	Inmate Access to and Communication with SSCC Staff
SSCC 01-07-01	Institutional Tours of SSCC
SSCC 01-08-01	SSCC Cooperation with Outside Agencies Including Courts, Governmental, Legislative, Executive, and Community Agencies

SSCC 01-10-01	Public Information and Media Communication
SSCC 01-11-01	Tobacco Products and Nicotine Procedures
SSCC 02-08-01	Inmate Canteen
SSCC 02-12-01	Inmate Accounts
SSCC 05-02-01	Outside Consultation and Research
SSCC 09-01-01	Inmate Counts
SSCC 09-02-01	Inmate Substance Abuse Testing
SSCC 09-03-01	Inmate Death
SSCC 09-04-01	Construction Crew Entry and Exit Procedures
SSCC 09-05-01	Entry and Exit Procedures
SSCC 10-01-01	Restrictive Housing Unit 2/14/22
SSCC 11-01-01	Food Service General Information & Staff Health Standards
SSCC 11-01-02	Inmate Dining Room
SSCC 11-02-01	Food Service Security
SSCC 11-03-01	Inmate Work Schedule for Food Service
SSCC 11-04-01	Meal Preparation and Service
SSCC 11-04-02	Menu, Nutrition, Special, and Individual Diets
SSCC 12-01-01	Clothing, Bedding, Hygiene Supplies, and Barber Shop
SSCC 12-03-01	Vermin and Insect Control
SSCC 13-02-01	Medical Services Informed Consent, Sick Call, Physician's Clinics, Pill Call, and Medical Co-Payment
SSCC 13-02-02	Emergency Medical Care and Specialized Health Services
SSCC 13-02-03	Continuity of Care: Health Evaluations, Intra-System Transfer, Individual Treatment Plans
SSCC 13-03-01	Use of Pharmaceutical Products
SSCC 13-05-01	Management of Serious and Infectious Diseases
SSCC 13-06-01	Mental Health Services
SSCC 13-07-01	Suicide Prevention and Intervention Program
SSCC 13-08-01	Eye Care
SSCC 13-09-01	Dental Care
SSCC 13-12-01	Inmate Self Administration of Medication
SSCC 13-13-01	Health Education Program and Detoxification
SSCC 13-14-01	COVID-19 Precautions
SSCC 14-02-01	Legal Services Program
SSCC 16-01-01	Inmate Visitation
SSCC 16-02-01	Inmate Mail
SSCC 16-03-01	Inmate Telephone Communications
SSCC 16-04-01	Inmate Packages
SSCC 17-01-01	Personal Property Control
SSCC 17-02-01	SSCC Inmate Receiving and Orientation Process
SSCC 17-03-01	Television Repair Process
SSCC 18-01-01	Inmate Classification
SSCC 18-02-01	Meritorious Housing
SSCC 18-02-02	Meritorious Visitation
SSCC 19-01-01	Inmate Work Program
SSCC 20-01-01	Educational Courses
SSCC 21-01-01	Library Services
SSCC 22-01-01	Recreation Programs
SSCC 22-02-01	Inmate Clubs and Organizations
SSCC 22-03-01	Arts and Crafts Projects
SSCC 23-01-01	Religious Services
SSCC 24-01-01	Social Services and Counseling Program
SSCC 25-01-01	Pre-Release Program
SSCC 25-01-02	Inmate Release Process
SSCC 25-02-01	Parole Hearings
SSCC 26-01-01	Citizen Involvement and Volunteer Service Program

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VOLUME 48, NUMBER 9– MARCH 1, 2022

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 14, 2022

FILED WITH LRC: February 14, 2022 at 2:00 p.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, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Southeast State Correctional Complex (SSCC).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and meets American Correctional Association (ACA) policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Southeast State Correctional Complex including rights and responsibilities of employees and inmates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to SSCC employees and inmates concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 245 employees and 584 inmates at the Southeast State Correctional Complex and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but is anticipated to be within the funds budgeted to the Department of Corrections for institutional operational costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Corrections budgeted funds for Southeast State Correctional Complex for the biennium.

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

(8) State whether or not this administrative regulation established

any fees or directly or indirectly increased any fees: The regulation does not establish any fee.

(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? Southeast State Correctional Complex

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 28 C.F.R. §115.15, 28 C.F.R. §115.42

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, 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 does not create any revenue for the institution.

(b) How 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 does not create any revenue for the institution.

(c) How much will it cost to administer this program for the first year? The regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the institution for the biennium.

(d) How much will it cost to administer this program for subsequent years? The regulation impacts how the institution operates, but is not expected to increase costs from what will be budgeted to the institution.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

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)[(10)] "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.

(e) A request for an in-person or synchronous encounter shall be recorded within the recipient's medical record.

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>; [er]

5. 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[recomp 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.[Section 3.] Telehealth Reimbursement. (1)(a)[1.] 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; or

(d) When operating within their scope of practice and licensure, the following behavioral health practitioners:

- 1. A psychiatrist;**
- 2. A licensed psychologist;**
- 3. A licensed psychological practitioner;**
- 4. A certified psychologist with autonomous functioning;**
- 5. A licensed clinical social worker;**
- 6. A licensed marriage and family therapist;**
- 7. A licensed professional art therapist;**
- 8. A licensed clinical alcohol and drug counselor; or**
- 9. A licensed behavior analyst.**

(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;
- (i) A behavioral health multi-specialty group participating in the Medicaid program pursuant to 907 KAR 15:010;**
- (j) A behavioral health services organization participating in the Medicaid program pursuant to 907 KAR 15:020 or 907 KAR 15:022;**
- (k) A residential crisis stabilization unit participating in the Medicaid program pursuant to 907 KAR 15:070;**
- (l) A chemical dependency treatment center participating in the Medicaid program pursuant to 907 KAR 15:080;**
- (m) A community mental health center that is participating in the Medicaid program in compliance with 907 KAR 1:044, 907 KAR 1:045, or 907 KAR 1:047; or**
- (n) A certified community behavioral health clinic that is participating in the Medicaid program.**

(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 ~~accommodate~~~~[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: February 10, 2022

FILED WITH LRC: February 15, 2022 at 9:15 a.m.

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

REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact persons: Jonathan Scott and Krista Quarles

(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. The Amended After Comments version of this administrative regulation requires providers who are requested to accommodate a recipient on an in-person or synchronous telehealth basis to note this in the recipient's medical record. The version also expands the providers and facilities that can order and provide remote patient monitoring to better include mental and behavioral health professionals and facilities. Finally, additional technical clarifications are made.

(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 1.6 million Kentuckians participating in the Medicaid program and 59,000 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.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Aging and Physical Disabilities (Amended After Comments)

910 KAR 1:190. Nutrition program for older persons.

RELATES TO: KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), [205.460,] 205.465, 209A.030, 310.005, 310.021, 310.031, 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(1), (2), 42 U.S.C. 3030e

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3030e authorizes grants to states under state plans, approved under 42 U.S.C. 3027, to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet as the state agency to administer the Older Americans Act, 42 U.S.C. 3001 to 3058ff, in Kentucky and authorizes the cabinet to promulgate administrative regulations necessary to comply with any requirement imposed or required by federal law. This administrative regulation establishes the standards of operation for the nutrition program for older persons.

Section 1. Definitions. (1) "Area Agencies on Aging and Independent Living" or "AAAIL" means an entity designated by the state to administer, at the local level, the programs funded by the department.

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) Releases funds under contract for the delivery of services

within the planning and service area.

(3) "Central kitchen" means an institutional kitchen that[which] is equipped and used for preparing food to be sent to meal sites for service.

(4) "Certified nutritionist" is defined by KRS 310.005 and KRS 310.031.

(5) "Community" means a county designated as urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(6) "Congregate meal" means a meal provided to a qualified individual in a congregate or group setting.

(7) "Congregate nutrition services" means the provision of meals and related nutrition services in a group setting to older individuals that include:

- (a) Nutrition education;
- (b) Nutrition assessment;
- (c) Nutrition counseling;
- (d) Nutrition screening;
- (e) Malnutrition screening;

(f)(e) Opportunities for social engagement at senior centers or on field trips; and

(g)(f) Volunteer roles that contribute to overall health and well-being.

(8) "Congregate setting" means a senior center or a restaurant.

(9) "Cycle menu" means a menu planned for at least five (5) weeks and repeated with modification for seasonal menu items.

(10) "Department" means the Department for Aging and Independent Living.

(11) "Dietary reference intakes" means the nutritional requirements[-]

[(a)] established by the Food and Nutrition Board of the Institute of Medicine of the National Academies; and

(b) Included in DAIL-NP-17.9.8, Meal Planning Nutrient Requirements.

(12) "District" is defined by KRS 205.455(4).

(13) "District nutrition program" means the program approved by the department and administered in each of the fifteen (15) planning and service areas in Kentucky by the districts or other contract agencies.

(14) "Home delivered meal" means a meal provided to a qualified individual in his or her place of residence.

(15) "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are homebound, such as:

- (a) Nutrition screening;
- (b) Malnutrition screening;
- (c)(b) Nutrition education;
- (d)(e) Nutrition assessment; and
- (e)(d) Nutrition counseling.

(16) "Licensed dietitian" is defined by KRS 310.005(11).

(17) "Meal" means a portion of food that:

(a) Provides the equivalent of one-third (1/3) of the dietary reference intakes;

(b) Meets the requirements of the Dietary Guidelines for Americans; and

(c) Is served with optional condiments to complete the meal as approved by the licensed dietitian or certified nutritionist.

(18) "Modified atmosphere packaging" means the method of extending the shelf life of fresh food products where the atmospheric air inside a package is replaced with a protective gas mix that helps ensure the product stays fresh for as long as possible.

(19) "Modified Meal" means a meal that has an altered texture such as pureed, chopped, or thickened liquids to accommodate the needs of an individual with difficulty in chewing or swallowing.

(20)(19) "Nontraditional meal" means a meal approved by the department that is cold, frozen, dried, canned, or modified atmosphere packaging.

(21)(20) "Nutrition counseling" means individualized guidance:

(a) To an individual who is at nutritional risk because of the individual's health or nutritional history, dietary intake, chronic illness, or medications use, or to caregivers; and

(b) Provided one-on-one by a licensed dietitian to address options and methods for improving the individual's nutrition status.

(22)(24) "Nutrition screening" means the identification of those at risk of poor nutrition in accordance with Section 9 of this administrative regulation.

(23)(22) "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

(24)(23) "Nutrition Services Incentive Program" or "NSIP" means federally provided incentives to encourage and reward effective performance by states in the efficient delivery of nutrition meals to older individuals.

(25)(24) "OAA" means the Older Americans Act of 1965, as amended, with the relevant portions of the federal law for purposes of this program codified as 42 U.S.C. 3030a to 3030g-22.

(26)(25) "Rural" means a community with less than 50,000 population living in a rural area as designated by the most current listing from the U.S. Census Bureau.

(27)(26) "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity that specifies the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(28)(27) "State nutrition program for older persons" means the nutrition program administered by the department, consisting of:

- (a) Meals;
- (b) Nutrition screening and education; and
- (c) Nutrition assessment and counseling.

(29)(28) "Target group" means:

(a) Low-income individuals, including low-income minority older individuals;

(b) Older individuals with limited English proficiency;

(c) Older individuals residing in rural areas; or

(d) Older individuals at risk for institutional placement.

(30)(29) "Traditional meal" means a ready to eat hot meal.

(31)(30) "Urban" means a community with 50,000 or more population living in an urbanized area as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility. (1) Except as provided in subsection (2) of this section, an individual shall be eligible for congregate meals and congregate nutrition services if the individual:

- (a) Is aged sixty (60) or older;
- (b) Is the spouse of an individual aged sixty (60) or older; or
- (c) Has a disability and resides at home with the eligible older individual.

(2) The AAAIL may, in accordance with 42 U.S.C. 3030g-21(2)(H), (I), provide a congregate meal to:

- (a) A volunteer providing services during meal hours; or
- (b) An individual under age sixty (60) who:

1. Has a disability; and

2. Resides in a housing facility primarily occupied by older individuals at which congregate nutrition services are provided.

(3) An individual shall be eligible for home-delivered meals and home-delivered nutrition services if the individual:

(a)1. Is a person aged sixty (60) or over, or the spouse of a person aged sixty (60) or over;

2. Is unable to attend a congregate site because of illness or an incapacitating disability; and

3. Does not have a person in the home able to prepare a nutritious meal on a regular basis; or

(b)1. Is under age sixty (60);

2. Has a disability; and

3. Resides with a homebound individual aged sixty (60) or over.

(4) Eligibility for the Homecare Program home-delivered meals shall be in accordance with 910 KAR 1:180.

Section 3. District Nutrition Funding. The district nutrition program may include meals or nutrition services from the following funding sources:

(1) Congregate or home delivered meals funded by the OAA;

(2) Home delivered meals as specified in 910 KAR 1:180

funded by the State Homecare Program;

(3) A congregate meal as specified in 910 KAR 1:160 funded by the State Adult Day and Alzheimer's Respite Program;

(4) NSIP funding for expansion of meals served in the state; or

(5) Other funds designated in the AAAIL's approved area plan, such as United Way or other local funding.

Section 4. Congregate Nutrition Services. (1)(a) Congregate meals shall be provided by a nutrition service provider who, five (5) or more days per week, in each rural or urban community within the nutrition service provider's service and planning area, provides at least one (1) hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide in a congregate setting.

(b) A waiver may be approved by the department for a rural area to serve less frequently if the budget does not sustain five (5) days per week, pursuant to 42 U.S.C. 3030e.

(2) The requirements established in this subsection shall apply to the transportation of meals to a congregate site.

(a) 1. Bulk foods shall be transported in a stainless steel pan or aluminum disposable pan in an insulated container.

2. Use of plastic shall be restricted to cold foods only.

(b) 1. Hot items shall be transported in a bulk container separated from cold products.

2. A container shall be preheated or prechilled before being loaded.

(3) The order of service shall be as established in this subsection.

(a) Congregate meals shall be served after packaging the home delivered meals.

(b) Nutritional site personnel shall check and record temperatures of congregate meals daily.

(c) Milk or other cold food items shall not be preset on a table prior to meal service.

(d) A table shall not be preset with eating or drinking utensils more than four (4) hours prior to meal service unless each item is individually wrapped.

(e) A preset table shall not be used for activities prior to meal service.

(f) After all participants have been served, volunteers or other staff may be served.

(4) If more meals were prepared than arrived guests at meal time, after guests have been served, left over full meals may be packaged for frozen meals to be used for emergency or weekend meals.

(5)[(g)] Food items left over after packaging for emergency or weekend meals [at the point of service] shall be:

(a)[4-] Offered as seconds to a participant, if requested by the participant and after all have been served;

(b)[2-] Donated to a local facility, such as a food bank or homeless shelter if overproduced; or

(c)[3-] Discarded.

(6)[(4)](a) Only complete meals shall be claimed for payment.

(b) Omission of required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement.

(c) Refusal by a participant of specific meal components shall not render that meal incomplete.

(7)[(5)](a) A participant shall be allowed to carry out left over foods.

(b) Center staff shall assure that a participant is advised concerning the risks involved if foods are held at unsafe temperatures.

(c) Staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(8)[(6)] A participant shall have an opportunity to complete a satisfaction survey to evaluate meals and service at least annually.

(9)[(7)](a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider or AAAIL and include at a minimum one (1) session per month at each nutrition site.

(b) The education program shall include a variety of teaching

methods on the following topics:

1. Nutrition and its relevance to health promotion and disease prevention;

2. Consumer approaches to food safety and food purchasing;

3. Food fads and diets;

4. Physical activity; and

5. Activities to modify behavior and improve health literacy, including providing information and optimal nutrients.

(c) An annual nutrition education plan shall be developed by the AAAIL and the nutrition service providers.

(d) The plan shall include a minimum of one (1) session each month at each nutrition site.

(e) The plan shall include a variety of topics using a wide range of teaching techniques.

(f) The plan shall include how educational materials shall be provided to home delivered meals clients at least monthly.

(g) The plan and educational materials shall be provided in the participants preferred language.

(h) The DAIL Senior Health and Wellness Newsletter may be utilized to meet the nutrition education requirements monthly.

Section 5. Home Delivered Nutrition Services. (1) Home delivered meals shall be provided by a nutrition service provider who, five (5) or more days a week, in each rural or urban community within the nutrition service provider's service and planning area, provides at least one (1) home delivered hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide.

(2)(a) Except as provided in paragraph (b) of this subsection, a meal shall be delivered only to an eligible person in the eligible person's home. The delivery driver shall leave the meal only if:

1. The delivery driver sees or hears the participant;

2. The delivery driver takes the meal to the door of a participant [person residing in a multi-family residence]; or

3. The participant [living in a single family home] acknowledges the delivery through electronic means such as a video doorbell, or intercom.

(b) A meal may be left with a designee of the older person if the designee has been informed of the requirements of the nutrition program and provides to the AAAIL assurance they have the ability [has indicated a willingness] to comply with the following [those] requirements:-

1. Store cold foods in a manner that maintains cold food at or below forty-one (41) degrees Fahrenheit; and

2. Store hot foods in a manner that maintains the temperature above 135 degrees Fahrenheit; or

3. Store hot foods below forty-one (41) degrees Fahrenheit.

(c) For a traditional meal, an AAAIL shall train and monitor delivery staff to ensure that the meal participant or designee acknowledges delivery of the meal.

(3) Documentation for the provision of a non-traditional meal shall show:

(a) The participant has expressed a preference for the non-traditional meal or lives off an established route;

(b) Proper storage and heating facilities are available in the home;

(c) The participant is able to prepare and consume the meal alone or with available assistance; and

(d) Cost is no more than a traditional meal.

(4)(a) A provider of home delivered meals shall use methods of delivery that shall be delivered in a sanitary manner to prevent outside contamination and hold food at appropriate temperatures as specified in paragraph (b) of this subsection.

(b) Meals shall be delivered in accordance with the requirements established in this paragraph.

1. Delivery routes shall be established by the nutrition service provider to minimize nutrient loss and to facilitate temperature retention.

2. Meals shall be delivered within four (4) hours from the end of preparation to the final destination.

3. Hot food shall be maintained at or above 135 degrees Fahrenheit.

4. Cold food shall be maintained at or below forty-one (41)

degrees

Fahrenheit, and ice may be used if the food containers are constructed to prevent water seepage into the food.

5.a. Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route.

b. If the temperatures are not consistent with the requirements of subparagraphs 3. and 4. of this paragraph, the nutrition site personnel shall check and record the meal temperatures daily until the temperatures are consistent with those requirements.

6. Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination.

7.a. Frozen meals shall be maintained in a frozen state during delivery.

b. If the meal has thawed to the extent that ice crystals are not contained in the meal or the temperature is above forty (40) degrees Fahrenheit, the meal shall not be refrozen for later use. The meal shall be either:

(i) Heated and consumed immediately; or

(ii) Discarded.

(5) A participant shall have an opportunity to:

(a) Complete a satisfaction survey developed by the nutrition service provider to evaluate meals and services at least annually; and

(b) Provide ongoing comments for preparation of menus.

(6)(a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider and shall include a minimum of one (1) session each month for the home delivered meal participant.

(b) The program shall include nutrition training as specified in Section 4(9)(b)[4(8)(b)] of this administrative regulation.

(7) A nutrition service provider shall have a contingency plan in place to replace a meal if the meal:

(a) Does not register the correct temperature on delivery; or

(b) Is not delivered.

Section 6. Emergency Meals. (1) Provisions shall be made for furnishing emergency meals during inclement weather conditions, power failure, or any disaster that may cause isolation or create a special need.

(2) An emergency meal shall:

(a) Be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these types of meals;

(b) Meet the nutritional requirements of this program;

(c) Follow a menu that has been:

1. Approved by a certified nutritionist or licensed dietitian;

2. Planned for a minimum of three (3) days; and

3. Delivered, reported, and billed in the same month; and

(d) Use frozen meals only if the:

1. Participant is able to store, prepare, and consume the meal alone or with available assistance; and

2. Delivery system is arranged so that storage time after delivery is minimal.

(3) Water shall be provided, if necessary, to prepare a meal.

(4) The menu plan shall include some foods which require no cooking prior to consumption.

(5) One (1) dish meals may be used if the nutritional requirements of the Dietary Guidelines of Americans are met.

(6)(a) Foods may be taken to the nutrition site.

(b) A participant may assist with packaging foods for distribution if the participant is a volunteer at the nutrition site.

(7) An emergency meal package shall be distributed to the eligible homebound client receiving home delivered meals.

(8) Emergency meals may be used for a congregate participant if the center is closed.

Section 7. Nutrition Services Incentive Program (NSIP). (1) Additional funding received from the NSIP for the nutrition program shall be used exclusively to purchase food and shall not be used to pay for another nutrition-related service or for state or agency administrative costs.

(2) The department shall disburse NSIP monies to AAAILs based upon the AAAIL's proportion of the total number of eligible

meals served in the state.

(3) The AAAIL shall:

(a) Expend NSIP monies within the fiscal year funds are allocated by the department;

(b) Use the NSIP funds to expand the total number of meals provided in the state;

(c) Not use the NSIP funds to reduce funds from any other grant or contract which the provider may be given;

(d) Maintain records to show the amount of cash received and how it was expended;

(e) Only use the NSIP funds to purchase:

1. Foods approved by the United States Department of Health and Human Services or other foods produced in the United States of America; or

2. Meals if the cost of the meal is quoted as a unit of service cost which includes both food and labor. Ready to serve meals may be purchased on a unit of service cost basis if each meal contains food equivalent in value to the current rate of reimbursement; and

(f) Serve meals through a nutrition service provider under the jurisdiction, control, management, and audit authority of the department and AAAIL and to eligible individuals as described in Section 2 of this administrative regulation.

(4) Financial records kept by the nutrition service provider shall show:

(a) Meals provided are bid without regard to NSIP reimbursement;

(b) NSIP funds are used as a revenue source for expansion of meals served in the state;

(c) The unit of service cost of a meal is not reduced in anticipation of future NSIP reimbursement but is stated as a true cost in both bidding and reporting procedures; and

(d) Monthly financial reports reflect NSIP expenditures.

(5) NSIP funding shall not be used for the following situations:

(a) Meals served to individuals, guests, or staff less than sixty (60) years of age;

(b) Meals served to a person who is paying a set fee for the meal;

(c) Meals that are served to consumers that meet income eligibility criteria under other programs;

(d) Meals used as a non-federal match for other federal program funding;

(e) Alcoholic beverages and vitamin supplements;

(f) Sponsored meals if a set fee or charge is involved; or

(g) Meals served to individuals in nursing homes, adult day care, or assisted living facilities if the meal is a part of the per diem.

Section 8. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with NSIP cash resources;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving, and in direct supervision of employees;

(d) Equipment costs for capital items such as a:

1. Range;

2. Dishwasher;

3. Truck or van;

4. Steam table; or

5. Freezer;

(e) The costs of space, related utility costs, equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, insurance, and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home

delivery of meals to a participant;

(b) Mileage and maintenance of vehicle costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services; and

(d) Project management costs, including personnel, equipment, and supply costs.

(3)(a) A food service contract bid shall be structured in accordance with Kentucky's Procurement Code, KRS Chapter 45A.

(b) Meals shall:

1. Be bid without regard to funding source; and
2. Contain both a meal preparation cost and a delivery cost.

Section 9. Responsibilities of AAAIL. (1) An AAAIL shall have written policies and procedures to carry out the AAAIL's responsibilities as established in this subsection. The AAAIL shall:

(a) Solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science or an individual with comparable expertise in the planning of nutritional services pursuant to 42 U.S.C. 3030g-21(1);

(b) Pursuant to 42 U.S.C. 3030g-21(2)(K), encourage individuals who distribute nutrition services to provide homebound older individuals with medical information approved by health care professionals, such as informational brochures on how to get vaccines in the individual's community for:

1. Influenza;
2. Pneumonia; and
3. Shingles;

(c) Provide implementation and management of the state nutrition program for older persons;

(d) Assure that a nutrition service provider provides:

1. At least one (1) meal per day in a congregate nutrition site or provide home delivered meals based upon a determination of a participant's needs;

2. Meals to reach the maximum number of eligible older individuals consistent with the requirement established in 42 U.S.C. 3025(a)(2)(E);

3. Nutrition screening and, malnutrition screening, counseling and nutrition education services to address a participant's assessed needs and ensure that nutrition funds are used to provide these services.

a. Nutrition screening and malnutrition screening shall be provided for all participants of the nutrition program for older persons as outlined in the state data system at least annually.

b. The results of this screening shall be reported to the department.

c. A participant who receives a nutrition score of six (6) or higher shall have documentation of further action based on a referral to a:

- (i) Dietitian for nutrition counseling; or
- (ii) Participant's physician;

d. A participant who receives a malnutrition score of two (2) or higher shall have documentation of further action based on a referral to a:

- (i) Dietitian for nutrition counseling; or
- (ii) Participant's physician;

e. A participant shall receive follow up regarding their nutrition and malnutrition screening score within three (3) months of the assessment date to address the needs and concerns.

4. Nutrition services to keep older persons healthy, reduce the older adult's risk of chronic disease and disability, and help the older adult to manage chronic diseases and conditions;

5. An emergency plan for back up food preparation sites, nutrition sites, and meal delivery; and

6. A plan for furnishing emergency meals during an emergency, such as:

- a. Inclement weather conditions;
- b. Power failure;
- c. A disaster that may cause isolation; or
- d. A medical emergency; and

(e) Use meal contributions to increase the number of meals served and facilitate access to these meals; and

~~(f) Monitor the nutrition program a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies and central kitchens a minimum of one (1) time per year].~~

(2) If the AAAIL is the provider of meals and services, the AAAIL shall comply with all responsibilities of the nutrition service provider as specified in Section 12 of this administrative regulation.

Section 10. Nutrition Site Operation. (1)(a) Congregate meal services shall be funded at a site if the site has been approved by the department, in accordance with this section.

(b) The services shall not become operational until the department grants written approval through review of:

1. A completed DAIL-NP-17.96 Kitchen Checklist; and
2. a. Pictures documenting compliance with the checklist; or
b. An on-site visit by the department.

(2) Prior to approval of any site, it shall be inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes; and

(c) The department for compliance with 42 U.S.C. 3027(a)(8).

(3) A site shall:

(a) Be located as near as possible to the target group of individuals;

(b) Comply with the confidentiality and disclosure requirements of KRS 194A.060(2); and

(c) Be clearly identified to the public with a sign.

(4)(a) Selection of a site to offer congregate meal services shall be based on information on older people in its service area and on the advice of public and voluntary agencies serving the elderly.

(b) The following factors shall be given consideration in choosing a site:

1. Demographic information and projections;
2. Accessibility to the maximum number of people who are socially or economically deprived;
3. Proximity to other services and facilities;
4. Convenience to public or private transportation or location within comfortable walking distance for participants;
5. Clear of structural barriers or difficult terrain; and
6. The safety and security of participants and staff.

(5) A site shall:

(a) Take necessary actions to create for handicapped older people barrier-free access and movement within the facility in conformance with the requirements of 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973;

(b) Make arrangements for security of site equipment, furniture, and files;

(c) Have signs visible for exits, entrances, and other areas of importance;

(d) Adopt procedures for fire safety, including:

1. Fire drills;
 2. Inspection;
 3. Maintenance of fire extinguishers; and
 4. Training by fire department personnel; and
- (e) Maintain and repair the site.

(6) A site that does not meet the requirements of subsection (5) of this section shall comply with a corrective action plan administered by the department.

(7)(a) A site shall have an individual, either volunteer or paid staff, who shall be responsible for the administration of the site.

(b) At least one (1) staff person or trained volunteer shall be present at the site during hours of operation.

(c) A site shall have available the following minimum services:

1. At least one (1) hot meal in accordance with Section 4 of this administrative regulation;
2. Outreach services that may be funded by Title III-B or Title III-C;
3. Information and referral; and
4. Nutrition education.

(d) An optional service may be home-delivered meals.

(e) A congregate meal shall be:

1. Prepared on site;
2. Catered; or
3. Prepared in a central kitchen.

Section 11. Kitchen Approval. (1) A new kitchen preparing a congregate meal or home delivered meal shall not become operational until inspected by the following:

- (a) A local health department for compliance with applicable health codes;
 - (b) A local fire department for compliance with fire and building safety codes;
 - (c) An AAAIL inspector for compliance with DAIL-NP-17.96, Kitchen Checklist; and
 - (d) The department utilizing the DAIL-NP-17.96, Kitchen Checklist, submitted in accordance with Section 10(1)(b)1. and 2. of this administrative regulation, for compliance with:
 1. Facility specifications;
 2. Food preparation; and
 3. Clean up.
- (2) The department shall notify the AAAIL of kitchen operation approval within ten (10) days of the initial on-site visit.

Section 12. Responsibilities of Nutrition Service Providers. (1) The nutrition service provider contracting to provide meals and services shall have written policies and procedures to carry out the responsibilities of the service provider as established in this subsection. The nutrition service provider shall:

- (a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018;
- (b) Provide a recipient with an opportunity to voluntarily contribute to the cost of the service. Pursuant to 42 U.S.C. 3030c-2(b), voluntary contributions:
 1. May be solicited if the method of solicitation is noncoercive; and
 2. Shall be encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level, at contribution levels based on the actual cost of the service;
- (c) Assure that an older person shall not be denied service because the older person does not or cannot contribute to the cost of the service;
- (d) Protect the privacy of each older person with respect to contributions;
- (e) Report to appropriate officials, such as Department for Community Based Services, EMS, local law enforcement, for follow-up, conditions or circumstances which place the older person or his or her household in imminent danger;
- (f) Make arrangements for services to older persons in weather-related or declared emergencies;
- (g) Assist a participant with access to benefits under other programs;
- (h) Employ staff to ensure that the service staff is based on the number of program participants and the type of services provided;
- (i) Have a site director, on a paid or volunteer basis, responsible for activities at the site.

1. Congregate and home delivered meals funds shall pay up to a maximum of five (5) hours, per day, of a paid site director's time; and

2. Other funding sources may be used to pay for additional hours;

(j) Permit staff of the AAAIL, the cabinet, and federal representatives to monitor and inspect the operation of the site; and

(k) Attend meetings and training sessions as requested by the AAAIL and the department.

(2) The service provider contracting to provide meals only shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018; and

(b) Abide by the requirements of subsection (1)(i) through (k) of

this section.

Section 13. Meal Planning. (1) Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of foods. The use of saturated fats, salt, and sugar shall be restricted to maintain good health, in accordance with the dietary reference intakes and the Dietary Guidelines for Americans.

(2) Menus shall be:

- (a) Planned through a formal procedure for soliciting participant comments established in each district;
- (b) Planned a minimum of one (1) month in advance or, if a cycle menu is planned, used at least for five (5) weeks;
- (c) In compliance with the Dietary Guidelines for Americans;
- (d) Provided to each participating older individual and shall include a meal plan to provide:

1. A minimum of thirty-three and one-third (33 1/3) percent of the allowances established in the dietary reference intakes, if the individual is provided one (1) meal per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(I);

2. A minimum of sixty-six and two-third (66 2/3) percent of the allowances established in the dietary reference intakes, if the individual is provided two (2) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(II); or

3. 100 percent of the allowances established in the dietary reference intakes, if the individual is provided three (3) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(III);

(e) Altered to meet participant dietary needs such as low sugar, low salt, low fat, or low cholesterol;

(f) Certified by [the] a Kentucky licensed dietitian or Kentucky certified nutritionist as meeting the nutritional requirements, unless:

1. Meals are provided through an approved national distribution center, and

2. Approved by the DAIL dietitian.

(g) Adhered to without substitution, unless a substitution is approved by the licensed dietitian or certified nutritionist. If a substitution is approved, the nutrition service provider shall provide a copy of the revised menu to the AAAIL; and

(h)1. Posted in a conspicuous location, including at each congregate meal site and each preparation site; or

2. Provided in advance to each participant receiving home delivered meals.

(3) Special menus which allow for modified meals, religious, ethnic, cultural, or regional dietary practices may be provided if foods and preparations are available.

(4)(a) Additional foods, such as fresh produce, baked items, or donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition but shall not be considered part of the reimbursable program meal.

(b) Home-canned foods shall not be used.

(5)(a) If a potluck meal is served at a particular site, a congregate meal shall not be served at that site for that particular mealtime.

(b) Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

Section 14. Food Procurement. (1) Foods purchased for use in the nutrition program shall be obtained from sources which conform to the nutritional requirements of 902 KAR 45:005.

(2)(a) Term contracts may be used for repetitively purchased items.

(b) Fixed quantity contracting shall be used if definite items and quantities can be determined for future delivery dates.

Section 15. Food Preparation. (1)(a) Standardized recipes shall be used in food preparation and yield shall be indicated.

(b) Recipes shall specify the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(2) The standards established in this section shall apply for quality control.

(a) Food production standards.

1. The handling and preparation of food shall be conducted in safe and hygienic conditions pursuant to 902 KAR 45:005 State

food service code.

2.[4.] Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe.

3.[2.] Protein foods shall be cooked completely once the cooking cycle has begun.

4.[3.] Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe.

5.[4.] Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) The holding time for hot foods shall not exceed four (4) hours after preparation.

(c) Temperature standards.

1. Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 135 degrees Fahrenheit during transportation and service.

2. Cold foods shall not exceed forty-one (41) degrees Fahrenheit during transportation and service.

3. Thermometers used to check food temperatures shall be:

a. Of metal stem-type construction;

b. Numerically scaled;

c. Accurate to plus or minus three (3) degrees Fahrenheit; and

d. Checked periodically to ensure that each thermometer is registering accurately.

4. Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.

5. Infrared thermometers may be used for lettuce-based salads, sandwich garnishes, and during the home delivery route to check weekly temperatures of hot and frozen meals.

(3)(a) Food preparation facilities shall be in compliance with state and local fire, health, sanitation, and safety administrative regulations which apply to food service operations.

(b) A food preparation and service kitchen shall be inspected periodically by state and local health officials and the department dietitian.

(4) Standards for food handling and personal hygiene shall be in accordance with the food service requirements of the Kentucky Food Code governed by 902 KAR 45:005.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-NP-17.96 Kitchen Checklist", edition 5/12; and

(b) ~~["DAIL-NP-17.9.8, Meal Planning Nutrient Requirements", December 30, 2009; and]~~

~~[(e)] "Dietary Guidelines for Americans 2020-2025", [most current version-][2040], U.S. Department of Agriculture, and U.S. Department of Health and Human Services [and may be accessed online at www.dietaryguidelines.gov].~~

(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. and may be accessed online at the following Web sites:

(a) Kitchen checklist – <https://chfs.ky.gov/agencies/dail/Documents/DAIL-NP-17.96KitchenChecklist.pdf>; and

(b) Dietary Guidelines for Americans – www.dietaryguidelines.gov.

~~[(3) The Dietary Guidelines for Americans may be accessed online at www.dietaryguidelines.gov.]~~

VICTORIA ELRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 10, 2022

FILED WITH LRC: February 15, 2022 at 11:00 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Phyllis Sosa or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended regulation helps provide guidance that follows the Older Americans Act Nutrition programs.

(b) The necessity of this administrative regulation: This amended regulation is needed to ensure that agencies receiving Older Americans Act funding are following the same guidance and have an outlined expectation of the programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation amendment uses the authorized statutes as a base to build the guidance provided in this regulation. This amended regulation allows Kentucky to provide more in-depth detail of the Older Americans Act Nutrition Program that best fits the needs of Kentucky's older adults.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will clarify expectations for Older Americans Act Nutrition 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 amendment includes updates based on the USDA "Dietary Guidelines for Americans" that was recently updated in 2020. The amended administrative regulation also updates disaster/emergency preparedness requirements. The amendment also allows seniors the opportunity to receive culturally or therapeutic appropriate meals. Additional amendments were made after receiving comments and a suggested amendment from LRC. The changes clarify eligibility requirements for the program, add clarifying language specifying the AAAIL's responsibility in obtaining assurances from designees, add clarifying language to temperature requirements, and make technical changes.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to comply with current guidelines relevant to the Older Americans Act.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the existing statutes by aligning expectations in accordance with updated federal guidelines that effect Kentucky's older adult population.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific expectations that follow the existing statutes to best serve the older adults of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department for Aging and Independent Living; 15 Kentucky Area Agency on Aging (which may include local governments on their boards); 1 million senior citizens living in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendments are suggested based on needs of the agencies. The proposed amendments will impact these agencies in a positive way keeping in mind the health and well-being of the older adults of Kentucky.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These agencies will need to insure they meet the specified expectations in the amendment. These amendments are to help simplify and streamline services while being mindful of budgets as well as keeping Kentucky's older adults in mind.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed amended regulation will not increase costs and may result in an actual reduction in costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation should

result in cost savings to providers as well as loosening some of the current regulations.

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

(a) Initially: None. Services are currently in place and there is no additional cost.

(b) On a continuing basis: None. Services are currently in place and there is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Older Americans Act funding, State and Local funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need for an increase of funding requests to implement these proposed changes.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be increased based on this amended regulation.

(9) TIERING: Is tiering applied? There is no tiering for this program as there are no fees related to this program or regulation.

(c) How much will it cost to administer this program for the first year? This amended regulation will not require additional costs.

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

(2) State compliance standards. KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031

(3) Minimum or uniform standards contained in the federal mandate. 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirements than the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirements than 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 for Aging and Independent Living; 15 Kentucky Area Agency on Aging (which may include local governments on their boards)

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031, 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amended regulation will not affect expenditures and revenue. Services are currently in place and there is no additional cost.

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

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

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

BOARDS AND COMMISSIONS
Board of Speech-Language Pathology and Audiology
(Amendment)

201 KAR 17:110. Telehealth and telepractice.

RELATES TO: KRS 334A.188, 334A.200, 211.332, 211.334, 211.336, 211.338

STATUTORY AUTHORITY: KRS 334A.080(1), 334A.200, 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.200 requires the Board of Speech Language Pathology and Audiology to promulgate administrative regulations to implement the use of telehealth services by speech-language pathologists and audiologists. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations relating to telehealth. This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions. (1) "Client" means the person receiving the services of the speech-language pathologist or audiologist and the representative thereof if required by law.

(2) "Telehealth" is defined by KRS 334A.200(3) and 211.332(5).

(3) "Telepractice" means the practice of speech language pathology or audiology as defined by KRS 334A.020(4) and KRS 334.020(6) respectively provided by using communication technology that is two (2) way, interactive, and simultaneously audio and video.

Section 2. Client Requirements. A practitioner-patient relationship ~~may~~shall not commence via telehealth. An in-person initial meeting shall not be required unless the provider determines it is medically necessary to perform those services in person as set forth in KRS 211.336(2)(a).~~[An initial, in-person meeting for the practitioner and patient who prospectively utilize telehealth shall occur.]~~ A licensed health care practitioner may represent the licensee at the initial~~, in-person~~ meeting. A licensee who uses telehealth to deliver speech language pathology or audiology services or who telepractices or the licensed healthcare practitioner representing the licensee shall, at the initial~~, in-person~~ meeting with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the licensee other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee; ~~[and]~~

(5) In accordance with KRS 334A.200(1)(a) and 900 KAR 12:005 Section 2(1)(c), obtain the informed consent of the client; and

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepractice;

(b) Potential risks to confidentiality of information due to technology in the provision of telepractice as required by KRS 334A.200(1)(b);

(c) Potential risks of disruption in the use of telepractice;

(d) When and how the licensee will respond to routine electronic messages;

(e) In what circumstances the licensee will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the licensee;

(g) How communications can be directed to a specific licensee;

(h) How the licensee stores electronic communications from the client; and

(i) That the licensee may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using telehealth to deliver services or who telepractices shall:

(1) Limit the telepractice to the licensee's scope of practice;

(2) Maintain continuing competency or associate with a group who has experience in telehealth delivery of care;

(3) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 334A.200(1)(b) and KRS 211.332(5)(c);

(4) Limit access to that information to only those necessary for the provision of services or those required by law; and

(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. (1) A licensee using telehealth to deliver speech language pathology and audiology services and telepractice shall~~comply with~~:

(a) Maintain patient privacy and security in accordance with 900 KAR 12:005 Section 2(1)(b).~~[State law by being licensed to practice speech language pathology or audiology, whichever is being telepracticed, in the jurisdiction where the practitioner-patient relationship commenced;]~~ and

(b) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

(2) If a person provides speech language pathology and audiology services via telepractice to a person physically located in Kentucky at the time the services are provided, that provider shall be licensed by the board or be a provider who is a participant in the audiology and speech-language pathology interstate compact recognized in KRS 334A.188 and delivers telehealth services to a person Kentucky under the standards and provisions of that interstate compact pursuant to KRS 211.336(2)(f).

(3) A person providing speech language pathology and audiology services via telepractice from a physical location in Kentucky shall be licensed by the board. This person may be subject to licensure requirements in other states where the services are received by the client.

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices:

(1) Shall conform to the statutes and regulations governing the provision of speech-language pathology and audiology services in Kentucky;

(2) Shall not engage in false, misleading, or deceptive advertising of telepractice in violation of KRS 334A.200(2)(a); and

(3)~~[(2)]~~ Shall not split fees in violation of KRS 334A.200(2)(b).

DOUGLAS KEEFE, M.S., Chair

APPROVED BY AGENCY: February 11, 2022

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 25, 2022 at 10:00 a.m. Eastern Time in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing. Members of the public may utilize the following link to attend the meeting by video conference: // Topic: SLPA Regulation Public Comment Hearing // Time: April 25, 2022 10:00 AM Eastern Time (US and Canada) // Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/83637763907?pwd=VDhQUVZvZDVVR3dWcjNmbzd0WXVuZz09> // Password: 583921 // or Telephone - Dial: USA 713 353 0212, USA 8888227517 (US Toll Free) // Conference code: 327149. Find local AT&T Numbers: <https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=327149>. Or an H.323/SIP room system: H.323: 162.255.37.11 (US West), 162.255.36.11 (US East), 115.114.131.7 (India Mumbai), 115.114.115.7 (India Hyderabad), 213.19.144.110 (Amsterdam Netherlands), 213.244.140.110 (Germany), 103.122.166.55 (Australia Sydney), 103.122.167.55 (Australia Melbourne), 149.137.40.110 (Singapore), 64.211.144.160 (Brazil), 149.137.68.253 (Mexico), 69.174.57.160 (Canada Toronto), 65.39.152.160 (Canada Vancouver), 207.226.132.110 (Japan Tokyo), 149.137.24.110 (Japan Osaka) // Meeting ID: 836 3776 3907 -- Password: 583921 // SIP: 83637763907@zoomcrc.com -- Password: 583921. // Individuals interested in attending 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 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 11:59 pm EST on April 30, 2022. 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: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 264 SC, Frankfort, Kentucky 40601, phone (502) 782-8805 (office), email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for provision of telehealth services in the field of speech language pathology and audiology.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 334A.080 and KRS 334A.200.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 334A.080 authorizes the Kentucky Board of Speech-Language Pathologists and Audiologists to promulgate administrative regulations regulating the practice of speech-language pathology and audiology. KRS 334A.200(2) requires the board to promulgate administrative regulations regarding telehealth. KRS 211.336(3) authorizes state agencies to promulgate administrative regulations relating to telehealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 334A by explaining how a licensee of the Board may provide telehealth to their clients.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows the initial meeting regarding telehealth to take place via telehealth, clarifies the requirements for informed consent, clarifies the requirements for a secure communication, and allows for the participation of a person licensed by a compact state.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 211.332 to 211.336.

(c) How the amendment conforms to the content of the

authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the over 4,000 licensed speech-language pathologists and audiologists, and an unknown number of providers who participate in the audiology and speech-language pathology interstate compact.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendment requires the licensees to practice telehealth in conformity with the requirements of the law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will add no additional cost to the licensees.

(c) As a result of compliance, what benefits will accrue to the entities: The licensees will understand how to practice telehealth.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Speech-Language Pathology and Audiology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Speech-Language Pathologists and Audiologists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 334A.080, KRS 334A.200, KRS 211.336.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

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

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:480. Licensure of graduates of foreign nursing schools.

RELATES TO: KRS. 314.041, 314.051

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 and 314.991. KRS 314.041 and 314.051 authorize the board to issue a license to a graduate of a foreign nursing school. This administrative regulation establishes the requirements for the licensure of graduates of foreign nursing schools.

Section 1. ~~[Applicants for Licensure by Examination.]~~ (1)(a) An applicant for licensure by examination who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:070, Section 1, except for Section 1(3) of that administrative regulation.

(b) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:110.

(2) If licensed in another country evidence shall be submitted by the applicant or an organization on behalf of the applicant that the license has not been revoked, suspended, probated, or otherwise disciplined in the licensing country.

(3) An applicant shall maintain proof of legal permanent or temporary residency under the laws and regulations of the United States.

(4)(a) An applicant for licensure as a registered nursing or a licensed practical nurse shall obtain a full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service. The report shall state whether the applicant's program of nursing is comparable to an approved program in the state.[shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.]

(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen Certificate have been met.]

(b) An applicant shall also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation.

(5) An applicant for licensure by examination may be made eligible to take the NCLEX examination prior to obtaining a Social Security number. However, the applicant shall not be licensed until the applicant[he] provides a Social Security number.

Section 2. English Language Proficiency Examinations.

(1) An applicant for licensure shall complete English Language Proficiency examination unless the language of instruction and the textbooks of the applicant's program of nursing were entirely in English.

(2) The following English Language Proficiency examinations are recognized with the minimum passing standard:

(a) International English Language Testing System (IELTS), 6.5 overall, 6.0 speaking; and

(b) Test of English as a Foreign Language (TOEFL), 84 overall, 26 speaking.

(3) The applicant shall cause the scores on the English Language Proficiency examination to be sent to the board by CGFNS.[Applicants for Licensure by Endorsement. (1) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements established in 201 KAR 20:110.

(2) A graduate of a foreign nursing school who is not a citizen of the United States shall maintain evidence of legal permanent or temporary residency in the United States.

(3)(a) An applicant for licensure as a registered nurse by endorsement shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.

(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen have been met.]

JESSICA WILSON, President

APPROVED BY AGENCY: January 31, 2022

FILED WITH LRC: February 2, 2022 at 9:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, April 25, 2022, at 10:00 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, April 18, 2022, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m. EDT) Saturday, April 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets certain requirements for applicants for licensure who graduated from a foreign nursing school.

(b) The necessity of this administrative regulation: It is necessary to assure that the foreign nursing program is comparable to a Kentucky program and that the applicant can speak, read, and understand English.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting these requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting these requirements.

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

(a) How the amendment will change the existing administrative regulation: It replaces the requirement of obtaining a VisaScreen with a Commission on Graduates of Foreign Nursing Schools Credentials Evaluation Service (CGFNS CES) report. The VisaScreen does not determine the comparability of the foreign nursing program; the CGFNS CES does. In addition, the accepted English Language Proficiency examinations and the passing scores are listed.

(b) The necessity of the amendment to the administrative

regulation: Since the VisaScreen is no longer a useful tool, there must be an evaluative tool to be used by the Board. The CGFNS is such a tool. Also since the VisaScreen will no longer be used, it is necessary to list the English Language Proficiency examinations that are acceptable.

(c) How the amendment conforms to the content of the authorizing statutes: By adopting the CGFNS CES and the English examinations.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: By adopting the CGFNS CES and the English examinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure who graduated from a foreign nursing school, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to obtain a CGFNS CES report and pass an English Language Proficiency examination.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: There is a fee paid to CGFNS and to the organization providing the English Language Proficiency examination. Board staff understands that the CGFNS CES report cost to be \$385; and the costs to take the ELP examinations are as follows: the Test of English as a Foreign Language (TOEFL) examination is \$185, and the International English Language Testing System (IELTS) is \$225.00.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: It will not.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Jeffrey R. Prather

(1) What units, 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 314.041, KRS 314.051, KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

Board of Physical Therapy (Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060, 327.075, 327.080, 327.310

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate.

(1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have successfully completed the Jurisprudence Exam;

(d) Submit a complete Application for credentialing that includes a photo taken within one (1) year;

(e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(f) Effective six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation, submit to the board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

(g) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and

(h) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(b) Complete the requirements of subsection (1)(b) through (h) of this section.

(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant for

licensure or certification shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

- (1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
- (2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

- (1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;
- (2) Complete a Supervisory Agreement for Applicant with Temporary Permit with one (1) or more physical therapists; and
- (3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

- (a) Has practiced in Kentucky for more than one (1) year; and
 - (b) Has an unrestricted license.
- (2) A supervising physical therapist:
- (a) Shall be on-site at all times during the practice of the applicant with a temporary permit;
 - (b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;
 - (c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;
 - (d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and
 - (e) Shall notify the board immediately if the supervisory relationship is terminated.
- (3) The applicant with a temporary permit shall:
- (a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;
 - (b) Sign documentation with temporary permit number and designation as required in 201 KAR 22:053, Section 5(5)(a) or (b); and
 - (c) Notify the board immediately if the supervisory relationship is terminated.
- (4) The temporary permit shall expire the earlier of:
- (a) Six (6) months from the date of issuance; or
 - (b) Notice of exam results by the board. A temporary permit holder who is registered for the examination in another jurisdiction shall register with the FSBPT Score Transfer Service to have results submitted to Kentucky within forty-eight (48) hours of the release of the exam results.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

- (1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
- (2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;
- (3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:
 - (a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national

average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Application for Credentialing", December 2011;
 - (b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and
 - (c) "Applicant Special Accommodations Request Form", February 2022[December 2012].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN CURLEY, Executive Director

APPROVED BY AGENCY: November 18, 2021

FILED WITH LRC: February 10, 2022 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26, 2022, at 12:00 p.m. (ET). Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. All individuals who notify this agency in writing at least five workdays prior to this hearing shall be notified whether the hearing will be held virtually by video teleconference or in person at the Board's office, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. If no notification of intent to attend the hearing is received in writing by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2022. 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: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 429-7140 and Fax (502) 429-7142, email stephen.curley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Curley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and credentialing procedures required under KRS 327.040.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility and credentialing procedures required under KRS 327.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the eligibility and credentialing procedures required

under KRS 327.040.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the eligibility and credentialing procedures required under KRS 327.040.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the Applicant Special Accommodations Request Form which is incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add updated language and questions in the Applicant Special Accommodations Request Form which is incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The Applicant Special Accommodations Request Form is used by applicants during the Exam Application process.

(d) How the amendment will assist in the effective administration of the statutes: The New Applicant Special Accommodations Request Form adds additional optional documentation for applicants to gain ADA Accommodations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any Exam Applicants that request ADA accommodations for their exam.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to file the new Applicant Special Accommodations Request Form instead of the old form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance the entities identified in (3) will be able to submit additional optional documentation for applicants to gain ADA Accommodations.

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

(a) Initially: No new costs will be incurred by the change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Stephen Curley

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact physical therapists and physical therapist assistants applying for exam through Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040 KRS 164.772, 327.010, 327.050,

327.060, 327.075, 327.080, 327.310.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

BOARDS AND COMMISSIONS

Board of Physical Therapy (Amendment)

201 KAR 22:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13), 327.060(3), 327.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate and enforce reasonable administrative regulations regarding certification, limitations of activities, supervision, and educational qualifications for physical therapist assistants. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b).

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution;

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of

relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency by:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a

Foreign Language, TOEFLE Internet-based test (TOEFL IBT):

- a. Writing, twenty-two (22);
 - b. Speaking, twenty-four (24);
 - c. Listening, twenty-one (21);
 - d. Reading, twenty-two (22); [or] and
 - e. With an overall score of not less than eighty-nine (89); or
3. Verification that English is the native language of the country of origin.

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Completes the Jurisprudence Exam; and

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3) and (4) shall be applicable to examination candidates; and

(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board that satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility that is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth (6th) month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

(3) Effective six (6) months after the Board receives an Originating Agency Number from the Federal Bureau of Investigation, submits to the Board a completed nationwide criminal background check as required by KRS 327.310 with the background investigation completed no later than six (6) months prior to the date of the filing of the application.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants.

(1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Educated in a Foreign Country".

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

Section 3. A foreign-educated physical therapist assistant applicant shall be credentialed if the applicant has:

(1) Completed the application process;

(2) Provided written proof that the education institution in which the applicant received his or her education to be a physical therapist assistant is recognized by its own ministry of education;

(3) Provided proof of legal authorization to reside and seek employment in the United States or its territories;

(4) Provided proof of authorization to practice as a physical therapist assistant without limitations in the country where the professional education occurred;

(5) Furnished the board a favorable educational credentials

evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one

(1) of the following:

(a) Completion of appropriate coursework at a regionally accredited academic institution;

(b) Continuing education in a course approved by the board; or

(c) Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(6) Shows proof of English Language Proficiency by:

(a) A score of not less than fifty (50) on the Test of Spoken English (TSE);

(b) Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL IBT):

1. Writing, twenty-two (22);

2. Speaking, twenty-four (24);

3. Listening, twenty-one (21);

4. Reading, twenty-two (22); [or] and

5. With an overall score of not less than eighty-nine (89); or

(c) Verification that English is the native language of the country of origin.

(7) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(8) Completes the Jurisprudence Exam;

(9) Obtains a passing score on the National Physical Therapy Examination (NPTE);

(10) Completes the requirements of Section 1(3) of this administrative regulation; and

(11) To be eligible for a temporary permit, a foreign-educated Physical Therapist Assistant applicant must complete the requirements of 201 KAR 22:020, Sections 4 and 5.

Section 4. Incorporation by Reference.

(1) The "Supervisory Agreement for Physical Therapists Educated in a Foreign Country, August 2017" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN CURLEY, Executive Director

APPROVED BY AGENCY: January 20, 2022

FILED WITH LRC: February 10, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26, 2022, at 2:00 p.m. (ET). Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. All individuals who notify this agency in writing at least five workdays prior to this hearing shall be notified whether the hearing will be held virtually by video teleconference or in person at the Board's office, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. If no notification of intent to attend the hearing is received in writing by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2022. 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: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email stephen.curley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Curley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility, credentialing procedures, and requirements for foreign-educated physical therapists and physical therapist assistants.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility, credentialing procedures, and requirements for foreign-educated physical therapists and physical therapist assistants required under KRS 327.050 and 327.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the eligibility, credentialing procedures, and requirements for foreign-educated physical therapists and physical therapist assistants required under KRS 327.050 and 327.060.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the eligibility, credentialing procedures, and requirements for foreign-educated physical therapists and physical therapist assistants required under KRS 327.050 and 327.060.

(2) If 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 fixes an error in the regulation allowing foreign-educated applicants TOFEL exam to be accepted with either individual scores (in Writing, Speaking, Listening, and Reading) or an overall score of 89. The regulation should require set individual scores (in Writing, Speaking, Listening, and Reading) and a total of 89 overall to be accepted as completed. The amendment changes the "or" back to "and."

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to fix an error in the regulation allowing foreign-educated applicants TOFEL exam to be accepted with either individual scores (in Writing, Speaking, Listening, and Reading) or an overall score of 89. The regulation should require set individual scores (in Writing, Speaking, Listening, and Reading) and a total of 89 overall to be accepted as completed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the eligibility, credentialing procedures, and requirements for foreign-educated physical therapists and physical therapist assistants including the required TOFEL exams scores

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to fix an error in the regulation allowing foreign-educated applicants TOFEL exam to be accepted with either individual scores (in Writing, Speaking, Listening, and Reading) or an overall score of 89. The regulation should require set individual scores (in Writing, Speaking, Listening, and Reading) and a total of 89 overall to be accepted as completed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Foreign-educated physical therapists and physical therapist assistants applying for licensure. Around 10 applicants a year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to provide a TOFEL exam with individual scores (in Writing, Speaking, Listening, and Reading) and a total of 89 overall to fulfill the regulation. This is how the regulation has always read until the most recent regulation update.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): As a result of compliance the entities identified in (3) will be able to submit the appropriate and necessary documentation for the required TOFEL exam.

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

(a) Initially: No new costs will be incurred by the change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact foreign-educated physical therapists and physical therapist assistants applying to Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(1), (11), (13), 327.060(3), 327.310

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

BOARDS AND COMMISSIONS

Board of Physical Therapy
(Amendment)

201 KAR 22:170. Physical Therapy Compact Commission.

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS Chapter 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation sets forth the Rules adopted by the Physical Therapy Compact Commission.

Section 1. The Kentucky Board of Physical Therapy shall

comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Physical Therapy Compact Commission Rules", October 2021[2020]; and

(b) "Physical Therapy Compact Commission Bylaws", October 2021[2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may be obtained on the Kentucky Board of Physical Therapy's Web site at <https://pt.ky.gov>.

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) <http://www.ptcompact.org>.

STEPHEN CURLEY, Executive Director

APPROVED BY AGENCY: January 20, 2022

FILED WITH LRC: February 10, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26, 2022, at 3:00 p.m. (ET). Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. All individuals who notify this agency in writing at least five workdays prior to this hearing shall be notified whether the hearing will be held virtually by video teleconference or in person at the Board's office, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. If no notification of intent to attend the hearing is received in writing by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2022. 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: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email stephen.curley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Curley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the rules and bylaws for the Physical Therapy Compact Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.300(12).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It promulgates the rules and bylaws established by the Physical Therapy Compact Commission as administrative regulations pursuant to KRS 327.300(12).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement that any rule or bylaw adopted by the Physical Therapy Compact Commission receive appropriate oversight.

(2) If 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 Physical Therapy Compact Rules and Bylaws dates will be updated.

(b) The necessity of the amendment to this administrative

regulation: The amendment to the Physical Therapy Compact Rules and Bylaws is necessary to comport with the requirements of KRS 327.300(12).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the Physical Therapy Compact Rules and Bylaws is necessary to comport with the requirements of KRS 327.300(12).

(d) How the amendment will assist in the effective administration of the statutes: The Physical Therapy Compact Rules and Bylaws will be the most up-to-date version.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Compact Privilege applicant and holders totaling around 150 right now.

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

(a) List 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 rule change 3.8 Clarifies the jurisprudence requirement when purchasing a compact privilege, and 3.11 rule addition requiring self-reporting of confidential alternative programs by the individual. The amendments to the bylaws establish Compliance Committee as a new standing committee to Article VII. Section 2.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Credentialed physical therapists and physical therapist assistants in Kentucky will be able to participate in the Physical Therapy Licensure Compact.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund and funds derived from compact privilege applications from other states.

(7) Provide an assessment of whether an 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.300(12).

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

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

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

years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

Board of Licensure and Certification for Dietitians and Nutritionists (Amendment)

201 KAR 33:015. Application; approved programs.

RELATES TO: KRS 310.021, 310.031(1), (2)

STATUTORY AUTHORITY: KRS 310.041(1), (2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041 requires the Kentucky Board of Licensure for Dietitians and Nutritionists to promulgate administrative regulations and to review and approve or reject the qualifications of all applicants for licensure and certification. This administrative regulation establishes the procedure for submitting an application for licensure[~~or~~], certification, or dual licensure as a Nutritionist and as a Dietitian; and establishes requirements for programs of study[institutions] to be approved by the board.

Section 1. Application.

(1) An "Application for Licensure, ~~or~~ Certification, or Dual Licensure" shall be submitted for licensure to practice dietetics after the requirements established in KRS 310.021 are met.

(2) An "Application for Licensure, ~~or~~ Certification, or Dual Licensure" shall be submitted for certification to practice nutrition after the requirements established in KRS 310.031 are met.

(3) An "Application for Licensure, Certification, or Dual Licensure" shall be submitted for dual licensure to practice dietetics and nutrition after the requirements established in KRS 310.021 and KRS 310.031 are met.

(4)(3) Each "Application for Licensure, ~~or~~ Certification, or Dual Licensure" shall be accompanied by the nonrefundable application fee, established in 201 KAR 33:010.

(5)(4) Each application shall be signed by the applicant.

(6)(5)(a) Each application to practice dietetics and each application for dual licensure shall include:

1. A copy of the applicant's current registration card issued by the Commission ~~on~~[of] Dietetic Registration; ~~or~~]

2. A letter from the Commission on Dietetic Registration indicating successful completion of the registration examination[~~;~~]; or

3. A Credential Verification Statement from the Commission on Dietetic Registration

(b) An Academy of Nutrition and Dietetics membership card shall not constitute compliance with paragraph (a)1. of this subsection.

(7)(6) Each application to practice nutrition and each application for dual licensure shall include a certified copy of the applicant's official master's transcript or meet the criteria set forth at KRS 310.031(3).

(8)(7) If the applicant is or was licensed or registered in another jurisdiction, the applicant shall:

(a) List each jurisdiction and license or registration number;

(b) Provide a complete licensure disciplinary history; and

(c) Provide license verification documentation from each respective jurisdiction that is:

1. Created by each respective jurisdiction within the sixty (60) days prior to the submission of the application; and

2. Is not a license card, scroll, initial certificate, diploma, or other initial license document.[submit a complete Verification of

Licensure in Other Jurisdictions form for all jurisdictions where the applicant is currently or has formerly been licensed or registered.]

Section 2. Approved Programs.

(1) A baccalaureate degree from a college or university approved by the board pursuant to KRS 310.021(3) or 310.031(2)(a) shall be a degree program that is listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics.

(2) If an applicant's baccalaureate degree is not listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics, then the applicant shall demonstrate at least forty-five (45) semester hours or sixty-eight (68) quarter hours, as evidenced by a certified copy of an academic transcript, of coursework at the baccalaureate or graduate level in addition to the hours required by KRS 310.031(2)(b). The coursework shall include content specific to each of the following areas:

(a) Communication;

(b) Counseling;

(c) Physical and biological sciences;

(d) Social sciences;

(e) Research;

(f) Food composition;

(g) Nutrient metabolism;

(h) Food systems management;

(i) Nutrition therapy;

(j) Lifecycle nutrition; and

(k) Healthcare systems.

(3) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall include only didactic hours of graduate credit specifically related to human nutrition. Examples include:

(a) Food sources of nutrients;

(b) Physiological and chemical processes of digestion, absorption, and metabolism;

(c) Nutrient needs throughout the life cycle;

(d) Nutrition assessment processes;

(e) Pathophysiology of disease states;

(f) Medical nutrition therapy;

(g) Nutrient needs in exercise and fitness; and

(h) Nutrition in health and wellness.

(4) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall not include practicums, courses that are primarily obtained from work experiences, independent study, thesis, or dissertation credit hours.

Section 3. Incorporation by Reference.

(1) "Application for Licensure, Certification, or Dual Licensure," January 2022, is incorporated by reference.[The following material is incorporated by reference:

(a) "Application for Licensure or Certification", July 2015; and

(b) "Verification of Licensure in Other Jurisdictions", July 2015.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, 500 Mero Street, 2SC32, [Division of Occupations and Professions, 944 Leawood Drive,]Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The Board's Web site is <https://bdn.ky.gov/>.

LORA ARNOLD PARKS, RDNDL CSG

APPROVED BY AGENCY: January 26, 2022

FILED WITH LRC: February 14, 2022 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 25, 2022, at 2:00 p.m. EST in Room 133CE, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android: <https://us06web.zoom.us/j/81717776176?pwd=c2lxRGITZlA3RHJJY0d1S1BsRVZlQT09--> Password: 698572 // or Telephone: Dial:

USA 713 353 0212, USA 8888227517 (US Toll Free) -- Conference code: 257130 // Individuals interested in attending this hearing shall notify this agency in writing by April 18, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 11:59 p.m. EST on April 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person listed below. 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: August Lincoln Pozgay, Executive Advisor, Public Protection Cabinet, 500 Mero Street, 2NCWK#2, Frankfort, Kentucky 40601, phone 502-782-0714, fax 502-564-4818, email august.pozgay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: August Lincoln Pozgay

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 310.041 requires the Kentucky Board of Licensure for Dietitians and Nutritionists (the board) to promulgate administrative regulations and to review and approve or reject the qualifications of all applicants for licensure and certification. This administrative regulation establishes the procedure for submitting an application for licensure or certification; and establishes requirements for institutions to be approved by the board. The proposed amendment will clarify requirements for dual licensure as a Nutritionist and as a Dietitian.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 310.041(1), (2), and (6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 310.041(1) requires the Kentucky Board of Licensure for Dietitians and Nutritionists to promulgate administrative regulations to regulate the issuance of licenses and certificates under KRS 310.021 and KRS 310.031. This administrative regulation establishes the procedure for submitting an application for licensure or certification; and establishes requirements for programs of study to be approved by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 310 by carrying out the legislative mandate for the board to establish regulations for the issuance of licenses and certifications to practice dietetics and nutrition.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a requirement that license verification documentation be created within sixty (60) days of the application, clarifies the form of documentation accepted by the board to verify licensure in other jurisdictions, and replaces the material incorporated by reference with an updated form to be used by applicants for dual licensure as Dietitian and as Nutritionist.

(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: As of February 10, 2022, the board

oversees 1739 active licensees, and an additional 100 licensees with temporary telehealth permits. This regulation will affect as an unknown number of applicants for licensure following implementation of the proposed amendment.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: applicants for licensure or certification will have to provide license verification documentation from other jurisdictions where applicants hold licenses, documentation that must be created within sixty (60) days of the date of application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to applicants for licensure because the current regulation and material incorporated by reference already requires license verification to be provided by the applicant.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will clarify the form of license verification documentation accepted by the board and make it easier for applicants coming from other jurisdictions to apply for licensure in Kentucky.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated applicants and licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (the Board).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for the Board. Board fees are set by separate regulation at 201 KAR 33:010.

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

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Medical Imaging and Radiation Therapy
(Amendment)

201 KAR 46:060. Continuing education requirements.

RELATES TO: KRS 311B.050, 311B.110

STATUTORY AUTHORITY: KRS 311B.050(2), (4), 311B.110(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(2) requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.050(4) and 311B.110(6) require the board to determine and enforce continuing education requirements and establish guidelines for the approval of continuing education. The board is authorized by KRS 311B.110(3) to require that all licensees obtain continuing education for ongoing knowledge of current practices in radiation safety and clinical procedures prior to licensure renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the approval of continuing education courses.

Section 1. Mandatory Continuing Education Units.

(1) Medical imaging technologists, advanced imaging professionals, radiographers, nuclear medicine technologists, and radiation therapists shall obtain a minimum of twenty-four (24) continuing education units per biennium.

(2) Limited X-Ray machine operators shall obtain a minimum of twelve (12) continuing education units per biennium.

(3) A continuing education unit shall be earned by participating in fifty (50) contact minutes in an approved continuing education program.

Section 2. Methods of Acquiring Continuing Education.

(1) Continuing education units applicable to the renewal of a license shall be directly relevant to the professional growth and development of the medical imaging technologist, radiation therapist, advanced imaging professional, radiographer, nuclear medicine technologist, or limited x-ray machine operator.

(2) Continuing education units may be earned by completing any of the following educational activities:

(a) Academic courses relevant to the radiologic sciences or patient care and is offered by a post-secondary educational institution accredited by a mechanism recognized by the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technologist Certification Board (NMTCB). Relevant courses in the biologic sciences, physical sciences, medical imaging[radiologic sciences], interventional procedures, radiation therapy, health and medical sciences, social sciences, verbal communication [oral[verbal] and written], mathematics, computer use related to medical imaging or radiation therapy[computers], management, cultural competency and ethics related to medical professionals, or post-secondary adult education methodology shall be considered for acceptance[accepted]. Some subject areas that shall not be applicable include formal education clinical hours/credits, independent study, courses in archeology, astronomy, fine arts, geology, geography, history, music, philosophy, and religion;

(b) Continuing education units approved by a professional organization recognized by the board or designated as a

Recognized Continuing Education Evaluation Mechanism (RCEEM); or

(c) Continuing education units offered by other individuals, organizations, or institutions that have been approved by the board.

(3) Academic course credit equivalency for continuing education units shall be based on one (1) academic quarter credit hour is equal to twelve (12)[fifteen (15)] continuing education units or one (1) academic semester credit hour is equal to sixteen (16) continuing education units.

~~[(4) A presenter may earn for the development of a continuing education presentation a maximum of twice the continuing education units awarded for the delivery of the presentation. The presenter shall also receive the continuing education approved for attendance at the presentation.~~

~~(5) Credit shall not be issued for repeated instruction of the same course within the biennium.]~~

Section 3. Procedure for Preapproval of Continuing Education Programs.

(1) A continuing education program may be approved by two (2) mechanisms:

(a) By applying and receiving approval from a RCEEM; or

(b) By applying and receiving approval from the board.

(2) For board approval of continuing education programs, a person, agency, or company, "CE Sponsor", shall:

(a) Submit KBMIRT Form 9, Continuing Education Program Approval Request Form at least twenty (20) business days in advance of the date of the offering;

(b) Submit the continuing education approval fee as established by 201 KAR 46:020, Section 12;

(c) Provide program participant(s) with documentation of participation such as a certificate of completion;

(d) Participate in the audit of approved continuing education programs including presentation evaluations, attendance, and continuing education participation documentation, as requested by the board; and

(e) Comply with policies set forth by the board, the ARRT, and NMTCB regarding continuing education programs.

(3) A continuing education activity shall be approved if the board determines that the activity is appropriate. The criteria as established in paragraphs (a) through (d) of this subsection shall be used by the board to determine the preapproval of a continuing education program.

(a) The activity shall enhance knowledge and skills associated with professional performance.

(b) It shall pertain to services provided to patients, the public, or medical profession by an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator.

(c) The presenter shall submit a curriculum vitae, an abstract, the objectives, and an outline of the presentation.

(d) The objectives shall be obtainable for the time frame, outline, and scope of the presentation.

Section 4. Responsibilities and Reporting Requirements of Licensee. A licensee shall be responsible for obtaining required continuing education units and submit documents only if requested by the board. Each licensee shall maintain all documentation verifying successful completion of continuing education units for the current and prior biennium. Documentation shall include:

(1) Official transcripts for completed academic courses;

(2) A copy of the program showing an individual as a presenter of an approved continuing education program; or

(3) Completion certificates or cards for continuing education programs.

Section 5. Audit Procedures. (1) The board shall audit a random selection of twenty-five (25) percent of limited x-ray machine operator licensees and ten (10) percent of all other licensees per year and notify the randomly-selected licensees.

(2) Each licensee selected for audit shall furnish

documentation of completed continuing education units on KBMIRT Form 8, Licensee Continuing Education Documentation Form, for the identified time frame, and provide the board with a copy of the certificates or records of completion.

(3) Failure to comply with an audit may result in non-renewal, suspension or revocation of license.

Section 6. Temporary Licensees. Continuing education requirements shall not apply to the holders of a temporary license.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KBMIRT Form 9, "Continuing Education Program Approval Request Form", March 2020; and

(b) KBMIRT Form 8, "Licensee Continuing Education Documentation Form", March 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DOYLE DECKER, Board Chair

APPROVED BY AGENCY: February 9, 2022

FILED WITH LRC: February 15, 2022 at 10:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at April 27, 2022 at 10:00 a.m. at 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on April 30, 2022. 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: Elizabeth Morgan, Executive Director, 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601, phone +1 (502) 782-5687, fax +1 (502) 782-6495, email elizabeth.morgan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for the approval of continuing education, delineates the requirements for continuing education, and prescribes methods and standards for the approval of continuing education courses.

(b) The necessity of this administrative regulation: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.010 to 311B.190 to regulate licensees other than licensed practitioners of the healing arts, including but not limited to: the classification and licensure of medical imaging technologists, radiation therapists, radiologist assistants and limited x-ray machine operators; examinations; standards of education and experience; curricula standards for institutions teaching persons to perform medical imaging and radiation therapy procedures; issuance, renewal, and revocation of licenses; the establishment of a reasonable scheduled of fees and charges to be paid by individuals for examinations, licenses and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation establishes guidelines for the approval of continuing education, delineates the requirements for continuing education, and prescribes methods and standards for the approval of continuing education courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311B.050(4) and KRS 311B.110(6) require the Board to determine and enforce continuing education requirements and establish guidelines for the approval of continuing education. KRS 311B.110(3) requires that all licensees obtain continuing education for ongoing knowledge of current practices in radiation safety and clinical procedures prior to licensure renewals. KRS 311B.080 establishes that the Board shall recognize and enforce current rules and regulations for the nationally recognized professional organizations and certifying bodies for technologists and therapists regulated by this chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes guidelines for the approval of continuing education, delineates the requirements for continuing education, and prescribes methods and standards for the approval of continuing education courses.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides clarity to updated methods of obtaining continuing education credits and removes one of the previously approved methods for obtaining continuing education credits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide updates to the methods of obtaining continuing education credit and to assure alignment with national certification requirements for continuing education.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding continuing education and to recognize and enforce current rules for certifying bodies for technologists and therapists.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure clear understanding of requirements for continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 7,500 licensees.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action is required. The amendment merely clarifies the continuing education requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities: Applicants and licensees benefit by having the continuing education requirements clarified.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board's operations are funded by fees paid by licensees and applicants.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the continuing education requirements apply equally to licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Imaging and Radiation Therapy will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311B.010 to KRS 311B.190

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this program for subsequent years.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)**

202 KAR 7:545. License classifications.

RELATES TO: KRS 311A.030, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of [the] ambulance services and medical first response agencies, except those regulated by the Board of [Emergency—]Medical Licensure[Services] or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations to establish requirements for various classes of ambulance and emergency medical service agencies. This administrative regulation establishes requirements for each class of ambulance service and medical first response agencies.

Section 1. License Classifications. (1) In accordance with KRS 311A.030(1), license classifications for ambulance providers shall include:

(a) A Class I ground ambulance agency operating at the Advanced Life Support (ALS), Basic Life Support (BLS), or Adult Critical Care Transport level to provide emergency and nonemergency care and transportation.

(b) A Class II ground ambulance agency operating at the BLS level only to provide nonemergency care and transportation.

(c) A Class III ground ambulance agency operating at the ALS level to provide critical care, specialty care, emergency or nonemergency care, and transportation between health care facilities. Based on the Certificate of Need and scope of care policy, a Class III ground ambulance agency shall be designated as one (1) or more of the following types:

1. A Class III Adult Critical Care agency providing critical care transport services to patients ages twelve (12) and above;

2. A Class III Pediatric Specialty Care agency providing specialty care transport services to patients under the age of twenty-one (21); or

3. A Class III Neonatal Specialty Care agency providing specialty care transport services to patients less than twenty-nine (29) days of age.

(d) A Class IV ground ambulance agency operating at the ALS or BLS level to provide emergency and nonemergency care and transportation for restricted locations, such as industrial sites or other sites that do not provide services outside the designated geographic service area.

(e) A Class VI agency providing medical first response without patient transport at the BLS or ALS level.

1. Each BLS First Response agency shall be licensed separately as a Class VI BLS agency unless a mutual aid agreement is executed with a licensed Class I ambulance agency that provides 911 response services for the geographic service area.

2. A nonlicensed BLS First Response Agency may execute a mutual aid agreement with multiple nonlicensed BLS First Response Agencies that serve the same geographic service area.

3. A mutual aid agreement shall automatically renew at the conclusion of a calendar year.

4. A nonlicensed BLS First Response Agency or a Class I ALS agency may terminate a mutual aid agreement thirty (30) days after written notice is provided to the other party.

5. A mutual aid agreement between a Class I ALS agency and a nonlicensed BLS First Response agency serving the same geographic area shall be updated as changes to the agreement occur and shall include provisions for:

- a. Medical direction;
- b. BLS protocols;
- c. Response protocol;
- d. Geographic service areas to be served;
- e. Circumstances causing dispatch of the nonlicensed BLS first response agency;
- f. Training;
- g. Quality assurance processes; and
- h. Liability Insurance if applicable.

6. A nonlicensed BLS First Response agency shall not provide BLS care outside of the geographic service area of the Class I ALS agency.

7. A nonlicensed BLS First Response agency unable to secure a written mutual aid agreement with a Class I ALS agency within its geographic service area, may operate within the jurisdiction as a nonlicensed BLS First Response agency if the agency has written correspondence from at least one (1) Class I 911 agency within its geographic service area denying the agency's request to enter into a mutual aid agreement. The correspondence denying the mutual aid request shall be maintained on file at the agency.

8. A license to provide BLS care shall not be issued solely through the execution of a mutual aid agreement between a Class I agency and a nonlicensed BLS First Response agency;

(f) A Class VII rotor wing air ambulance service providing ALS emergency or nonemergency air transportation;

(g) A fixed wing class VII service provides ALS or BLS emergency or nonemergency air transportation; and

(h) A Class VIII agency providing BLS or ALS pre-hospital care above the first-aid level at special events, sports events, concerts, or large social gatherings.

1. A Class VIII agency shall not transport patients beyond the grounds of an event and shall be bound by the geographic service area of its Certificate of Need.

2. A Class VIII agency shall not transport patients independently to a hospital.

3. If transport of a patient is required, a Class VIII agency shall contact 911 for transport by a Class I agency licensed for the geographic service area.

(2) The KBEMS office shall license agencies in accordance with subsection (1) of this section.

(3) An agency shall apply for[obtain] a license from the board within ninety (90) days of issuance of a Certificate of Need from the Cabinet for Health and Family Services.

(4) An agency that does not apply for[receive] a license within ninety (90) days of the issuance of its Certification of Need shall not be granted a license by the board.

(5) An agency shall request a final inspection for licensure from the board, in writing, within 180 days after applying for a license from the board.

(6) An agency that does not request a final inspection for licensure from the board, in writing, within 180 days after applying for a license from the board shall not be granted a license by the board.

(7)[(5)] An agency shall not hold more than one (1) license per level of classification in one (1) defined geographic service area unless each license was obtained prior to January 1, 2018.

Section 2. Public Notice of Negative Action. The board office shall publish on the KBEMS Web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: February 1, 2022

FILED WITH LRC: February 8, 2022 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 25, 2022, at 1:00 PM Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. 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 April 30, 2022. 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: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email chuck.oneal@kctcs.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for each class of ambulance service and medical first response agencies.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the Board to exercise all administrative functions in the regulation of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations to establish requirements for various classes of ambulance and emergency medical service agencies. This administrative regulation is necessary to establish requirements for each class of ambulance service and medical first response agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020 and 311A.030 by establishing requirements for each class of ambulance service and medical first response agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020 requires the Board to exercise all administrative functions in the regulation of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations to establish requirements for various classes of ambulance and emergency medical service agencies. This administrative regulation assists in the effective administration of these statutes by establishing requirements for each class of ambulance service and medical first response agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the requirement that agencies *obtain* a license from the Board within ninety (90) days after receiving a certificate of need. Instead, agencies will only need to *apply for* a license from the Board within ninety (90) days of issuance of a certificate of need. After applying for a license, agencies must request a final inspection from the Board within 180 days.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it is difficult for agencies to satisfy the requirement that they receive a license within ninety (90) days of issuance of a certificate of need. Before a license may be issued by the Board, new EMS agencies must contract with a medical director, order medications, purchase and acquire ambulances, hire staff, procure physical locations, etc. Were the Board to strictly enforce this requirement, some otherwise qualified agencies would be denied a license.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.020 and 311A.030 by removing requirements for each class of ambulance service and medical first response agencies.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the Board to exercise all administrative functions in the regulation of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations to establish requirements for various classes of ambulance and emergency medical service agencies. This amendment will assist in the effective administration of these statutes by removing requirements for each class of ambulance service and medical first response agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All ambulance services and medical first response agencies will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Ambulance services and medical first response agencies will no longer be required to obtain a license from the Board within ninety (90) days after the issuance of a certificate of need.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will not require entities to incur any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ambulance services and medical first response agencies will benefit from being permitted to receive

a license from the Board more than ninety (90) days after being issued a certificate of need.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies to all ambulance services and medical first response agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will affect all ambulance services and medical first response agencies.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the Board to exercise all administrative functions in the regulation of ambulance services and medical first response agencies, except those regulated by the Board of Medical Licensure or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations to establish requirements for various classes of ambulance and emergency medical service agencies. This administrative regulation establishes requirements for each class of ambulance service and medical first response agencies.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? Administration of this administrative regulation will not require any costs.

(d) How much will it cost to administer this program for subsequent years? Administration of this administrative regulation will not require any costs.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not require any additional expenditures.

Other Explanation:

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

702 KAR 3:090. Depository of board, collateral~~[bond, penal sum]~~.

RELATES TO: KRS 156.010, 160.570

STATUTORY AUTHORITY: KRS 156.029~~(8)~~~~(7)~~, 160.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029~~(8)~~~~(7)~~ requires the Board of Education to develop policies and to promulgate administrative regulations by which the Department of Education shall be governed. KRS 160.570(2) requires each local board of education's~~[education-]~~ designated depository of funds to provide collateral~~[execute bond]~~ for the faithful performance of its duties, which~~[and the bond]~~ shall be approved by the local board and the Commissioner of Education. KRS 160.570(2) states that collateral shall be provided in accordance with KRS 41.240.~~[KRS 160.570(2) also defines the nature and qualifying sureties for the bond and requires the Kentucky Board of Education to regulate the penal sum of the bond.]~~ This administrative regulation establishes the process for approval of collateral by the local board of education and the Commissioner of Education~~[standards for bonds of depository]~~.

Section 1. (1) Before any board of education appoints a bank, trust company, or savings and loan association to serve as depository as required pursuant to KRS 160.570, the board shall:~~[A local board of education, on advice of the superintendent, shall determine the penal sum of the bond of depository at least thirty (30) days prior to the depository entering upon its duties and by July 1 of each fiscal year thereafter.]~~

(a) Require the depository to pledge collateral having an aggregate current face value or current quoted market value at least equal to the local board of education deposits as of the last business day of each quarter in which funds are so deposited, or provide to the local board a surety bond or surety bonds in favor of the local board of education in an amount at least equal to the local board of education deposits, as of the last business day of each quarter in which funds are deposited; provided, however, that amounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation need not be so collateralized.

(b) As an alternative to subsection (1)(a), a depository insured by the Federal Deposit Insurance Corporation may either pledge to the local board, as collateral, securities or other obligations having an aggregate face value or a current quoted market value or provide to the local board a surety bond or surety bonds in an amount equal to eighty (80) percent of the value of the local board of education deposits including demand and time accounts, if the depository is determined by the State Investment Commission to have very strong credit with little or no credit risk at any maturity level and the likelihood of short-term unexpected problems of significance is minimal or not of a serious or long-term nature. The value of the local board of education deposit will be determined at the end of the business day of deposit and as of the end of business on the last day of each quarter that funds are so deposited.

Section 2. ~~[The district shall obtain approval for the bond of depository from the Commissioner of Education prior to the depository entering upon its duties.]~~The local board must submit the affidavit of the depository to the Commissioner of Education for approval. The collateral~~[A depository bond]~~ shall not be approved by the Commissioner of Education if the commissioner determines that the ~~collateral~~~~[bond]~~ is inadequate to insure the deposits of the local board of education~~[, pursuant to the commissioner's authority in KRS 156.010]~~.

Section 3. Incorporation by Reference. (1) "Affidavit of Depository", is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject

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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. (1)(a) The penal sum of the depository bond shall be at least equal to either;

1. 103 percent of the current daily balances in each account as they may fluctuate throughout the life of the bond; or

2. The highest daily balance in each account each month for all accounts in the previous year.

(b) The penal sum of the depository bond shall be adjusted to reflect expected increases or decreases in the highest daily balances due to anticipated changes of deposit amounts in the current year.

(2)(a) The escrow agent for a depository choosing to use a collateral bond shall file safekeeping receipts with the local board of education as evidence of any collateral that has been pledged in accordance with the provisions of the bond executed by the depository institution.

(b) To reduce the penal sum of a collateral bond, the local board of education shall submit a notice, with reasons for the reduction, to the Commissioner of Education. A local board of education shall not permit a reduction of the collateral of a bond without execution of a new bond with prior approval of the Commissioner of Education.]

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: February 11, 2022

FILED WITH LRC: February 11, 2022 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on April 29, 2022 at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed amendment establishes the collateral requirements for school district depositories.

(b) The necessity of this administrative regulation: KRS 160.570 requires school districts to name a bank, savings and loan or trust company as depository to receive school district funds. Per the statute, district deposits must be secured by collateral as set forth in KRS 41.240. This regulation amendment conforms the regulatory requirements to KRS 41.240.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 160.570 requires school districts to name a bank, savings and loan or trust company as depository to receive school district funds and to provide collateral pursuant to Kentucky Board of Education Administrative Regulations consistent

with KRS 41.240. This proposed amendment conforms the regulation to the statutory requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation establishes the collateral requirements for school district deposits in conformance and as required by KRS 160.570 and 41.240.

(2) If 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 conforms the collateral requirements to KRS 41.240 as required by KRS 160.570. The amendment provides for additional types of collateral for school district deposits.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the regulation to conform to the current statutory requirements of KRS 160.570 and 41.240.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 160.570 and 41.240 establish the collateral requirements for school district deposits. The amendment provides for additional types of collateral consistent with the aforementioned statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment sets forth school district depository collateral requirements consistent with KRS 160.570 and 41.240.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts and their depositories (banks, savings and loans and trust companies).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under the existing regulation, school districts are currently required to provide proof of collateral in the form of a bond. The proposed amendment permits additional forms of collateral consistent with KRS 160.570 and 41.240. Under the amendment, districts will continue to provide proof of the collateral.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no new costs to districts or their depositories in providing collateral. District depositories currently have to provide a bond. Any cost would be related to acquiring a bond. However, the amendment permits other forms of collateral such as securities owned by the depository. There may be no cost to the depository in pledging owned securities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Conforming the regulation to the requirements of KRS 160.570 and 41.240 provide additional collateral options to secure district deposits.

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

(a) Initially: Any costs are expected to be minimal to nil.

(b) On a continuing basis: Any costs are expected to be minimal to nil.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not 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? School Districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.570 and 41.240

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

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

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

(c) How much will it cost to administer this program for the first year? Any costs are expected to be minimum.

(d) How much will it cost to administer this program for subsequent years? Any costs are expected to be minimum.

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: Districts are required to obtain collateral for school district deposits currently. The proposed amendment permits additional collateral to secure district deposits consistent with KRS 160.570 and 41.240.

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

780 KAR 3:020. Compensation plan.

RELATES TO: KRS 156.802(3), 156.808 [454B.035], 161.605
STATUTORY AUTHORITY: KRS 156.802(3), 156.808 [154B.035]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808[154B.035(1) and (3)(c)] requires the Kentucky Board of Education[Executive Director of the Office of Career and Technical Education] to promulgate comprehensive administrative regulations to govern the compensation[pay] plan for all certified and equivalent staff[and unclassified staff]. KRS 156.808(6)(e) requires the Kentucky Board of Education to promulgate administrative regulations to govern proceedings which shall provide for supplementary information for the salary schedule for certified and equivalent staff. This administrative regulation establishes the compensation plan for certified and equivalent employees subject to the personnel system established under KRS 156.800 to KRS 156.860 of the Kentucky Tech area technology centers and Office of Career and Technical Education central office.

Section 1. (1) Appointments. A new certified or equivalent employee or reentering certified or equivalent employee shall be appointed at the salary specified on the Minimum Salary Schedule for Certified and Equivalent Staff commensurate with education rank and experience. An employee in an administrative position may be provided an index adjustment commensurate with the scope of administrative or supervisory responsibility in addition to the base salary as specified for the particular job classification.

(2) A retired certified or equivalent employee returning to work in a position covered by the Kentucky Teachers' Retirement System shall not be placed on the salary schedule referenced in this section but shall be paid pursuant to the requirements of KRS 161.605(1) and (2).

Section 2. Salary Adjustments. (1) Promotion.

(a) A certified or equivalent employee who is promoted to a

classified position shall receive a salary increase of five (5) percent unless his current salary is above the minimum on the salary schedule. If the employee's salary is above the minimum, the five (5) percent increase shall be at the discretion of the appointing authority.

(b)1. A certified or equivalent employee promoted to an unclassified position in a Kentucky Tech area technology center or the Office of Career and Technical Education central office shall receive a salary increase of five (5) percent upon promotion unless his current salary is above the minimum. If the employee's salary is above the minimum, the salary increase shall be at the discretion of the appointing authority.

2. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the Associate Commissioner[executive director] may grant upon promotion a ten (10) percent to twenty (20) percent salary increase over the employee's previous salary.

(2) Demotion.

[a] A certified or equivalent employee [in the Office of Career and Technical Education] who is demoted shall have his salary adjusted to not more than sixty (60) percent below[above] the proper cell within the salary schedule. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion.

[b] ~~An unclassified employee in the Office of Career and Technical Education who is demoted to a certified or equivalent position shall have his salary adjusted to not more than sixty (60) percent above the proper cell within the salary schedule. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion.]~~

(3) Rank changes. A certified or equivalent employee shall have a salary adjustment retroactive to July 1 for educational rank changes which are confirmed by September 30 of each year.

[4] ~~A certified or equivalent employee who administers the National Occupational Competency Testing Institute Performance Test on a Saturday shall be paid fifty (50) dollars per hour to administer the exam.~~

[5] ~~A certified or equivalent employee shall be paid at a rate of \$100 per lesson plan for each lesson plan that is utilized as a model for other classes located in the area technology centers.~~

[6] ~~A certified or equivalent employee shall be compensated for participating in specific projects relating to professional or curriculum development, staff exchange, and the integration of academics in career and technical education outside of normal working hours, subject to the provisions and requirements of the Kentucky state plan for career and technical education, 780 KAR 1:010. The rate or payment shall be determined in the approved project proposal.]~~

(4)[(7)] Other salary adjustments.

[a] ~~The Executive Director for the Office of Career and Technical Education may authorize performance bonuses in lump sum payments for outstanding job performance for nonprobationary status employees in any fiscal year in which monies are available.~~

[b] A full-time permanent employee working as a dual appointment in the certified or equivalent employment may be paid equal to the hourly rate of his full-time position salary, up to one and five-tenths (1.5) times that hourly rate.

Section 3. Salary Advancements. (1) The Minimum Salary Schedule for Certified and Equivalent Staff shall be approved by the Kentucky Board of Education annually.[The Minimum Salary Schedule for Certified and Equivalent Staff shall be adjusted each year.] All certified and equivalent staff shall receive a salary increase not less than the percentage increase provided other elementary and secondary teachers[state employees]. This increase shall be provided July 1. Salary adjustments for those entitled employees shall be retroactive to July 1 of each year once the salary schedule is confirmed by September 30 of each year.

(2) All certified and equivalent staff shall be entitled to equivalent pay raises provided to other state employees.

[(2) Annual salary increments for unclassified employees shall occur commensurate with each person's established increment

date.

~~Section 4. Paid Overtime. If applicable, certified and equivalent employees and unclassified employees shall be awarded overtime payments in accordance with the Fair Labor Standards Act, 29 U.S.C. 201 et seq.~~

~~Section 5. Incorporation by Reference. (1) "The Minimum Salary Schedule for Certified and Equivalent Staff", July 1, 2008, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workforce Investment, Office of Career and Technical Education, Division of Human Resources, 500 Mero, Second Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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

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

APPROVED BY AGENCY: February 11, 2022

FILED WITH LRC: February 11, 2022 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held April 29, 2022, 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 (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2022.

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 Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the compensation plan for all certified and equivalent staff subject to the personnel system established under KRS 156.800 to KRS 156.860 in the Kentucky Tech area technology centers and Office of Career and Technical Education central office.

(b) The necessity of this administrative regulation: KRS 156.802(3) provides that the Kentucky Department of Education shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational and education centers. KRS 156.808(3)(c) requires the Kentucky Board of Education to promulgate administrative regulations to govern the compensation plan for all certified and equivalent staff. KRS 156.808(6)(e) requires the Kentucky Board of education to promulgate administrative regulations to govern proceedings which shall provide for supplementary information for the salary schedule for certified and equivalent staff.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.808(3)(c) requires the Kentucky Board of Education to promulgate administrative regulations to govern the compensation plan for all certified and equivalent staff. KRS 156.808(6)(e) requires the Kentucky Board of education to promulgate administrative regulations to govern

proceedings which shall provide for supplementary information for the salary schedule for certified and equivalent staff. This administrative regulation establishes the compensation plan for all certified and equivalent staff subject to the personnel system established under KRS 156.800 to KRS 156.860 in the Kentucky Tech area technology centers and Office of Career and Technical Education central office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation governs the compensation plan and salary schedule for certified and equivalent staff subject to the personnel system established under KRS 156.800 and KRS 156.860 within the ATCs and Office of Career and Technical Education central office.

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

(a) How the amendment will change this existing administrative regulation: Proposed amendments to 780 KAR 3:020 update terminology and organizational changes, remove requirements that no longer align to Kentucky Department of Education (KDE) personnel policies, and removes the 2008 Kentucky Tech Salary Schedule (incorporated by reference).

(b) The necessity of the amendment to this administrative regulation: These amendments ensure compliance with current personnel policies and practices and alignment with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.808(3)(c) requires the Kentucky Board of Education to promulgate administrative regulations for full-time and part-time certified and equivalent staff governing compensation plans. KRS 156.808(6)(e) requires the Kentucky Board of education to promulgate administrative regulations to govern proceedings which shall provide for supplementary information for the salary schedule for certified and equivalent staff. The amendments are necessary due to outdated terminology and revised personnel policies.

(d) How the amendment will assist in the effective administration of the statutes: These amendments update information regarding staff compensation plans and align with other current personnel policies in order to provide for better efficiency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include KRS Chapter 156 employees within the ATCs and Office of Career and Technical Education central office, as well as other Kentucky Department of Education staff by providing the administrative framework for certified and equivalent employee compensation plans.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments will impact certified and equivalent employees' salaries of the ATCs and the Office of Career and Technical Education central office, as well as other Kentucky Department of Education staff who must implement this salary schedule

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments will not require any action by certified and equivalent employees within the ATCs or central office, nor Kentucky Department of Education staff.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments create greater efficiency by aligning to other existing personnel policies.

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

(a) Initially: N/A

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education will be required to implement these amendments, particularly as it relates to the maintenance of the

certified salary schedule on an annual basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary to implement these amendments at this time; however, all amendments to the certified salary schedule require adequate biennial budget funding for the Kentucky Department of Education to implement.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all certified and equivalent employees of the ATCs and central office.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Education (Office of Career and Technical Education and Office of Finance and Operations).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.802(3) provides that the Kentucky Department of Education shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational and education centers. KRS 156.808(3)(c) requires the Kentucky Board of Education to promulgate administrative regulations to govern the compensation plan for all certified and equivalent staff. KRS 156.808(6)(e) requires the Kentucky Board of education to promulgate administrative regulations to govern proceedings which shall provide for supplementary information for the salary schedule for certified and equivalent staff.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not have any impact on current expenditures or revenue associated with the Kentucky Department of Education. Currently, the Kentucky Tech Salary Schedule costs the Kentucky Department of Education approximately \$31M to implement.

(a) How much 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? Minimal staff time at the Kentucky Department of Education will be required to implement these amendments.

(d) How much will it cost to administer this program for subsequent years? Minimal staff time at the Kentucky Department of Education will be required to implement 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 (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:402. General safety and health provisions.

RELATES TO: KRS 338.015, 29 C.F.R. 1926.20-1926.35

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to 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. [29 C.F.R. 1926.20 to 1926.30 and 1926.32 to 1926.35 authorize federal safety and health requirements relating to construction.] This administrative regulation establishes [general safety and health] standards that are [to be] enforced by the Department of Workplace Standards in [the area of] construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

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

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

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

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

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor [U.S. 427 South], Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. Subpart C, General safety and health provisions, [the following federal requirements] published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[:]

(1) 29 C.F.R. 1926.20-1926.30 and 1926.32-1926.35, effective July 1, 2014; and

(2) The amendments to 29 C.F.R. 1926.21 as published in the May 4, 2015 Federal Register, Volume 80, Number 85].

JAMIE LINK, Secretary of Labor

APPROVED BY AGENCY: February 11, 2022

FILED WITH LRC: February 11, 2022 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2022 at 1:00 pm (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at: <https://us06web.zoom.us/j/81934895287> or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish

to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since, defines terms including terms previously found in Section 2. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart C, General Safety and Health Provisions. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 15, 1989 defines terms including terms previously found in Section 2. Section 2 adopts the requirements of 29 C.F.R. 1926 Subpart C, General Safety and Health Provisions. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590

Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies and conforms with the authorizing statutes of KRS 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate OSH administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. It promotes employer and employee occupational safety and health throughout Kentucky.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from clarification of the regulation.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(2) State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

(3) Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(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: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061

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

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

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

(c) How much will it cost to administer this program for the first year? 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 this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:411. Scaffolds.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.450-454

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1926

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This [The following] administrative regulation establishes [contains those] standards that are [to be] enforced by the Department of Workplace Standards in [Division of Occupational Safety and Health Compliance in the area of] construction.

Section 1. Section 1. Definitions. (1) [~~"Act" means KRS Chapter 338.~~

(2) [~~"Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.~~

(3) [~~"C.F.R." means Code of Federal Regulations.~~

(2) [(4)] "Employee" is defined by KRS 338.015(2).

(3) [(5)] "Employer" is defined by KRS 338.015(1).

(4) [(6)] [~~"Established federal standard" is defined by KRS 338.015(10).~~

(7)] "National consensus standard" is defined by KRS 338.015(9).

(5) [(8)] "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(6) [(9)] "Standard" is defined by KRS 338.015(3).

(7) [(40)] "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor [U.S.-427 South], Frankfort, Kentucky 40601.

Section 2. The construction industry shall comply with 29 C.F.R. 1926, Subpart L, Scaffolds [the following federal regulations] published by the Office of the Federal Register, National Archives, and Records Administration[:

(1) 29 C.F.R. 1926.450-1926.454, revised July 1, 2012; and

(2) The revisions to Appendix A of 29 C.F.R. 1926 Subpart L, as published in the August 7, 2012 Federal Register, Volume 77, Number 152].

JAMIE LINK, Secretary of Labor

APPROVED BY AGENCY: February 11, 2022

FILED WITH LRC: February 11, 2022 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2022 at 1:00 p.m. (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at: <https://us06web.zoom.us/j/81934895287> or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart L, Scaffolds. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require

Kentucky OSH regulations to be as effective as the federal requirements. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart L, Scaffolds. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are

imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(2) State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

(3) Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(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: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

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

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

counties, fire departments, or school districts) for the first year? None.

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

(c) How much will it cost to administer this program for the first year? 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 this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(Amendment)

803 KAR 2:419. Demolition~~[Adoption of 29 C.F.R. Part 1926.850-860].~~

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.850 - 860

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) ~~requires~~~~[and 338.061 require]~~ the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health ~~[rules,]~~ administrative regulations and authorizes the chairman to reference federal standards ~~without board approval if necessary to meet federal time requirements[, and standards]~~. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. ~~This [The following] administrative regulation establishes [contains these] standards that are [to be] enforced by the Department of Workplace Standards in [Division of Occupational Safety and Health Compliance in the area of] construction.~~

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

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

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

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

(4)(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart T, Demolition~~[the following federal regulations]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[:

(1) 29 C.F.R. 1926.600-1926.606, revised July 1, 2012; and

(2) The amendments to 29 C.F.R. 1926.856 and 1926.858 as published in the April 23, 2013 Federal Register, Volume 78, Number 78].

JAMIE LINK, Secretary of Labor

APPROVED BY AGENCY: February 11, 2022

FILED WITH LRC: February 11, 2022 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2022 at 1:00 pm (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of

emergency. Public access to the meeting will be available at: <https://us06web.zoom.us/j/81934895287> or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378.

Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart T, Demolition. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart T, Demolition. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was

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reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(2) State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

(3) Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(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: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

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

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

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

(c) How much will it cost to administer this program for the first year? 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 this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:445. Confined spaces in construction.

RELATES TO: KRS 338.015, 29 C.F.R. 1926.1200-1926.1213

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to

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~~meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards.[29 C.F.R. 1926.1200 to 1926.1213 establish federal safety and health requirements related to confined spaces in construction.] This administrative regulation establishes [general safety and health] standards that are[to be] enforced by the Department of Workplace Standards in [the area of] construction.~~

Section 1. Definitions. (1) ~~"Act" means KRS Chapter 338.~~

~~(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.~~

~~(3) "C.F.R." means Code of Federal Regulations.~~

~~(2)[(4)] "Employee" is defined by KRS 338.015(2).~~

~~(3)[(5)] "Employer" is defined by KRS 338.015(1).~~

~~(4)[(6)] "Established federal standard" is defined by KRS 338.015(10).~~

~~(5)[(7)] "National consensus standard" is defined by KRS 338.015(9).~~

~~(6)[(8)] "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.~~

~~(7)[(9)] "Standard" means "occupational safety and health standard," which is defined by KRS 338.015(3).~~

~~(8)[(40)] "U.S. Department of Labor" means U.S. Department of Labor or[Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor[U.S. 127 South], Frankfort, Kentucky 40601.~~

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart AA, Confined spaces in construction,~~[the federal requirements]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration~~[- 29 C.F.R. Part 1926, Subpart AA, Confined Spaces in Construction, published in the May 4, 2015 Federal Register, Volume 80, Number 85].~~

JAMIE LINK, Secretary of Labor

APPROVED BY AGENCY: February 11, 2022

FILED WITH LRC: February 11, 2022 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2022 at 1:00 pm (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at: <https://us06web.zoom.us/j/81934895287> or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 2, 1983, defines terms not used in the federal standard. Section 2 adopts

the requirements of 29 C.F.R. 1926, Subpart AA, Confined Spaces in Construction. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 2, 1983, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart AA, Confined Spaces in Construction. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment

promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(2) State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

(3) Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(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: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

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

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

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

(c) How much will it cost to administer this program for the first year? 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 this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Certificate of Need

(Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The [2020-2022] State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2022 Update to the [2020-2022] State Health Plan", January 2022 [August 2020], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 25, 2022

FILED WITH LRC: January 27, 2022 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 28, 2022, 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 April 21, 2022, 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 April 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2022 Update to the State Health Plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a., by establishing the State Health Plan's review criteria used for determinations regarding the issuance and denial of certificates of need.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the review criteria for certificate of need determinations.

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

(a) How the amendment will change this existing administrative regulation: In response to suggestions and comments submitted to the cabinet by interested groups, the amendment to this administrative regulation makes the following changes to the State Health Plan (SHP): - Updates the title and edition date of the SHP on page i of the Plan; - Updates the page numbers listed in the Table of Contents on page ii to align with the new changes to the SHP; - Updates the title of the SHP on page iii of the Plan under the heading "Purpose"; - Adds new language to the review criteria on pages 2 and 3 to allow acute care hospitals to transfer existing acute care beds to a new hospital under common ownership if: the hospitals are located within the same county; the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher for three (3) of the last four (4) reported quarters preceding the date the application was filed; and no more than fifty (50) percent of the existing hospital's acute care beds are transferred to the new facility. This change aligns with the proposed amendment of 900 KAR 6:075, Section 2(3)(e), filed concurrently with this administrative regulation to grant nonsubstantive review status to certificate of need applications for acute care hospitals that wish to transfer existing acute care beds to

a new facility as described above; - Adds new language to the review criteria on page 15 to allow hospitals to convert existing Level II special care neonatal beds to Level III special care neonatal beds; - Revises the language of the review criteria on page 40 to clarify that the addition of a cardiac catheterization program at a hospital shall be based on the existing program's utilization, rather than a specific laboratory's utilization; and - Adds new language to the review criteria on page 52 to align with the proposed amendment of 900 KAR 6:075, Section 2(3)(d), filed concurrently with this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address updates to the State Health Plan as required by KRS 216B.015(28).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes because it incorporates by reference the State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing the review criteria for certificate of need determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications and affected persons as defined by KRS 216B.015(3). A total of 70 certificate of need applications were submitted to the cabinet in calendar year 2021 and 60 certificate of need applications were submitted in calendar year 2020.

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

(a) List 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 that submit a certificate of need application are subject to the criteria set forth in the State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The certificate of need application filing fee for nonsubstantive review and formal review is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities subject to certificate of need approval must demonstrate that their proposal is consistent with the State Health Plan pursuant to KRS 216B.040(2)(a)2.a.

(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 amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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? Yes, tiering is used as there are different certificate of need review criteria for each licensure category addressed in the State Health Plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be

impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and may impact any government owned or controlled health care facility.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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

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

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

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)**

900 KAR 6:075. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; [or]

(c)1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation;

(d) The proposal involves an application by a licensed health facility to establish a Class I ground ambulance service operating at the Advanced Life Support (ALS) or Basic Life Support (BLS) level to provide nonemergency transport of individuals if the applicant agrees to the following restrictions to be placed on its proposed certificate of need and ground ambulance license:

1. The applicant shall only transport individuals who are patients of the licensed health facility or a health facility under common ownership; and

2. The applicant shall only transport individuals to or from its health facility or a health facility under common ownership and another licensed health facility, the individual's place of residence, or other community-based setting; or

(e) The proposal involves an application to transfer acute care beds from one (1) or more existing Kentucky-licensed hospitals to establish a new hospital under the following circumstances:

1. The existing hospital and new facility shall be under common ownership and located in the same county;

2. The existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher for three (3) out of the last four (4) reported quarters

preceding the date the application was filed; and

3. No more than fifty (50) percent of the existing hospital's acute care beds shall be transferred to the new facility.

(4) A certificate of need approved for an application submitted under subsection (3)(c) of this section shall state the limitations specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General, the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General, any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted, as required by KRS 216B.095(1). A hearing officer shall prioritize rendering decisions regarding

applications granted nonsubstantive review status pursuant to Section 2(3)(d) of this administrative regulation.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 25, 2022

FILED WITH LRC: January 27, 2022 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 28, 2022, 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 April 21, 2022, 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 April 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the nonsubstantive review of certificate of need applications. Nonsubstantive review is an expedited review process granted to certain applications pursuant to KRS 216B.095. This administrative regulation expands upon the types of applications that qualify for nonsubstantive review per the statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(18), 216B.040, and 216B.095.

(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 adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

(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 adding types of certificate of need applications that qualify for nonsubstantive review status, setting forth the procedure for granting nonsubstantive review status, and setting forth the procedure for affected parties to request a hearing to dispute the review status or application.

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

(a) How the amendment will change this existing administrative regulation: This amendment grants nonsubstantive review status to certificate of need applications submitted by licensed health facilities seeking to establish a Class I ground ambulance service operating at the Advanced Life Support (ALS) or Basic Life Support (BLS) level to provide nonemergency transport of individuals who are patients of the licensed health facility or a health facility under common ownership and the applicant agrees to the placement of restrictions as established by Section 2(3)(d) of this administrative regulation on its proposed certificate of need and ground ambulance license. This amendment also adds a cross-reference to KRS 216B.095(1) to emphasize the 35-day statutory time limit to issue a decision on applications assigned nonsubstantive review and requires hearing officers to prioritize decisions on nonemergency ground ambulance applications. Additionally, this amendment grants nonsubstantive review status to certificate of need applications for acute care hospitals that wish to transfer existing acute care beds to a new facility under common ownership if: - The facilities are located within the same county; - The existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher for three (3) of the last four (4) reported quarters preceding the date the application was filed; and - No more than fifty (50) percent of the existing hospital's acute care beds are transferred to the new facility.

(b) The necessity of the amendment to this administrative regulation: This amendment is being proposed pursuant to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 216B.095(3)(f), which permits the cabinet to grant nonsubstantive review status to a certificate of need application in accordance with circumstances prescribed by the cabinet via administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing the procedures for review of certificate of need applications granted nonsubstantive review status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities that submit certificate of need applications subject to the nonsubstantive review process. The number of entities that submit certificate of need applications subject to nonsubstantive review varies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will permit nonsubstantive review of certificate of need applications for health facility-based Class I ground ambulance service operating at the ALS or BLS level to provide nonemergency transport in accordance with the circumstances prescribed by Section 2(3)(d) of this administrative regulation. This amendment will also permit nonsubstantive review of certificate of need applications for acute care hospitals that wish to transfer existing acute care beds to a new facility under common ownership located in the same county and in accordance with additional criteria proposed in Section 2(3)(e) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The certificate of need application filing fee is the same for nonsubstantive review and formal review and is established in a separate administrative regulation, 900 KAR

6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendment will help improve access to services without a duplication of acute care beds as well as enhance patient care in an effort to address ongoing delays in nonemergency ambulance transportation.

(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 amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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? (Explain why or why not) Tiering is used as certificate of need applications are reviewed under a formal review process (900 KAR 6:070) or nonsubstantive review process (this administrative regulation). The list of applications granted nonsubstantive review is being amended to add two (2) new categories.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects entities that are subject to the certificate of need program's nonsubstantive review process. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(8), 216B.040, 216B.095

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

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

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

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

Public comment periods ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(New Administrative Regulation)**

9 KAR 1:070. Standards of Ethical Conduct for Transition Team Members and Disclosure Form.

RELATES TO: KRS 11A.010, KRS 11A.047

STATUTORY AUTHORITY: KRS 11A.047

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) and (4) require the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A and to prescribe forms for statements required by this chapter. KRS 11A.047(3), (4), and (7) require the commission to establish standards of ethical conduct for transition team members, prescribe a form for the newly elected official to designate transition team leaders, prescribe a form for the transition team leaders to list the members of the transition team, and prescribe a disclosure form for the transition team members to submit to the commission. This administrative regulation establishes the standards of ethical conduct for transition team members, prescribes the three forms, and incorporates them by reference.

Section 1. Definitions. (1) "Agency" is defined by KRS 11A.047(1)(a).

(2) "Commission" means the Executive Branch Ethics Commission as established by KRS 11A.060.

(3) "Engage" is defined by KRS 6.611(13) and 11A.201(4).

(4) "Executive agency decision" is defined by KRS 11A.201(8).

(5) "Executive agency lobbying activity" is defined by KRS 11A.201(10).

(6) "Financial Impact" means to have an effect on the financial position of a person or business whether or not the impact is positive or negative.

(7) "Gifts" is defined by KRS 11A.010(5).

(8) "Legislative matter" is defined by KRS 6.611(25).

(9) "Lobby" is defined by KRS 6.611(27).

(10) "Newly elected official" means a person elected to an office listed in KRS 11A.010(9)(a) to (g) who has not yet been sworn into office.

(11) "Non-public information" is defined by KRS 11A.047(1)(b).

(12) "Regular election" is defined by KRS 446.010(37).

(13) "Transition team" is defined by KRS 11A.047(1)(c).

(14) "Transition team lead" means a person designated by the newly elected official to manage the transition team on behalf of the newly elected official.

(15) "Transition team member" is defined by KRS 11A.047(1)(d).

(16) "Transition team end date" is the date of inauguration for the newly elected gubernatorial official or the swearing-in date for all other newly elected officials.

Section 2. Newly Elected Official Disclosure of Transition Team Lead. (1) The commission shall notify the newly elected official of all disclosure requirements within five (5) business days of the date of the regular election.

(2) If the newly elected official decides to create a transition team as provided in KRS 11A.047(2), then the newly elected official shall file with the commission a Transition Team Lead Designation form EBEC-301, as required by KRS 11A.047(4), within ten (10) business days of the date of the regular election.

(3) The newly elected official shall ensure that the Transition Team Lead Designation form EBEC-301 that is filed with the commission is current and notifies the commission by filing an amended Transition Team Lead Designation form EBEC-301 within five (5) business days of any additions to or departures from the transition team leadership until the transition team end date.

Section 3. Transition Team Member Lists. (1) The commission shall notify each transition team lead of all disclosure requirements within fourteen (14) business day of the date of the regular election.

(2) The transition team lead shall file with the commission a Transition Team Members List form EBEC-302, as required by KRS 11A.047(4), within twenty (20) business days of the date of the regular election.

(3) The transition team lead shall ensure that the Transition Team Members List form EBEC-302 that is filed with the commission is current and shall notify the commission by filing an amended Transition Team Members List form EBEC-302 within five (5) days of any additions to or departures from the transition team until the transition team end date.

Section 4. Transition Team Member Disclosure. (1) Prior to beginning service on a transition team, every transition team member shall file with the commission, as required by KRS 11A.047(7), a Transition Team Disclosure Statement form EBEC-303.

(2) The transition team member shall update the Transition Team Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of any employment, business interest, or transition team assignment changes that would have a material effect on their originally filed Disclosure Statement form EBEC-303 until the transition team end date.

(3) The transition team member shall update the Transition Team Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of the acceptance of any gifts over \$25 or acceptance of future employment as required by KRS 11A.047(7)(f) until the transition team end date.

(4) The transition team member shall update the Transition Team Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of any new recusals required pursuant to KRS 11A.047(7)(h) until the transition team end date.

(5) The commission shall notify any transition team member who fails to file the Transition Team Disclosure Statement form EBEC-303 within ten (10) business days after beginning their initial service.

(6) If within ten (10) business days of receiving notice from the commission, the transition team member has failed to file the required Transition Team Disclosure Statement form EBEC-303, the Commission will send notice to the newly elected official and transition team leads that the transition team member should be removed from the transition team and discontinue all activities on behalf of the transition team until the form is filed.

Section 5. Standards of Ethical Conduct for Transition Teams.

(1) All transition team members shall:

Comply with KRS 11A.047(5) and (6);

Document in writing all state agencies where they may be granted access to nonpublic information obtained for purposes of the transition process;

(c) Recuse from any assignment with which they have a financial interest as defined by KRS 11A.047(6)(a) through (g); and

(d) Ensure that their disclosures which are on file with the Commission are accurate and current until the transition team end date.

(2) Recusals must be documented on the Transition Team Disclosure Statement form EBEC-303 filed with the commission prior to beginning service on the transition team.

(3) Recusals that arise after beginning service on the transition team must be documented by filing an updated Transition Team Disclosure Statement form EBEC-303 with the Commission until the transition team end date.

Section 6. Current and Former Registered Lobbyists. (1) All transition team members who are registered lobbyists under KRS 6.801 to 6.829 and KRS 11A.201 to 11A.246 or are former lobbyists who were registered under KRS 6.801 to 6.829 and KRS 11A.201 to 11A.246 during the twelve (12) month period prior to becoming a transition team member shall:

(a) Disclose his or her current or previous registration as a lobbyist during the twelve (12) months prior to becoming a transition team member on the Transition Team Member Disclosure Statement form EBEC-303 filed with the commission;

(b) Recuse from involvement in a decision-making capacity on the transition team from any executive branch decision or legislative matter that would have a financial impact on his or her executive agency lobbying activities or legislative lobbying engaged in during the previous twelve (12) months;

(c) Not use or reveal any nonpublic information he or she receives in his or her tenure as a transition team member in any current or future executive agency lobbying activity or legislative lobbying; and

(d) Not receive nonpublic information regarding matters that financially impact his or her clients for whom he or she was engaged to lobby.

Section 7. Submission. The forms required by this administrative regulation, which are filed with the commission, shall be submitted as follows:

(1) By hard copy via hand-delivery or U.S. Mail to the Commission's address;

(2) Electronically by facsimile to (502) 696-5091; or

(3) Electronically by electronic mail to ethicsfiler@ky.gov.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Transition Team Lead Designation" EBEC-301 (Rev. 01/2022);

(b) "Transition Team Members List" EBEC-302 (Rev. 01/2022); and

(c) "Transition Team Disclosure Statement" EBEC-303 (Rev. 01/2022).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the commission's website at <https://ethics.ky.gov/Pages/default.aspx>.

JUDGE ROGER L. CRITTENDEN (RET.), CHAIRMAN

APPROVED BY AGENCY: January 19, 2022

FILED WITH LRC: February 9, 2022 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2022, at 1:00 p.m., via Video Teleconference platform Zoom

<https://us02web.zoom.us/j/89517732224?pwd=cXl6UGVmSi9haINhWDRMM29adEUwUT09> Meeting ID: 895 1773 2224, Passcode: Open, by phone at +1 929 205 6099 US (New York), Meeting ID: 895 1773 2224, Passcode: 018719, and at the primary physical location of Shared Boardroom, Capital Complex East, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2022. 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: Steven T. Pulliam, General Counsel, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax

(502) 695-5939, email EthicsFiler@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven T. Pulliam

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation fulfils the requirements of KRS 11A.047 to establish a code of conduct for Constitutional Officer Transition Teams and provides forms for the members of Transition Teams to file disclosures with the Executive Branch Ethics Commission.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 11A.047(3) and (7).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides the standards of conduct, guidance, and forms required by KRS 11A.047(3) and (7).

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

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

(a) How the amendment will change this existing administrative regulation: 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: Constitutional Officers, newly elected Constitutional Officers who have not yet taken office, Executive Agency Lobbyists, Legislative Lobbyists, any individual who serves on a Transition Team.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: All entities listed in answer to paragraph (3) will be aware of the requirements of KRS 11A.047, the standards of conduct established by this administrative regulation as required by KRS 11A.047, the requirement to provide certain disclosures to the Executive Branch Ethics Commission, and the timing of those disclosures while serving on a Transition Team.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to follow the standards of conduct and file the required forms with the Executive Branch Ethics Commission.

(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 known cost associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities listed in answer to question (3) will have guidance and notice as to the requirements of KRS 11A.047, the standards of conduct for Transition Team members, and the required disclosure forms.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education.

(b) On a continuing basis: Minimal annual costs to the Executive Branch Ethics Commission associated with the ongoing publication of training materials, conducting education, and engaging in enforcement actions for those who allegedly violate the standards established.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation will not require an increase in fees. The Commission is seeking sufficient general fund monies to support the enforcement of KRS 11A.047; however, this new administrative regulation by itself should not require an increase in funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies 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 Executive Branch of state government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.047(3) and (7).

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

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

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

(c) How much will it cost to administer this program for the first year? \$1500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? \$1500 for publication and training; funds already included in the Executive Branch Ethics Commission's budget.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

BOARDS AND COMMISSIONS Board of Dentistry (New Administrative Regulation)

201 KAR 8:600. Mobile Dental Facilities and Portable Dental Units.

RELATES TO: KRS 313.021, 313.022.

STATUTORY AUTHORITY: KRS 218A.205(3), 313.060(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(a) authorizes the board to govern mobile dental facilities and portable dental units. KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration created by the board. 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 requirements for the issuance and renewal of registrations for mobile dental facilities and portable dental units by the board.

Section 1. Definitions. (1) "Mobile dental facility" means a self-contained facility in which dentistry is practiced and that may be towed, moved, or transported from one location to another.

(2) "Registration holder" means a dentist or employer of a dentist which is the principal operator of a mobile dental facility or portable dental unit registered pursuant to this administrative regulation.

(3) "Portable dental unit" means a non-facility in which dental equipment used in the practice of dentistry is transported and used on a temporary basis at an out-of-office location.

Section 2. Scope and Applicability. (1) Patient encounters conducted by a mobile dental facility or portable dental unit shall be held to the same standard of care as any other patient encounter as provided for under KRS Chapter 313.

(2) Mobile dental facilities and portable dental units engaged exclusively in charitable dental practices as governed by 201 KAR 8:581 shall be exempt from Sections 3(2)(b) and 7(2)(b) of this administrative regulation.

(3) Public health programs governed by KRS 313.040(8) and 201 KAR 8:562, Section 15, shall be exempt from the requirements of this administrative regulation.

(4) Any violations of KRS Chapter 313 or 201 KAR Chapter 8 related to the operation of a mobile dental facility or portable dental unit shall be subject to disciplinary action pursuant to KRS 313:080 and 313:100.

Section 3. Registration of Mobile Dental Facilities and Portable Dental Units. (1) Each mobile dental facility or portable dental unit doing business in Kentucky shall be registered with the board and abide by the provisions of this administrative regulation.

(2) To register a mobile dental facility or portable dental unit, the intended registration holder shall:

(a) Submit a completed and signed Application for Mobile Dental Facility or Portable Dental Unit Registration, which shall contain but not be limited to:

1. The name of the intended registration holder;
2. An official business or mailing address of record, which shall not be a post office box;
3. An official phone number and email address of record; and
4. The name and license number of any individual(s) licensed with the board who are providing services on behalf of or in partnership with the registration holder.

(b) Pay the fee required by 201 KAR 8:520.

Section 4. Emergency and Follow Up Care. (1) A mobile dental facility or portable dental unit shall maintain a signed agreement with a fixed general practice or pediatric dental office within seventy (70) miles of the treatment location which will accept timely referrals for comprehensive, follow up, and emergency care.

(2) At the conclusion of each patient's visit, the mobile dental facility or portable dental unit shall provide each patient with an information sheet that contains:

(a) Contact information that allows the patient to reach the registration holder or dentist of record for emergency care, follow-up care, access to dental records, or information about treatment received;

(b) The name of the dentist or dental hygienist, or both, who provided services;

(c) A description of the diagnostic findings, the treatment rendered; and

(d) A plan for follow-up care, including contact information to a dental office as provided for in subsection (1) of this Section.

(3) A mobile dental facility or portable dental unit which accepts a patient and provides preventive treatment, including prophylaxis, radiographs, and fluoride, but does not arrange for follow-up care when such treatment is clearly indicated, will be considered by the board to have abandoned the patient.

Section 5. Patient Records and Communications. (1) Mobile dental facilities and portable dental units shall maintain:

(a) A written or electronic record detailing the location where services are provided, the dates of each session, and the services administered.

(b) Patient records of prior treatment to have readily available during subsequent treatment visits; and

(c) All dental and official records at the address of record when not in transit.

(2) Mobile dental facilities and portable dental units shall maintain a reliable means of communication onsite and at the address of record to:

(a) Contact necessary parties in the event of a medical or dental emergency;

(b) Allow the patient or the parent or guardian of the patient treated to contact the provider for emergency care, follow-up care, or information about treatment received; and

(c) Allow a provider who renders follow-up care to request and receive treatment information, including radiographs.

(3) Mobile dental facilities and portable dental units doing business in Kentucky shall not perform services on minors without a signed consent form from the parent or guardian, which shall indicate that:

(a) If the minor already has a dentist, the parent or guardian should continue to arrange dental care through that provider; and

(b) The treatment of the child by the mobile dental facility may affect the future benefits that the child may receive under private and public insurance plans.

Section 6. General Operating Requirements. (1) Mobile dental facilities and portable dental units shall:

(a) Operate under the direct supervision of a dentist licensed in accordance with 201 KAR 8:532, who shall be responsible for all aspects of patient care.

(b) Display in or on the mobile dental facility or portable dental unit a current valid registration issued pursuant to this administrative regulation in a manner which is readily observable by patients or visitors;

(c) Conform to all applicable federal, state, and local laws, regulations, and ordinances dealing with radiographic equipment, flammability, construction, sanitation, zoning, infectious waste management, universal precautions, Occupational Safety and Health Administration guidelines, and Centers for Disease Control and Prevention protocols; and

(d) Be driven or transported by a driver possessing a valid Kentucky driver's license appropriate for the operation of the vehicle.

Section 7. Registration Renewal and Reinstatement. (1) Each mobile dental facility and portable dental unit registration shall expire on December 31 of even-numbered years.

(2) A registration holder desiring renewal of an active mobile dental facility or portable dental unit registration shall:

(a) Submit a completed Application for Renewal of Mobile Dental Facility or Portable Dental Unit Registration; and

(b) Pay the fee required by 201 KAR 8:520.

(3) A registration holder desiring reinstatement of a mobile dental facility or portable dental unit registration that has expired within 90 days shall:

(a) Submit a completed Application for Renewal of Mobile Dental Facility or Portable Dental Unit Registration; and

(b) Pay the fee required by 201 KAR 8:520.

(4) A registration holder desiring reinstatement of a mobile dental facility or portable dental unit registration that has been expired for more than ninety (90) days shall:

(a) Reapply for registration as required by Section 3(2) of this administrative regulation; and

(b) Be subject to disciplinary action pursuant to KRS 313:080 and 313:100.

Section 8. Notification Requirements. (1) The registration holder shall notify the board of any changes to the information required by Section 3(2)(a) of this administrative regulation within thirty (30) days of the change.

(2) If ownership of the mobile dental facility or portable dental unit changes, the prior registration is invalid, and a new application shall be submitted to the board prior to continued operation of the mobile dental facility or portable dental unit.

(3) If a mobile dental facility or portable dental unit ceases operations, the registration holder shall notify the board within thirty

(30) days after the last day of operation and report on the disposition of patient records.

Section 9. Incorporation by Reference. (1) The following material shall be incorporated by reference:

(a) "Application for Mobile Dental Facility or Portable Dental Unit Registration," Oct. 2021; and

(b) "Application for Renewal of Mobile Dental Facility or Portable Dental Unit Registration," Nov. 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFFREY ALLEN, Executive Director

APPROVED BY AGENCY: February 14, 2022

FILED WITH LRC: February 14, 2022 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this Amendment shall be held on April 22, 2022 at 4:00 p.m. Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed Amendment. Written comments shall be accepted through April 30, 2022. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for mobile dental facilities and portable dental units.

(b) The necessity of this administrative regulation: KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration created by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for the issuance and renewal of registrations for mobile dental facilities and portable dental units by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for the issuance and renewal of registrations for mobile dental facilities and portable dental units in compliance with state 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: 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: The operators of mobile dental facilities and/or portable dental units will be affected. These operators will primarily be businesses or organizations, which we expect to number no more than in the dozens. Dentists, dental hygienists, and dental assistants in the employ of a mobile dental facility or portable dental unit may be minimally affected as well. Finally, recipients of care from a mobile dental facility or portable dental unit will be impacted, though the exact number of individuals in this category is difficult to determine.

(4) Provide an analysis of how the 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: Each entity will be required to register as a mobile dental facility or portable dental unit as applicable and maintain the requirements of this administrative regulation throughout the registration period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicable entities are required to pay a registration and renewal fee as established by 201 KAR 8:520.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in the increased ability to provide dental care to the community.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, as established by 201 KAR 8:520.

(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 218A.205(3), 313.060(1).

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 7, 2022

Call to Order and Roll Call

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 7, 2022 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 Ralph Alvarado, Julie Raque Adams, 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: Johnna Ballinger, Michael Wilson, Department of State; Stafford Easterling, Personnel Board; Carrie Bass, Wendi Pierce, Jeff Pritchett, Liza Welch, Public Pensions Authority; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Brian Clark, Steven Fields, Department of Fish and Wildlife Resources; Amy Barker, Michael Murriell, Kenneth Sandusky, Matthew Johnson, Kentucky State Police; Jon Johnson, Kyle Ray, Niki Sizemore, Ricky Sizemore, Amy Utterback, Department of Highways; Sam Flynn, Robin Maples, Chuck Stribling, Labor Cabinet; Joshua Newton, Department of Alcoholic Beverage Control; Abigail Gall, Shaun Orme, Chad Thompson, Department of Insurance; Waqas Ahmed, Shan Dutta, Marc Guilfoil, Bruce Howard, Jennifer Wolsing, Kentucky Horse Racing Commission; Kelli Rodman, Cabinet for Health and Family Services; Julie Brooks, Jennifer Burt, Erica Brakefield, Jessica Davenport, Department for Public Health; Lee Guice, Veronica Judy-Cecil, Lisa Lee, Angie Parker, Jonathan Scott, Department for Medicaid Services; Laura Begin, Leigh Dixon, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Monday, February 7, 2022, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

SECRETARY OF STATE: Office of Business Services: Implementation of Revised Article 9

30 KAR 5:011. Definitions for 030 KAR Chapter 005. Michael Wilson, director, represented the office.

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.

30 KAR 5:021. Filing methods and forms.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

30 KAR 5:031. Acceptance and refusal of records.

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.

30 KAR 5:041. UCC information management system.

A motion was made and seconded to approve the following amendments: to amend Sections 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.

30 KAR 5:051. Filing, indexing, and data entry procedures.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

30 KAR 5:060. Search requests, reports, and copies.

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.

GENERAL GOVERNMENT CABINET: Personnel Board

101 KAR 1:325. Probationary periods. Stafford Easterling, general counsel, represented the board.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 1:210. Disability procedures. Carrie Bass, staff attorney supervisor; Wendi Pierce, assistant director, Disability and Survivor Benefits; Jeff Pritchett, assistant director of member services; and Liza Welch, director, Disability and Survivor Benefits, represented the systems.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 10 and 13 through 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.

105 KAR 1:310. Fred Capps Memorial Act.

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, 7 through 10, and 12 through 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:330. Purchase of service credit.

A motion was made and seconded to approve the following amendments: to amend 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.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:471. Repeal of 201 KAR 020:470. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

In response to questions by Senator Alvarado, Mr. Prather stated that fee increases were necessary because of increased costs to the board. Time and resources were needed for the effective monitoring of licensees. The board would follow up with detailed budgetary information regarding how much funding the fees were forecast to generate. Board staff established the specific fee amount needed. Co-Chair West stated that data indicated that in April 2021, there were 712 active dialysis technicians.

Co-Chair Hale stated that this seemed like a significant fee increase.

In response to questions by Co-Chair West, Mr. Prather

stated that he would follow up with the subcommittee regarding the number of licensees. Licensee monitoring consisted of site visits and training. The \$2,000 was an initial, one (1) time, application fee.

201 KAR 20:472. Initial approval for dialysis technician training programs.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4: (a) for clarity; and (b) to establish that the board may waive the master's degree requirements for a program administrator upon a showing that the administrator is otherwise qualified; (2) to amend Section 5 to clarify requirements for didactic faculty, including to allow an associate degree from an accredited school of nursing; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:474. Continuing approval and periodic evaluation of dialysis technician training programs.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

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 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:410. Taking of fish by nontraditional fishing methods. Brian Clark, deputy commissioner, and Steven Fields, staff attorney, represented the department.

In response to a question by Representative Bridges, Mr. Clark stated that bow fishing usually took place at night. The department had received complaints regarding noise and lights from bow fishing on small lakes with residents located near the fishing areas. Bow hunters sometimes took grass carp, which were necessary to restore vegetation for optimal fishing.

Wildlife

301 KAR 4:091. Buying and selling mounted wildlife specimens.

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.

JUSTICE AND PUBLIC SAFETY CABINET: General Traffic

502 KAR 15:020. Abandoned vehicles. Amy Barker, assistant general counsel; Matthew Johnson, major; Michael Murriell, sergeant; and Kenneth Sandusky, lieutenant, represented the

cabinet.

In response to questions by Co-Chair Hale, Ms. Barker stated that these administrative regulations were being updated in relation to sunset provisions. Stickers were used in the process of identifying and removing abandoned vehicles that impeded the flow of traffic. Major Johnson stated that vehicles were removed after three (3) days, unless sooner removal was necessary to avoid hazardous traffic situations. The program used a rotating list of towing services that had agreed to cabinet requirements. Towing services were provided with the names and information of the vehicles' registrants. After sixty (60) days and two (2) notices, an abandoned vehicle could be sold by a towing service to offset towing and storage costs.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Missing Child Information Center

502 KAR 35:010. Definitions.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 35:020. Capabilities of the Missing Child Information Center computer system.

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.

502 KAR 35:030. Quality of information reported to the Kentucky Missing Child Information Center.

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.

502 KAR 35:040. Reporting of missing children by law enforcement agencies.

502 KAR 35:050. Statistical analysis of information related to missing children.

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.

Candidate Selection

502 KAR 45:005. Definitions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 45:015. Qualifications.

502 KAR 45:035. Application and selection process.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND

CONFORMITY paragraph and Sections 1, 2, and 4 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 45:045. Aptitude examination.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 45:075. Register.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 45:085. Medical examination.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 45:105. Appointment.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 45:115. Appeals.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were filed.

502 KAR 45:150. Physical Fitness Test (PFT).

TRANSPORTATION CABINET: Department of Highways: Traffic

603 KAR 5:150. Encroachment permits. Jon Johnson, assistant general counsel, and Ricky Sizemore, branch manager, represented the department.

In response to questions by Co-Chair West, Mr. Johnson stated that this administrative regulation updated the permitting manual. Mr. Sizemore stated that the changes were minor and clarified encroachment procedures. New restrictions were not being established.

LABOR CABINET: Occupational Safety and Health

803 KAR 2:321E. Occupational health and environmental control. Sam Flynn, general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, occupational safety and health standards federal – state coordinator, represented the cabinet.

In response to a question by Co-Chair West, Mr. Stribling stated that these administrative regulations were filed on an emergency basis because the cabinet inadvertently failed to provide certification for related administrative regulations governing similar subject matter.

803 KAR 2:426E. Stairways and ladders.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:415. Direct shipper license. Joshua Newton,

general counsel, represented the department.

Department of Insurance: Health Insurance Contracts

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements. Abigail Gall, regulation coordinator; Shaun Orme, executive advisor; and Chad Thompson, general counsel, represented the department.

In response to questions by Co-Chair West, Ms. Gall stated that this administrative regulation was being amended to address provider agreements unrelated to pharmacy benefit managers. Technical changes were necessary related to this and another administrative regulation.

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.

806 KAR 17:575. Pharmacy benefit managers.

In response to a question by Senator Alvarado, Ms. Gall stated that the sixty (60) day window was previously a requirement of this administrative regulation and was being moved within the text for better organization of the provisions.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 5 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:590. Annual report on providers prescribing medication for addiction treatment.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Group and Blanket Health Insurance

806 KAR 18:030. Group health insurance coordination of benefits.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 2 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Horse Racing Commission: Pari-Mutuel Wagering

810 KAR 6:001. Definitions for 810 KAR Chapter 006. Marc Guilfoil, executive director; Dr. Bruce Howard, equine medical director; and Jennifer Wolsing, general counsel, represented the commission.

In response to a question by Senator Yates, Ms. Wolsing stated that these administrative regulations were not being amended in response to litigation.

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.

Medication Guidelines

810 KAR 8:025E. Drug, medication, and substance withdrawal guidelines.

810 KAR 8:025. Drug, medication, and substance withdrawal guidelines.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services

907 KAR 1:005. Nonduplication of payments. Jonathan Scott,

regulatory and legislative advisor, represented the department.

Managed Care

907 KAR 17:005. Definitions for 907 KAR Chapter 017.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 6, 8, 9, 11, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Medicaid Eligibility

907 KAR 20:001. Definitions for 907 KAR Chapter 020.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 20:020. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Energy Assistance Program/Weatherization

921 KAR 4:122E. Assistance for low-income households with water or wastewater utility arrears. Leigh Dixon, human resources supervisor, and Laura Begin, regulation coordinator, represented the department.

In response to questions by Senator Yates, Laura Begin stated that this program was available statewide.

The following administrative regulations were deferred or removed from the February 7, 2022, subcommittee agenda:

DEPARTMENT OF LAW: Medical Examination of Sexual Abuse Victims

40 KAR 3:020. Protocol for operation of local multidisciplinary teams on child sexual abuse.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:106E. Licensed or permitted facility closures.

201 KAR 2:430. Emergency orders and hearings.

Board of Licensure for Long-Term Care Administrators

201 KAR 6:040. Renewal, reinstatement, and reactivation of license.

Board of Barbering

201 KAR 14:015. Retaking of examination.

201 KAR 14:030. Five (5) year expiration of license.

201 KAR 14:040. Inspection of shops and schools.

201 KAR 14:050. Apprentice license; qualifications.

201 KAR 14:065. Place of business requirements.

201 KAR 14:085. Sanitation requirements.

201 KAR 14:105. Barbering school enrollment and postgraduate requirements.

201 KAR 14:110. School equipment; plant layout.

201 KAR 14:115. Examinations; school and board.

201 KAR 14:125. Instructor requirements.

201 KAR 14:150. School records.

201 KAR 14:180. Fees.

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 20:220. Nursing continuing education provider approval.

201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.

201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.

Board of Examiners of Psychology

201 KAR 26:115. Definition of psychological testing.

201 KAR 26:125. Health service provider designation.

201 KAR 26:130. Grievances and administrative complaints.

201 KAR 26:155. Licensed psychologist: application and temporary license.

201 KAR 26:160. Fee schedule.

201 KAR 26:175. Continuing education.

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

201 KAR 26:190. Requirements for supervised professional experience.

201 KAR 26:215. Nonresident status.

201 KAR 26:225. Renewal and reinstatement.

201 KAR 26:230. Examinations and applications.

201 KAR 26:250. Employment of a psychological associate, a temporarily licensed psychological associate, or temporarily licensed psychologist.

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201 KAR 26:270. Change of license status.

201 KAR 26:310. Telehealth and telepsychology.

Board of Licensure for Massage Therapy

201 KAR 42:010. Goals for massage therapy sessions.

201 KAR 42:020. Fees.

201 KAR 42:030. Licensee's change of name, home address, or place of business.

201 KAR 42:035. Application process, exam, and curriculum requirements.

201 KAR 42:040. Renewal and reinstatement.

201 KAR 42:050. Complaint procedure and disciplinary action.

201 KAR 42:061. Code of ethics and standards of practice for massage therapists.

201 KAR 42:070. Endorsement.

201 KAR 42:080. Programs of massage therapy instruction.

201 KAR 42:110. Continuing education requirements.

Applied Behavior Analysis Licensing Board

201 KAR 43:010. Application procedures for licensure.

201 KAR 43:020. Application procedures for temporary licensure.

201 KAR 43:030. Fees.

201 KAR 43:040. Code of ethical standards and standards of practice.

201 KAR 43:050. Requirement for supervision.

201 KAR 43:060. Complaint and disciplinary process.

201 KAR 43:071. Repeal of 201 KAR 043:070.

201 KAR 43:080. Renewals.

201 KAR 43:090. Voluntary inactive and retired status.

201 KAR 43:100. Telehealth and telepractice.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Wildlife

301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

301 KAR 4:010. Districts.

301 KAR 4:020. Ballard Wildlife Management Area restrictions.

301 KAR 4:100. Peabody Wildlife Management Area use requirements and restrictions.

301 KAR 4:110. Administration of drugs to wildlife.

Licensing

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

301 KAR 5:030. Purchasing licenses and permits.

301 KAR 5:100. Interstate Wildlife Violators Compact.

DEPARTMENT OF AGRICULTURE: Industrial Hemp

302 KAR 50:021. Procedures and policies for hemp growers.

302 KAR 50:031. Procedures and policies for hemp processors and handlers.

302 KAR 50:046. Department's reports to the USDA; records retention for three years.

302 KAR 50:056. Sampling and THC testing; disposal of non-compliant harvests; post-testing actions.

302 KAR 50:080. Materials incorporated by reference.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:290. Southeast State Correctional Complex.

Department of State Police: Driver Training

502 KAR 10:010. Definitions.

502 KAR 10:020. Department facilities; facility inspection; conflict of interest.

502 KAR 10:030. Instructor's license.

502 KAR 10:035. Commercial driver's license skill testing.

502 KAR 10:040. Training school facilities.

502 KAR 10:050. Contracts and agreements.

502 KAR 10:060. School advertising.

502 KAR 10:070. Training vehicle, annual inspection.

502 KAR 10:080. License suspension, revocation, denial.

502 KAR 10:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

502 KAR 10:110. Third-party CDL skills test examiner standards.

502 KAR 10:120. Hazardous materials endorsement requirements.

JUSTICE AND PUBLIC SAFETY: Department of State Police: Concealed Deadly Weapons

502 KAR 11:010. Application for license to carry concealed deadly weapon.

502 KAR 11:060. License denial and reconsideration process.

502 KAR 11:070. License revocation and suspension notice and reinstatement process.

Law Enforcement Officers Safety Act of 2004

502 KAR 13:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 13:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 13:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18

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U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 13:050. Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 13:060. Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 13:080. Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

General Traffic

502 KAR 15:010. Traffic collision.

Criminal History Record Information System

502 KAR 30:010. Criminal History Record Information System.

502 KAR 30:020. Arrest and disposition reporting procedure.

502 KAR 30:030. Audit of Criminal History Record Information System.

502 KAR 30:050. Security of centralized criminal history record information.

502 KAR 30:060. Dissemination of criminal history record information.

502 KAR 30:070. Inspection of criminal history record information by record subject.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: General Administration

702 KAR 1:192E. District employee quarantine leave.

Department of Workforce Investment: Office of Vocational Rehabilitation

781 KAR 1:010. Office of Vocational Rehabilitation appeal procedures.

781 KAR 1:020. General provisions for operation of the Office of Vocational Rehabilitation.

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

781 KAR 1:040. Rehabilitation technology services.

781 KAR 1:050. Carl D. Perkins Vocational Training Center.

Office for the Blind

782 KAR 1:010. Kentucky Business Enterprises.

782 KAR 1:070. Certified driver training program.

Apprenticeship Standards

787 KAR 3:020. Confidentiality of records of the Office of Employer and Apprenticeship Services.

Kentucky Commission on Proprietary Education

791 KAR 1:010. Applications, permits, and renewals.

791 KAR 1:020. Standards for licensure.

791 KAR 1:025. Fees.

791 KAR 1:027. School record keeping requirements.

791 KAR 1:030. Procedures for hearings.

791 KAR 1:035. Student protection fund.

791 KAR 1:040. Commercial driver license training school curriculum and refresher course.

791 KAR 1:050. Application for license for commercial driver license training school.

791 KAR 1:060. Application for renewal of license for commercial driver license training school.

791 KAR 1:070. Commercial driver license training school instructor and agency application and renewal procedures.

791 KAR 1:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools.

791 KAR 1:100. Standards for Kentucky resident commercial driver training school facilities.

791 KAR 1:150. Bond requirements for agents and schools.

791 KAR 1:155. School closing process.

791 KAR 1:160. 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 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.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 17:350. Life insurance and managed care.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Sanitation

902 KAR 10:120. Kentucky public swimming and bathing facilities. Erica Brakefield, section supervisor; Julie Brooks, regulation coordinator; Jennifer Burt, branch manager; and Jessica Davenport, inspection program evaluator, represented the

department.

In response to questions by Senator Yates, Ms. Brooks stated that there were lifeguard requirements for standard, rectangular pools larger than 2,000 square feet. Waterparks with irregular shapes or nontraditional uses had different lifeguard needs based on number of bathers, type of water feature, and size and configuration (such as shallow or deep water). The minimum lifeguard requirements were established in this administrative regulation, and additional factors were established as part of the permitting process.

In response to questions by Senator Raque Adams, Ms. Brooks stated that the cabinet did receive public comments and had amended provisions in response to stakeholder concerns. Senator Raque Adams stated that pools in Louisville, including Kentucky Kingdom, and state parks had continuing concerns regarding these requirements.

Senator Alvarado stated that he was concerned about the impact lifeguard requirements could have on Kentucky state parks. For example, Lake Barkley would be required to have seven (7) lifeguards. Closing bathing areas could actually result in more drownings, and closing these areas could impact tourism.

In response to a question by Co-Chair West, Julie Brooks agreed to defer consideration of these administrative regulations to the March meeting of this subcommittee. A motion was made and seconded to defer consideration of these administrative regulations to the March meeting of this subcommittee. Without objection, and with agreement of the agency, these administrative regulations were deferred.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define terms; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 14 and 16 through 22 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 10:121. Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments.

902 KAR 10:190. Splash pads operated by local governments.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define terms; and (2) to amend the RELATES TO paragraph and Sections 1, 2, 4, 7 through 12, 15, and 16 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 for Medicaid Services: Payments and Services

907 KAR 3:170. Telehealth service coverage and reimbursement.

Outpatient Pharmacy Program

907 KAR 23:020. Reimbursement for outpatient drugs.

Department for Aging and Independent Living: Aging Services

910 KAR 1:190. Nutrition program for older persons.

The subcommittee adjourned at 2 p.m. The next meeting of this subcommittee was tentatively scheduled for March 7, 2022, 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.

SENATE STANDING COMMITTEE ON TRANSPORTATION
Meeting of January 19, 2022

The Senate Transportation met on January 19, 2022 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on January 5, 2022, pursuant to KRS 13A.290(6):

603 KAR 003:100
603 KAR 005:360
603 KAR 010:011E
603 KAR 010:040E
603 KAR 010:040

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 January 19, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON TRANSPORTATION
Meeting of January 25, 2022

The House Transportation met on January 25, 2022 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on January 5, 2022, pursuant to KRS 13A.290(6):

603 KAR 003:100
603 KAR 005:360
603 KAR 010:011E
603 KAR 010:040 E
603 KAR 010:040

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 January 25, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of February 9, 2022

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of February 9, 2022, having been referred to the Committee on February 2, 2022, pursuant to KRS 13A.290(6):

February 2, 2022

900 KAR 012:005 Proposed
902 KAR 020:081 Proposed
902 KAR 020:460 Emergency
906 KAR 001:180 Proposed
910 KAR 004:010 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 9, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES
Meeting of February 10, 2022

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of February 10, 2022, having been referred to the Committee on February 2, 2022, pursuant to KRS 13A.290(6):

February 2, 2022

900 KAR 012:005 Proposed
902 KAR 020:081 Proposed
902 KAR 020:460 Emergency
906 KAR 001:180 Proposed
910 KAR 004:010 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 9, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 48th year of the *Administrative Register of Kentucky*, from July 2021 through June 2022.

Locator Index - Effective Dates

I - 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.

ALSO NOTE: 2021 legislation may affect the expiration date of some regulations. Generally, the expiration dates listed in this index are based on KRS Chapter 13A provisions.

KRS Index

I - 18

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

I - 35

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

Technical Amendment Index

I - 36

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

I - 37

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of <i>Register</i> year 48. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another <i>Register</i> year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in 46 Ky.R. or 47 Ky.R., please visit our online Administrative Registers of Kentucky .					
SYMBOL KEY:			201 KAR 012:082E	48 Ky.R.	1468
* Statement of Consideration not filed by deadline			Am Comments		2009
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			As Amended		
*** Withdrawn before being printed in Register			201 KAR 015:030E	48 Ky.R.	268
IJC Interim Joint Committee			201 KAR 015:040E	48 Ky.R.	270
(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.			201 KAR 015:050E	48 Ky.R.	272
-----			201 KAR 015:110E	48 Ky.R.	276
			201 KAR 015:125E	48 Ky.R.	279
			201 KAR 020:260E	48 Ky.R.	2168
			201 KAR 020:480E	48 Ky.R.	2367
			201 KAR 035:010E	47 Ky.R.	1872
			Am Comments		2536
			As Amended	48 Ky.R.	15
			Replaced		334
EMERGENCY ADMINISTRATIVE REGULATIONS			201 KAR 035:020E	47 Ky.R.	1874
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 legislation including: 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 .			Am Comments		2538
-----			As Amended	48 Ky.R.	16
			Replaced		68
			201 KAR 035:025E	47 Ky.R.	1878
			Am Comments		2542
			Replaced		338
			201 KAR 035:040E	47 Ky.R.	1880
			Am Comments		2544
			Replaced		340
			201 KAR 035:050E	47 Ky.R.	1884
			Am Comments		2547
			Replaced		341
016 KAR 002:220E	48 Ky.R.	253	201 KAR 035:055E	47 Ky.R.	6-25-2021886
Replaced		1492	Replaced	48 Ky.R.	2-1-2022341
016 KAR 002:230E	48 Ky.R.	255	201 KAR 035:070E	47 Ky.R.	6-25-2021889
Replaced		705	Am Comments		2-1-2022550
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	301 KAR 003:010	157.3175	016 KAR 002:040
	301 KAR 003:012	157.320	702 KAR 007:125E
	301 KAR 003:026		702 KAR 007:125
	301 KAR 003:027	157.350	702 KAR 007:125E

KRS SECTION	REGULATION	KRS SECTION	REGULATION
157.360	702 KAR 007:125		016 KAR 002:220
	702 KAR 007:125E		016 KAR 002:230E
158.030	702 KAR 007:125		016 KAR 002:230
	702 KAR 007:125E		016 KAR 003:070
158.070	702 KAR 007:125		016 KAR 004:020
	702 KAR 007:125E		016 KAR 004:050
	702 KAR 007:125		016 KAR 005:010
	704 KAR 003:395		016 KAR 006:010
158.100	702 KAR 007:125E	161.053	016 KAR 002:050
	702 KAR 007:125	161.120	016 KAR 001:030
158.135	013 KAR 003:050	161.1211	016 KAR 002:180
158.143	013 KAR 003:050	161.155	702 KAR 001:191
158.160	902 KAR 002:221E	161.200	702 KAR 007:125E
158.240	702 KAR 007:125E		702 KAR 007:125
	702 KAR 007:125	161.605	780 KAR 003:020
158.6451	704 KAR 003:395	161.661	102 KAR 001:360E
	704 KAR 007:170	163.470	782 KAR 001:010
158.6453	704 KAR 003:395	164.518	011 KAR 016:001
158.6645	013 KAR 003:050		011 KAR 016:010
158.792	704 KAR 003:395	164.740	011 KAR 016:001
159.010	702 KAR 007:125E	164.772	201 KAR 022:020
	702 KAR 007:125	164.945	016 KAR 005:010
159.030	702 KAR 007:125E	164.946	016 KAR 005:010
	702 KAR 007:125	164.947	016 KAR 005:010
	704 KAR 007:121	164A.575	745 KAR 001:035
159.035	702 KAR 007:125E	165A.310	502 KAR 010:035
	702 KAR 007:125		791 KAR 001:020
159.140	702 KAR 007:125E		791 KAR 001:070
	702 KAR 007:125	165A.330	791 KAR 001:010
159.170	702 KAR 007:125E		791 KAR 001:020
	702 KAR 007:125		791 KAR 001:040
160.151	922 KAR 001:470		791 KAR 001:050
160.180	702 KAR 001:116		791 KAR 001:060
160.290	702 KAR 001:191E		791 KAR 001:070
	702 KAR 001:191		791 KAR 001:080
	702 KAR 001:192E		791 KAR 001:100
	702 KAR 007:150	165A.340	791 KAR 001:020
	704 KAR 007:121		791 KAR 001:155
160.380	016 KAR 001:030	165A.350	791 KAR 001:010
	702 KAR 007:065		791 KAR 001:020
	704 KAR 019:002		791 KAR 001:025
	922 KAR 001:470		791 KAR 001:030
160.445	702 KAR 007:065		791 KAR 001:070
160.570	702 KAR 003:090		791 KAR 001:150
160.613	103 KAR 030:140	165A.360	791 KAR 001:010
161.010-161.100	016 KAR 001:030		791 KAR 001:020
161.011	013 KAR 003:030		791 KAR 001:025
161.020	016 KAR 002:040		791 KAR 001:030
	016 KAR 002:050		791 KAR 001:150
	016 KAR 002:180		791 KAR 001:160
	016 KAR 002:220E	165A.370	791 KAR 001:020
	016 KAR 002:220		791 KAR 001:027
	016 KAR 002:230E		791 KAR 001:030
	016 KAR 002:230		791 KAR 001:040
	016 KAR 002:180		791 KAR 001:050
	016 KAR 003:070		791 KAR 001:060
	016 KAR 004:020		791 KAR 001:070
	016 KAR 004:050		791 KAR 001:080
	016 KAR 005:010		791 KAR 001:100
	016 KAR 006:010		791 KAR 001:155
161.028	016 KAR 002:050		791 KAR 001:160
	016 KAR 002:220E	165A.380	791 KAR 001:025
	016 KAR 002:220		791 KAR 001:070
	016 KAR 002:230E	165A.390	791 KAR 001:020
	016 KAR 002:230		791 KAR 001:030
	016 KAR 003:070		791 KAR 001:155
	016 KAR 004:020	165A.420	791 KAR 001:025
	016 KAR 004:050	165A.450	791 KAR 001:020
	016 KAR 005:010		791 KAR 001:035
	016 KAR 006:010		791 KAR 001:050
161.030	016 KAR 002:040	165A.460	502 KAR 010:070
	016 KAR 002:050		502 KAR 010:090
	016 KAR 002:180		791 KAR 001:040
	016 KAR 002:220E		791 KAR 001:070

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165A.460-165A.515	791 KAR 001:060	189.910-189.950	202 KAR 007:560
165A.465	791 KAR 001:050	190.010	605 KAR 001:051
	791 KAR 001:070		605 KAR 001:211
165A.470	791 KAR 001:050	190.010-190.990	605 KAR 001:191
	791 KAR 001:070	190.030	605 KAR 001:051
165A.475	791 KAR 001:050		605 KAR 001:071
	791 KAR 001:070	190.032	605 KAR 001:211
165A.480	791 KAR 001:050	190.040	605 KAR 001:091
	791 KAR 001:070	190.058	605 KAR 001:131
165A.485	791 KAR 001:070	190.062	605 KAR 001:131
165A.500	791 KAR 001:080	194.010	921 KAR 004:116E
165A.510	791 KAR 001:080		921 KAR 004:116
	791 KAR 001:100	194.025	907 KAR 017:010
165A.990	791 KAR 001:030	194.030	787 KAR 001:310
171	725 KAR 001:010	194.060	921 KAR 004:116E
	725 KAR 001:050		921 KAR 004:116
171.027	725 KAR 002:015		922 KAR 002:160E
171.125	725 KAR 002:015		922 KAR 002:160
171.221	725 KAR 002:080	194.070	921 KAR 004:116E
171.396	300 KAR 006:010		921 KAR 004:116
171.3961	300 KAR 006:010	194A	921 KAR 002:015E
171.397	300 KAR 006:010		921 KAR 002:015
171.420	725 KAR 001:025	194A.005	907 KAR 020:001
	725 KAR 001:061		922 KAR 001:565
171.450	725 KAR 001:020	194A.010	922 KAR 005:070
	725 KAR 001:030	194A.025	907 KAR 017:005
	725 KAR 001:061	194A.050	900 KAR 010:201
171.470	725 KAR 001:025		902 KAR 002:230E
171.480	725 KAR 001:025		902 KAR 002:240E
171.500	725 KAR 001:025		902 KAR 002:250E
	725 KAR 001:040	194A.060	907 KAR 003:170
171.520	725 KAR 001:025		910 KAR 001:190
171.550	725 KAR 001:025	194A.070	921 KAR 004:122E
171.580	725 KAR 001:025		921 KAR 004:122
171.590	725 KAR 001:025	194A.380-194A.383	922 KAR 001:470
171.600	725 KAR 001:020	194A.540	201 KAR 020:320
171.670	725 KAR 001:020	196	501 KAR 006:030
173.040	725 KAR 002:015		501 KAR 006:290
173.340	725 KAR 002:015	197	501 KAR 006:030
173.480	725 KAR 002:015		501 KAR 006:290
173.725	725 KAR 002:015	196.035	501 KAR 002:060
176.050	603 KAR 005:150	196.020	501 KAR 002:060
176.051	603 KAR 003:100	196.030	501 KAR 006:250
177.047	603 KAR 005:150	197.045	501 KAR 002:060
177.0734-177.0738	603 KAR 004:035		725 KAR 002:015
177.103	603 KAR 005:150	198B.032	725 KAR 002:015
177.106	603 KAR 005:150	198B.040	815 KAR 007:110
177.572-177.576	603 KAR 010:011E	198B.050	725 KAR 002:015
	603 KAR 010:040E		815 KAR 004:025
	603 KAR 010:040		815 KAR 007:110
177.830-177.890	603 KAR 010:011E		815 KAR 010:060
	603 KAR 010:040E		815 KAR 020:195
	603 KAR 010:040		815 KAR 035:020
177.990	603 KAR 010:011E	198B.060	815 KAR 007:110
	603 KAR 010:040E	198B.070	815 KAR 007:110
	603 KAR 010:040	198B.260	902 KAR 020:016
186.021	806 KAR 039:070	198B.400	815 KAR 004:010
186.412	502 KAR 013:010		815 KAR 004:027
	502 KAR 013:040	198B.400-198B.0540	815 KAR 004:025
186.480	782 KAR 001:070	198B.470	815 KAR 004:010
186.570	921 KAR 001:390	198B.480	815 KAR 004:010
186.576	782 KAR 001:070	198B.490	815 KAR 004:027
186.577	782 KAR 001:070	198B.500	815 KAR 004:010
186.578	782 KAR 001:070	198B.510	815 KAR 004:010
186.579	782 KAR 001:070	198B.540	815 KAR 004:010
186A.040	806 KAR 039:070	198B.550-198B.630	815 KAR 007:080
186A.042	806 KAR 039:070	199.011	922 KAR 001:360E
186A.095	806 KAR 039:070		922 KAR 001:360
189A.010	782 KAR 001:070		922 KAR 001:530
189.450	502 KAR 015:020		922 KAR 001:565
189.635	502 KAR 015:010		922 KAR 002:280
189.751	502 KAR 015:020	199.462	922 KAR 001:565
189.752	502 KAR 015:020	199.466	922 KAR 001:470
189.753	502 KAR 015:020		922 KAR 002:280

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199.470-199.590	922 KAR 001:565	205.565	907 KAR 010:830
199.555	907 KAR 017:005	205.624	907 KAR 001:005
199.640-199.680	922 KAR 001:360E		907 KAR 017:010
	922 KAR 001:360	205.6312	907 KAR 001:005
199.801	922 KAR 001:360E		907 KAR 001:604
	922 KAR 001:360	205.6316	907 KAR 023:020E
199.894	922 KAR 002:160E		907 KAR 023:020
	922 KAR 002:160	205.637	907 KAR 010:815
	922 KAR 002:280		907 KAR 010:830
199.896	922 KAR 001:470	205.638	907 KAR 010:830
	922 KAR 002:160E	205.639	906 KAR 001:110
	922 KAR 002:160		907 KAR 010:815
199.898	922 KAR 002:160E		907 KAR 010:830
	922 KAR 002:160	205.640	907 KAR 010:815
199.8982	922 KAR 001:470		907 KAR 010:830
	922 KAR 002:160E	205.6405	907 KAR 010:815
	922 KAR 002:160	205.6406	907 KAR 010:815
199.899	922 KAR 002:160E	205.6407	907 KAR 010:815
	922 KAR 002:160	205.6408	907 KAR 010:815
200.575	922 KAR 001:530	204.6485	907 KAR 001:604
202A	907 KAR 017:005	205.710	921 KAR 001:020
202A.011	702 KAR 007:150		921 KAR 001:390
	921 KAR 002:015E		921 KAR 001:400E
	921 KAR 002:015		921 KAR 001:400
202A.051	922 KAR 005:070	205.712	921 KAR 001:020
202A.410	501 KAR 014:010		921 KAR 001:390
202B.100	922 KAR 005:070	205.721	921 KAR 001:390
205.175	921 KAR 001:020	205.730	921 KAR 001:020
205.177	921 KAR 001:020		921 KAR 001:390
205.201	910 KAR 001:190	205.735	921 KAR 001:020
205.2005	921 KAR 003:026E	205.7685	921 KAR 001:020
	921 KAR 003:027E	205.772	921 KAR 001:020
	921 KAR 003:027	205.774	921 KAR 001:020
205.203	910 KAR 001:190	205.776	921 KAR 001:020
205.211	922 KAR 001:565	205.800	921 KAR 001:020
205.240	921 KAR 004:122E	205.802	921 KAR 001:400E
	921 KAR 004:122		921 KAR 001:400
205.245	921 KAR 002:015E	205.8451	907 KAR 001:604
	921 KAR 002:015		907 KAR 020:001
	923 KAR 002:470	205.8451-205.8483	907 KAR 017:005
205.455	910 KAR 001:190	205.990	921 KAR 001:020
205.465	910 KAR 001:190		921 KAR 001:400E
205.510	900 KAR 012:005E		921 KAR 001:400
	900 KAR 012:005	209	902 KAR 020:016
	907 KAR 003:170		922 KAR 002:280
	907 KAR 010:815		922 KAR 005:070
	907 KAR 010:830	209.020	502 KAR 012:010
250.520	907 KAR 020:020		921 KAR 002:015E
205.5510-205.5520	907 KAR 023:020E		921 KAR 002:015
	907 KAR 023:020	209.030	502 KAR 012:010
205.559	900 KAR 012:005E		906 KAR 001:180
	900 KAR 012:005	209.032	902 KAR 020:081
	907 KAR 003:170		906 KAR 001:180
205.5591	900 KAR 012:005E	209A.020	502 KAR 012:010
	900 KAR 012:005	209A.030	502 KAR 012:010
	907 KAR 003:170		910 KAR 001:190
205.560	907 KAR 001:604	209A.100	502 KAR 012:010
	907 KAR 003:170	209A.110	502 KAR 012:010
	907 KAR 023:020E	209A.130	502 KAR 012:010
	907 KAR 023:020	210.366	201 KAR 026:175
205.561	907 KAR 023:020E	211.015	902 KAR 010:120
	907 KAR 023:020		902 KAR 010:190
205.5631	907 KAR 023:020E	211.090	902 KAR 010:120
	907 KAR 023:020	211.180	902 KAR 002:212E
205.5632	907 KAR 023:020E		902 KAR 002:213E
	907 KAR 023:020		902 KAR 002:230E
205.5634	907 KAR 023:020E		902 KAR 002:240E
	907 KAR 023:020		902 KAR 002:250E
205.5636	907 KAR 023:020E		902 KAR 010:190
	907 KAR 023:020		902 KAR 048:010
205.5638	907 KAR 023:020E		902 KAR 048:020
	907 KAR 023:020		902 KAR 048:030
205.5639	907 KAR 023:020E		902 KAR 048:040
	907 KAR 023:020	211.185	902 KAR 010:121

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211.332	201 KAR 017:110 900 KAR 012:005E 900 KAR 012:005	216A.070 216A.080	201 KAR 006:020 201 KAR 006:020 201 KAR 006:040
211.334	201 KAR 017:110	216A.090	201 KAR 006:040
211.336	201 KAR 017:110	216B	921 KAR 002:015E 921 KAR 002:015
211.338	201 KAR 017:110	216B.010	900 KAR 006:075E 900 KAR 006:075
211.600	502 KAR 012:010		902 KAR 020:016 902 KAR 020:018
211.990	902 KAR 010:120 902 KAR 010:121 902 KAR 048:010	216B.010-216B.130	900 KAR 005:020E 900 KAR 005:020
211.994	902 KAR 048:010		902 KAR 020:081 502 KAR 012:010
211.210	902 KAR 010:120	216B.015	900 KAR 006:075E 900 KAR 006:075
211.220	902 KAR 010:120		902 KAR 002:020 902 KAR 002:230E
211.350	815 KAR 035:020		902 KAR 020:016 902 KAR 020:018
211.684	922 KAR 001:470		902 KAR 020:106 906 KAR 001:110
211.842-211.852	902 KAR 020:016 902 KAR 020:106 906 KAR 001:110		906 KAR 001:180 900 KAR 006:075E
211.900-211.905	902 KAR 048:010 902 KAR 048:010	216B.040	900 KAR 006:075 902 KAR 020:016
211.990	902 KAR 010:120 902 KAR 048:010		902 KAR 020:018 906 KAR 001:110
211.994	902 KAR 048:010 902 KAR 048:010	216B.042	902 KAR 020:016 902 KAR 020:018
211.9061-200.9079	902 KAR 048:010		902 KAR 020:106 902 KAR 020:016
211.9063	902 KAR 048:030 902 KAR 048:040	216B.045	902 KAR 020:016 902 KAR 020:018
211.9069	902 KAR 048:030	216B.050	902 KAR 020:016 902 KAR 020:018
211.9071	902 KAR 048:030 902 KAR 048:040	216B.055	902 KAR 020:016 902 KAR 020:018
211.9075	902 KAR 048:030	216B.062	900 KAR 006:075E 900 KAR 006:075
212.626	815 KAR 007:110	216B.075	902 KAR 020:016 902 KAR 020:018
213.036	921 KAR 001:390	216B.085	902 KAR 020:016 902 KAR 020:018
213.046	921 KAR 001:390 921 KAR 001:400E 921 KAR 001:400	216B.090	900 KAR 006:075E 900 KAR 006:075
213.071	921 KAR 001:390	216B.095	900 KAR 006:075 906 KAR 001:110
214	902 KAR 020:016	216B.105	902 KAR 020:016 902 KAR 020:018
214.010	902 KAR 002:212E 902 KAR 002:213E 902 KAR 002:221E	216B.105-216B.125	902 KAR 020:016 902 KAR 020:018
214.020	902 KAR 002:221E	216B.115	900 KAR 006:075E 900 KAR 006:075
214.036	922 KAR 002:160E 922 KAR 002:160	216B.140-216B.175	902 KAR 020:016 902 KAR 020:106
214.623	902 KAR 002:020	216B.153	906 KAR 001:110 902 KAR 020:106
214.645	902 KAR 002:020 902 KAR 002:212E 902 KAR 002:213E	216B.165	906 KAR 001:110 902 KAR 020:016
214.990	902 KAR 002:020	216B.185	902 KAR 020:016 902 KAR 020:016
215.520	902 KAR 002:020	216B.190	902 KAR 020:016 902 KAR 020:016
216.2970	902 KAR 020:016	216B.230-216B.239	502 KAR 012:010 902 KAR 020:016
216.378	906 KAR 001:110	216B.250	902 KAR 020:016 902 KAR 020:018
216.379	906 KAR 001:110	216B.400	900 KAR 006:075E 900 KAR 006:075
216.380	906 KAR 001:110 907 KAR 010:815 907 KAR 010:830	216B.400-216B.402	502 KAR 012:010 902 KAR 020:016
216.510	902 KAR 020:460E	216B.455	900 KAR 006:075E 900 KAR 006:075
216.530	921 KAR 002:015E 921 KAR 002:015	216B.990	502 KAR 012:010 900 KAR 006:075E
216.557	921 KAR 002:015E 921 KAR 002:015		900 KAR 006:075 902 KAR 020:016
216.710-216.716	906 KAR 001:180 910 KAR 004:010		902 KAR 020:018 902 KAR 020:081
216.765	921 KAR 002:015E 921 KAR 002:015		902 KAR 020:106 906 KAR 001:110
216.935	902 KAR 020:081 907 KAR 001:030		902 KAR 020:016 902 KAR 020:018
216.936	907 KAR 001:030		902 KAR 020:018 902 KAR 020:081
216.937	902 KAR 020:081 907 KAR 001:030		902 KAR 020:106 906 KAR 001:110
216.9375	902 KAR 020:081 907 KAR 001:030		
216.935-216.939	910 KAR 004:010		
216.939	907 KAR 001:030		

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217.015	907 KAR 023:020E		810 KAR 008:025
	907 KAR 023:020	230.265	810 KAR 008:025E
217.055	201 KAR 002:076		810 KAR 008:025
217.065	201 KAR 002:076	230.280	810 KAR 005:070
217.186	201 KAR 002:360	230.290	810 KAR 005:070
217.211	806 KAR 017:280		810 KAR 008:025E
217.660	902 KAR 048:010		810 KAR 008:025
217.801	902 KAR 048:010	230.300	810 KAR 005:070
	902 KAR 048:010	230.310	810 KAR 005:070
	902 KAR 048:040	230.320	810 KAR 005:070
217B	302 KAR 050:021		810 KAR 008:025E
	302 KAR 050:046		810 KAR 008:025
	302 KAR 050:056	230.330	810 KAR 007:050
218A.010	016 KAR 001:030	230.370	810 KAR 008:025E
218A.1431	502 KAR 047:010		810 KAR 008:025
218A.172	201 KAR 020:057	230.804	810 KAR 007:050
218A.205	201 KAR 002:050	234.120	815 KAR 030:010
	201 KAR 002:430	234.130	815 KAR 030:010
	201 KAR 008:520	234.140	815 KAR 010:060
	201 KAR 020:057	235	301 KAR 006:001
	201 KAR 020:215	235.40	301 KAR 006:070
224A.011	200 KAR 017:110E	235.220	301 KAR 006:070
	200 KAR 017:110	235.315	301 KAR 001:018
224A.020	200 KAR 017:110E	237.110	502 KAR 011:010
	200 KAR 017:110		502 KAR 011:060
224A.035	200 KAR 017:110E		502 KAR 011:070
	200 KAR 017:110		502 KAR 013:030
224A.040	200 KAR 017:110E		502 KAR 013:040
	200 KAR 017:110		502 KAR 013:050
224A.050-224A.314	200 KAR 017:110E		502 KAR 013:060
	200 KAR 017:110		502 KAR 013:080
224.1-010-410	502 KAR 047:010		502 KAR 030:060
224.20-100	401 KAR 051:010		503 KAR 004:010
224.20-110	401 KAR 051:010		503 KAR 004:040
224.20.120	401 KAR 051:010		503 KAR 004:050
224.60-105	815 KAR 030:060		921 KAR 001:390
224.60-135	815 KAR 030:060	237.120	503 KAR 004:040
224.99-010	502 KAR 047:010	237.122	503 KAR 004:040
227.300	725 KAR 002:015	237.124	503 KAR 004:040
	815 KAR 010:060		503 KAR 004:050
	815 KAR 030:060	237.126	503 KAR 004:040
227.320	815 KAR 010:060	237.138	502 KAR 013:030
227.330	815 KAR 010:060		502 KAR 013:040
227.460	815 KAR 035:020		502 KAR 013:050
227.480	815 KAR 035:020		502 KAR 013:060
227.487	815 KAR 035:020		502 KAR 013:080
227.489	815 KAR 007:110	237.140	502 KAR 013:030
227.491	815 KAR 035:020		502 KAR 013:040
227.700	815 KAR 010:070		502 KAR 013:050
227.702	815 KAR 010:070		502 KAR 013:060
227.704	815 KAR 010:070		502 KAR 013:080
227.708	815 KAR 010:070	237.142	502 KAR 013:030
227.710	815 KAR 010:070		502 KAR 013:040
227.715	815 KAR 010:070		502 KAR 013:050
227.750	815 KAR 010:070		502 KAR 013:060
227.752	815 KAR 010:070		502 KAR 013:080
227.990	815 KAR 010:060	237.138-237.142	502 KAR 013:010
230	810 KAR 006:001	241.010	103 KAR 030:120
230.215	810 KAR 004:040	243.027	804 KAR 004:415
	810 KAR 005:030	243.028	804 KAR 004:415
	810 KAR 005:060	243.029	804 KAR 004:415
	810 KAR 005:070	243.030	103 KAR 030:120
	810 KAR 008:025E		804 KAR 004:212
	810 KAR 008:025	243.040	103 KAR 030:120
230.225	810 KAR 007:050	243.100	804 KAR 004:480
	810 KAR 008:025E	243.220	804 KAR 004:221
	810 KAR 008:025	243.260	804 KAR 004:251
230.240	810 KAR 008:025E	243.520	804 KAR 004:480
	810 KAR 008:025	247.100	303 KAR 001:110
230.260	810 KAR 004:040	247.145	303 KAR 001:005
	810 KAR 005:030		303 KAR 001:010
	810 KAR 005:060		303 KAR 001:015
	810 KAR 005:070		303 KAR 001:075
	810 KAR 008:025E		303 KAR 001:080

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	303 KAR 001:090		806 KAR 017:590
	303 KAR 001:100	304.9-051	806 KAR 011:020
217.147	303 KAR 001:110	304.9-052	806 KAR 017:450
247.153	303 KAR 001:005	304.9-055	806 KAR 017:590
247.154	303 KAR 001:005	304.10-030	806 KAR 010:030
	303 KAR 001:010	304.10-040	806 KAR 010:030
	303 KAR 001:015	304.10-050	806 KAR 010:030
247.160	303 KAR 001:075	304.10-170	806 KAR 010:030
258.065	902 KAR 002:020	304.10-180	806 KAR 010:030
258.990	902 KAR 002:020	304.11-030	806 KAR 011:020
260.850-260.869	302 KAR 050:021	304.11-045	806 KAR 011:020
	302 KAR 050:031	304.12-010	806 KAR 012:010
	302 KAR 050:046	304.12-020	806 KAR 012:010
	302 KAR 050:056	304.12-060	806 KAR 012:010
	302 KAR 050:080	304.12-120	806 KAR 012:010
278.0154	921 KAR 004:122E	304.12.130	806 KAR 012:010
	921 KAR 004:122	304.13-011	806 KAR 046:050
281A.120	502 KAR 010:120	304.13-051	806 KAR 046:050
281A.130	502 KAR 010:120	304.14-120	806 KAR 014:007
281A.150	502 KAR 010:120		806 KAR 046:050
281A.160	502 KAR 010:035	304.14-190	806 KAR 014:007
	502 KAR 010:110	304.14-640	907 KAR 020:001
	502 KAR 010:120	304.17-042	806 KAR 018:030
281A.170	502 KAR 010:120	304.17-380	806 KAR 014:007
285.065	301 KAR 002:082	304.17-412	806 KAR 017:280
285.085	301 KAR 002:082	304.17A	806 KAR 017:260
302.31	921 KAR 001:390	304.17A-005	806 KAR 011:020
302.33	921 KAR 001:390		806 KAR 017:370
302.34	921 KAR 001:020		806 KAR 017:470
302.50	921 KAR 001:400E		806 KAR 017:590
	921 KAR 001:400	304.17A-095	806 KAR 014:007
302.56	921 KAR 001:400E	304.17A-096	806 KAR 014:007
	921 KAR 001:400	304.17A-138	806 KAR 017:270
302.80	921 KAR 001:400E		900 KAR 012:005E
	921 KAR 001:400		900 KAR 012:005
303.107	921 KAR 001:020	304.17A-150	806 KAR 017:300
303.21	921 KAR 001:020	304.17A-161	806 KAR 017:575
303.4	921 KAR 001:400E	304.17A-162	806 KAR 017:575
	921 KAR 001:400	304.17A-200	806 KAR 017:450
303.5	921 KAR 001:390	304.17A-230	806 KAR 017:240
303.70	921 KAR 001:020	304.17A-235	806 KAR 017:300
303.8	921 KAR 001:400E	304.17A-250	806 KAR 018:030
	921 KAR 001:400	304.17A-330	806 KAR 017:240
303.30-303.32	921 KAR 001:400E	304.17A-410	806 KAR 011:020
	921 KAR 001:400	304.17A-500	806 KAR 017:300
304	806 KAR 011:020	304.17A-527	806 KAR 017:300
	921 KAR 001:020	304.17A-530	806 KAR 017:300
	921 KAR 001:390	304.17A-532	806 KAR 017:300
304.1-010	806 KAR 014:007	304.17A-560	806 KAR 017:300
304.1-050	806 KAR 011:020	304.17A-575	806 KAR 017:300
	806 KAR 014:007	304.17A-578	806 KAR 017:300
	806 KAR 017:575	304.17A-600	806 KAR 011:020
	806 KAR 017:590		806 KAR 017:280
	806 KAR 046:050		806 KAR 017:290
304.1-070	806 KAR 010:030	304.17A-607	806 KAR 017:370
304.1-120	806 KAR 011:020	304.17A-619	806 KAR 017:280
304.2-100	806 KAR 017:290	304.17A-621	806 KAR 017:290
	806 KAR 017:350	304.17A-623	806 KAR 017:280
304.2-110	806 KAR 017:470	304.17A-631	806 KAR 017:290
304.2-140	806 KAR 017:280	304.17A-633	806 KAR 011:020
304.2-160	806 KAR 011:020	304.17A-700	806 KAR 017:370
	806 KAR 017:575		806 KAR 017:470
304.2-165	806 KAR 011:020		806 KAR 017:590
	806 KAR 017:575	304.17A-728	806 KAR 017:300
304.2-230	806 KAR 017:290	304.17A-730	806 KAR 017:370
304.2-310	806 KAR 017:290	304.17A-732	806 KAR 017:590
	806 KAR 017:450	304.17A-750	806 KAR 017:450
304.3-240	806 KAR 012:010	304.17A-770	806 KAR 017:450
304.3-270	806 KAR 014:007	304.17A-802	806 KAR 011:020
304.4-010	806 KAR 014:007	304.17A-812	806 KAR 011:020
304.5-040	806 KAR 011:020	304.17A-846	806 KAR 017:470
304.5-140	806 KAR 005:025	304.17B-001	806 KAR 017:350
304.9-020	806 KAR 011:020		900 KAR 013:010
	806 KAR 017:575	304.17B-021	806 KAR 017:350

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304.17B-023	900 KAR 013:010	309.406	201 KAR 047:010
	806 KAR 017:350		201 KAR 047:030
304.17C-010	900 KAR 013:010	309.412	201 KAR 047:010
	806 KAR 014:007		201 KAR 047:030
	806 KAR 017:280	309.414	201 KAR 047:010
	806 KAR 017:370		201 KAR 047:030
304.17C-030	806 KAR 017:280	309.416	201 KAR 047:010
304.17C-060	806 KAR 017:300		201 KAR 047:030
304.17C-070	806 KAR 017:300	309.418	201 KAR 047:010
304.17C-090	806 KAR 017:370		201 KAR 047:030
304.18-032	806 KAR 018:030	309.420	201 KAR 047:010
304.18-045	806 KAR 017:280		201 KAR 047:030
304.18-085	806 KAR 018:030	310	902 KAR 020:016
304.18-114	806 KAR 017:260	310.005	910 KAR 001:190
304.18-120	806 KAR 017:260	310.021	201 KAR 033:015
304.32-145	806 KAR 018:030		902 KAR 020:018
304.32-147	806 KAR 017:280		910 KAR 001:190
304.32-185	806 KAR 018:030	310.031	201 KAR 033:015
304.32-330	806 KAR 017:280		910 KAR 001:190
304.38-225	806 KAR 017:280	311	906 KAR 001:110
304.38-240	907 KAR 003:170	311.282	902 KAR 002:020
304.39-010	806 KAR 017:370	311.400	902 KAR 020:106
304.39-080	806 KAR 039:070	311.550	907 KAR 017:005
304.39-083	806 KAR 039:070		907 KAR 020:001
304.39-085	806 KAR 039:070	311.560	902 KAR 020:016
304.39-087	806 KAR 039:070	311.571	902 KAR 002:020
304.39-090	806 KAR 039:070		902 KAR 020:106
304.39-117	806 KAR 039:070	311.5975	900 KAR 012:005E
304.39-340	806 KAR 017:370		900 KAR 012:005
304.40-320	900 KAR 012:005E	311.621	906 KAR 001:180
	900 KAR 012:005	311.621-311.643	907 KAR 017:010
304.47-020	806 KAR 017:450	311.710-311.810	902 KAR 020:106
304.48-020	806 KAR 046:050	311.840	902 KAR 020:081
304.48-180	806 KAR 046:050	311.992	902 KAR 020:016
304.99	806 KAR 017:300	311A.030	202 KAR 007:545
304.99-020	806 KAR 011:020		202 KAR 007:560
304.99-085	806 KAR 010:030	311A.100	502 KAR 030:060
307.13	921 KAR 001:020	311A.190	202 KAR 007:545
309.0814	201 KAR 035:070		202 KAR 007:560
309.083	201 KAR 035:070	311B	902 KAR 020:016
309.0830	201 KAR 035:070	311B.050	201 KAR 046:020E
309.0831	201 KAR 035:070		201 KAR 046:020
309.0832	201 KAR 035:070		201 KAR 046:060
309.0833	201 KAR 035:070	311B.100	201 KAR 046:020E
309.0834	201 KAR 035:070		201 KAR 046:020
309.0841	201 KAR 035:070	311B.110	201 KAR 046:020E
309.0842	201 KAR 035:070		201 KAR 046:020
309.350	201 KAR 042:010		201 KAR 046:060
309.351	201 KAR 042:050	311B.120	201 KAR 046:020E
	201 KAR 042:110		201 KAR 046:020
309.352	201 KAR 042:080	311B.130	201 KAR 046:020E
309.355	201 KAR 042:010		201 KAR 046:020
	201 KAR 042:030	311B.140	201 KAR 046:020E
	201 KAR 042:050		201 KAR 046:020
	201 KAR 042:060	311B.180	201 KAR 046:020E
	201 KAR 042:061		201 KAR 046:020
	201 KAR 042:080	311B.190	201 KAR 046:020E
	201 KAR 042:110		201 KAR 046:020
309.357	201 KAR 042:010	312.019	201 KAR 021:035
	201 KAR 042:040		201 KAR 021:054
309.358	201 KAR 042:035		201 KAR 021:070
309.359	201 KAR 042:035		201 KAR 021:090
	201 KAR 042:070		201 KAR 021:100
309.361	201 KAR 042:040	312.085	201 KAR 021:090
	201 KAR 042:110	312.115	201 KAR 021:070
309.362	201 KAR 042:035	313.010	902 KAR 020:106
	201 KAR 042:040	313.021	201 KAR 008:600
	201 KAR 042:050	313.022	201 KAR 008:520
	201 KAR 042:060		201 KAR 008:600
	201 KAR 042:061	313.030	201 KAR 008:520
309.363	201 KAR 042:035		902 KAR 020:106
	201 KAR 042:080	313.100	201 KAR 008:520
309.3631	201 KAR 042:080	314.011	201 KAR 020:057
309.404	201 KAR 047:010		201 KAR 020:215

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	201 KAR 020:220	315.036	201 KAR 002:050
	201 KAR 020:280		201 KAR 002:106E
	201 KAR 020:320		201 KAR 002:106
	502 KAR 012:010	315.050	201 KAR 002:050
	702 KAR 007:150		201 KAR 002:411E
	902 KAR 020:016		201 KAR 002:412E
	902 KAR 020:081		201 KAR 002:420
	907 KAR 017:005	315.060	201 KAR 002:050
	907 KAR 020:001	315.065	201 KAR 002:411E
	922 KAR 002:160E		201 KAR 002:412E
	922 KAR 002:160	315.110	201 KAR 002:050
314.021	201 KAR 020:320	315.120	201 KAR 002:050
	201 KAR 020:478	315.121	201 KAR 002:074
314.035	201 KAR 020:472		201 KAR 002:106E
	201 KAR 020:474		201 KAR 002:106
	201 KAR 020:476		201 KAR 002:270
	201 KAR 020:478		201 KAR 002:430
314.041	201 KAR 020:320	315.131	201 KAR 002:430
	201 KAR 020:480E	315.135	201 KAR 002:411E
	201 KAR 020:480		201 KAR 002:412E
	902 KAR 020:018	315.136	201 KAR 002:420
	902 KAR 020:106	315.191	201 KAR 002:030
314.042	201 KAR 020:057		201 KAR 002:050
	902 KAR 020:016		201 KAR 002:076
	902 KAR 020:081		201 KAR 002:270
	902 KAR 020:106		201 KAR 002:440
314.051	201 KAR 020:480E	315.205	201 KAR 002:411E
	201 KAR 020:480		201 KAR 002:412E
	902 KAR 020:106	315.210	201 KAR 002:030
314.073	201 KAR 020:215	315.340	201 KAR 002:106E
	201 KAR 020:220		201 KAR 002:106
314.089	201 KAR 020:478	315.342	201 KAR 002:106E
314.091	201 KAR 020:478		201 KAR 002:106
314.111	201 KAR 020:260E	315.350	201 KAR 002:106E
	201 KAR 020:280		201 KAR 002:106
	201 KAR 020:320	315.402	201 KAR 002:050
	201 KAR 020:360		201 KAR 002:106E
314.103	201 KAR 020:476		201 KAR 002:106
	201 KAR 020:478	315.4102	201 KAR 002:106E
314.131	201 KAR 020:220		201 KAR 002:106
	201 KAR 020:260E	315.450	201 KAR 002:440
	201 KAR 020:280	315.452	201 KAR 002:440
	201 KAR 020:320	315.454	201 KAR 002:440
	201 KAR 020:472	315.456	201 KAR 002:440
	201 KAR 020:474	315.458	201 KAR 002:440
	201 KAR 020:476	315.460	201 KAR 002:440
314.137	201 KAR 020:470	315.500	201 KAR 002:411E
	201 KAR 020:472		201 KAR 002:412E
	201 KAR 020:474	316.010	201 KAR 015:110E
	201 KAR 020:476		201 KAR 015:110
	201 KAR 020:478	316.030	201 KAR 015:040E
314.193	201 KAR 020:057		201 KAR 015:040
314.195	201 KAR 020:057		201 KAR 015:050E
314.991	201 KAR 020:215		201 KAR 015:050
	201 KAR 020:478		201 KAR 015:110E
315.010	201 KAR 002:074		201 KAR 015:110
	201 KAR 002:411E	316.125	201 KAR 015:030E
	201 KAR 002:412E		201 KAR 015:030
	201 KAR 002:420		201 KAR 015:110E
315.020	902 KAR 002:020		201 KAR 015:110
	201 KAR 002:074	316.127	201 KAR 015:110E
	201 KAR 002:076		201 KAR 015:110
	201 KAR 002:411E	316.130	201 KAR 015:030E
	201 KAR 002:412E		201 KAR 015:030
315.030	201 KAR 002:074		201 KAR 015:110E
315.035	201 KAR 002:050		201 KAR 015:110
	201 KAR 002:076	316.132	201 KAR 015:030E
	201 KAR 002:106E		201 KAR 015:030
	201 KAR 002:106	316.140	201 KAR 015:030E
	906 KAR 001:110		201 KAR 015:030
315.0351	201 KAR 002:050	316.165	201 KAR 015:125E
	201 KAR 002:076		201 KAR 015:125
	201 KAR 002:106E	316.260	201 KAR 015:110E
	201 KAR 002:106		201 KAR 015:110

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317.410	201 KAR 014:030		201 KAR 043:060
	201 KAR 014:085		201 KAR 043:080
	201 KAR 014:105	319C.060	201 KAR 043:030
	201 KAR 014:110		201 KAR 043:040
	201 KAR 014:115		201 KAR 043:050
	201 KAR 014:150		201 KAR 043:060
317.440	201 KAR 014:015		201 KAR 043:071
	201 KAR 014:040		201 KAR 043:080
	201 KAR 014:065	319C.070	201 KAR 043:010
	201 KAR 014:085		201 KAR 043:060
	201 KAR 014:105	319C.080	201 KAR 043:010
	201 KAR 014:110		201 KAR 043:020
	201 KAR 014:115		201 KAR 043:030
	201 KAR 014:125	319C.110	201 KAR 043:060
317.450	201 KAR 014:015	319C.140	201 KAR 043:100
	201 KAR 014:030	321.181	902 KAR 002:020
	201 KAR 014:040	322.010	725 KAR 002:015
	201 KAR 014:050	323.010	725 KAR 002:015
	201 KAR 014:065	323.020	725 KAR 002:015
	201 KAR 014:105	324B.030	201 KAR 047:010
	201 KAR 014:125	324B.040	201 KAR 047:010
	201 KAR 014:150	325.261	201 KAR 001:190
	201 KAR 014:180	325.270	201 KAR 001:190
317.570	201 KAR 014:015	327.010	201 KAR 022:001
317.590	201 KAR 014:040		201 KAR 022:020
317A.020	201 KAR 012:082E		201 KAR 022:045
	201 KAR 012:082		902 KAR 020:081
317A.050	201 KAR 012:082E		907 KAR 001:604
	201 KAR 012:082	327.040	201 KAR 022:053
317A.090	201 KAR 012:082E	327.050	201 KAR 022:001
	201 KAR 012:082		201 KAR 022:020
318.010	815 KAR 020:195		201 KAR 022:070
318.030	815 KAR 020:050	327.060	201 KAR 022:020
318.134	815 KAR 020:050		201 KAR 022:070
	815 KAR 020:195	327.070	201 KAR 022:045
318.160	815 KAR 020:050		201 KAR 022:053
319.005	201 KAR 026:130	327.075	201 KAR 022:020
319.010	201 KAR 026:115	327.080	201 KAR 022:020
319.015	201 KAR 026:215	327.100	201 KAR 022:001
319.032	201 KAR 026:130	327.300	201 KAR 022:170
	201 KAR 026:175	327.310	201 KAR 022:020
	201 KAR 026:185	329.010-329.030	502 KAR 020:020
	201 KAR 026:230	322.110	902 KAR 010:120
	201 KAR 026:250	323.020	902 KAR 010:120
319.050	201 KAR 026:125	333.030	902 KAR 020:016
	201 KAR 026:155		902 KAR 020:106
	201 KAR 026:160	332.015	502 KAR 010:010
	201 KAR 026:175	332.095	791 KAR 001:070
	201 KAR 026:185	332.204	502 KAR 010:030
	201 KAR 026:190		502 KAR 010:035
	201 KAR 026:230	332.216	502 KAR 010:020
319.053	201 KAR 026:175		502 KAR 010:050
	201 KAR 026:190		502 KAR 010:060
	201 KAR 026:230		502 KAR 010:080
	201 KAR 026:270	333	902 KAR 020:018
319.056	201 KAR 026:190	333.020	902 KAR 002:020
	201 KAR 026:270	333.030	V
319.064	201 KAR 026:160	333.130	902 KAR 002:020
	201 KAR 026:175		902 KAR 002:212E
	201 KAR 026:190		902 KAR 002:213E
	201 KAR 026:230	334A.020	016 KAR 002:050
	201 KAR 026:250		902 KAR 020:081
319.071	201 KAR 026:160		907 KAR 001:604
	201 KAR 026:175	334A.033	016 KAR 002:050
	201 KAR 026:225	334A.035	016 KAR 002:050
319.082	201 KAR 026:130	334A.060	016 KAR 002:050
	201 KAR 026:215	334A.188	201 KAR 017:110
319.118	201 KAR 026:130	334A.190	016 KAR 002:050
319.140	201 KAR 026:310	334A.200	201 KAR 017:110
319.990	201 KAR 026:130	335.100	902 KAR 020:018
319A.010	902 KAR 020:081	336.220	922 KAR 002:280
	907 KAR 001:604	337	803 KAR 001:006
319C	201 KAR 043:090	337.010	803 KAR 001:076
319C.050	201 KAR 043:050	337.275	803 KAR 001:063

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	803 KAR 001:064		787 KAR 001:090
	803 KAR 001:065		787 KAR 001:150
	803 KAR 001:066	341.370	787 KAR 001:060
	803 KAR 001:067		787 KAR 001:090
	803 KAR 001:068		787 KAR 001:150
	803 KAR 001:070	341.380	787 KAR 001:090
	803 KAR 001:071		787 KAR 001:150
	803 KAR 001:075	341.420	787 KAR 001:110
	803 KAR 001:076	341.430	787 KAR 001:110
	803 KAR 001:080	341.440	787 KAR 001:110
	803 KAR 001:081	341.450	787 KAR 001:110
	803 KAR 001:090	341.500	787 KAR 001:140
	922 KAR 002:160E	341.540	787 KAR 001:300
337.275-337.325	922 KAR 002:160	341.510	787 KAR 001:140
	803 KAR 001:005	341.530	787 KAR 001:060
337.285	803 KAR 001:091	342	725 KAR 002:015
	803 KAR 001:060	342.0011	803 KAR 025:305E
	803 KAR 001:061	342.020	803 KAR 025:305E
	803 KAR 001:063	342.040	803 KAR 025:305E
	803 KAR 001:064	342.270	803 KAR 025:305E
	803 KAR 001:065	342.730	803 KAR 025:305E
	803 KAR 001:066	344	725 KAR 002:015
	803 KAR 001:067	344.030	101 KAR 001:365
	803 KAR 001:068		105 KAR 001:210
	803 KAR 001:070	349.3401	501 KAR 014:010
	803 KAR 001:071	355.9	030 KAR 005:011E
	803 KAR 001:075		030 KAR 005:011
	803 KAR 001:076		030 KAR 005:021E
	803 KAR 001:080		030 KAR 005:021
	803 KAR 001:081	355.9-513A	030 KAR 005:031E
337.345	803 KAR 001:090		030 KAR 005:031
	803 KAR 001:005	355.9-515	030 KAR 005:031E
	803 KAR 001:091		030 KAR 005:031
337.385-337.405	803 KAR 001:005		030 KAR 005:041E
	803 KAR 001:091		030 KAR 005:041
337.420-337.433	803 KAR 001:025		030 KAR 005:051E
	803 KAR 001:026		030 KAR 005:051
338	803 KAR 002:321E	355.9-516	030 KAR 005:021E
	803 KAR 002:321		030 KAR 005:021
	803 KAR 002:419		030 KAR 005:031E
	803 KAR 002:426E		030 KAR 005:031
338.015	803 KAR 002:426	355.9-516A	030 KAR 005:031E
	803 KAR 002:330E		030 KAR 005:031
	803 KAR 002:402	355.9-519	030 KAR 005:041E
	803 KAR 002:445		030 KAR 005:041
338.051	803 KAR 002:411		030 KAR 005:051E
338.061	803 KAR 002:411		030 KAR 005:051
341	725 KAR 002:015		030 KAR 005:060E
341.070	787 KAR 001:010		030 KAR 005:060
	787 KAR 001:020	355.9-520	030 KAR 005:031E
	787 KAR 001:220		030 KAR 005:031
	787 KAR 001:260	355.9-521	030 KAR 005:021E
	787 KAR 001:290		030 KAR 005:021
	787 KAR 001:300	355.9-523	030 KAR 005:060E
341.115	787 KAR 001:020		030 KAR 005:060
341.145	787 KAR 001:150	355.9-525	030 KAR 005:060E
341.190	787 KAR 001:010		030 KAR 005:060
	787 KAR 001:020	355.9-526	030 KAR 005:041E
	787 KAR 001:060		030 KAR 005:041
	787 KAR 001:220		030 KAR 005:051E
341.243	787 KAR 001:010		030 KAR 005:051
341.250	787 KAR 001:010	365.571	030 KAR 003:010
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	787 KAR 001:260	365.581	030 KAR 003:020
341.262	787 KAR 001:010	365.593	030 KAR 003:010
	787 KAR 001:220		030 KAR 003:030
341.270	787 KAR 001:210	367.110-367-360	791 KAR 001:010
341.272	787 KAR 001:210	387	922 KAR 001:565
	787 KAR 001:290	387.500-387.800	907 KAR 017:010
341.350	787 KAR 001:090	387.510	907 KAR 017:005
	787 KAR 001:150	387.540	922 KAR 005:070
	787 KAR 001:310	400.203	907 KAR 003:170
341.360	787 KAR 001:060	403.160	921 KAR 001:400E
	787 KAR 001:080		921 KAR 001:400

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403.210-403.240	921 KAR 001:400E		501 KAR 003:120
	921 KAR 001:400		501 KAR 003:130
403.211	921 KAR 001:020		501 KAR 003:170
403.270-403.355	922 KAR 001:565		501 KAR 007:040
403.352	922 KAR 001:470		501 KAR 007:060
403.707	502 KAR 012:010		501 KAR 007:090
405.024	922 KAR 001:565		501 KAR 007:100
405.430	921 KAR 001:020		501 KAR 007:110
	921 KAR 001:390		501 KAR 007:120
	921 KAR 001:400E		501 KAR 007:130
	921 KAR 001:400		501 KAR 007:140
405.440	921 KAR 001:400E		501 KAR 007:150
	921 KAR 001:400	441.075	501 KAR 002:060
405.991	921 KAR 001:400E	441.115	501 KAR 007:120
	921 KAR 001:400	441.125	501 KAR 003:130
406.011	921 KAR 001:390		501 KAR 007:120
406.021	921 KAR 001:390	441.203	806 KAR 017:370
	921 KAR 001:400E	441.206	806 KAR 017:370
	921 KAR 001:400	441.207	806 KAR 017:370
406.025	921 KAR 001:390	441.208	806 KAR 017:370
	921 KAR 001:400E	441.250	806 KAR 017:370
	921 KAR 001:400	441.255	806 KAR 017:370
406.035	921 KAR 001:020	441.256	806 KAR 017:370
406.180	921 KAR 001:390	441.258	806 KAR 017:370
411.32	806 KAR 017:370	441.510	501 KAR 002:060
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415.184	907 KAR 003:170	446.010	501 KAR 006:250
416.120	921 KAR 002:015E		502 KAR 013:010
	921 KAR 002:015	446.030	030 KAR 005:031E
416.212	921 KAR 002:015E		030 KAR 005:031
	921 KAR 002:015	446.400	902 KAR 020:016
416.2030	921 KAR 002:015E	447.500-447.520	907 KAR 023:020E
	921 KAR 002:015		907 KAR 023:020
416.2095	921 KAR 002:015E	454.220	921 KAR 001:400E
	921 KAR 002:015		921 KAR 001:400
416.2096	921 KAR 002:015E	503.050	704 KAR 007:170
	921 KAR 002:015	503.070	704 KAR 007:170
416.2099	921 KAR 002:015E	503.110	704 KAR 007:170
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421.570	502 KAR 012:010	510.010-510.140	502 KAR 012:010
422.317	907 KAR 003:170	511	922 KAR 002:280
431.215	501 KAR 002:060	514	921 KAR 002:015E
431.300-431.307	907 KAR 003:170		921 KAR 002:015
431.600-431.660	040 KAR 003:020	515	922 KAR 002:280
434.757	301 KAR 001:018	520	922 KAR 002:280
434.840-434.860	907 KAR 003:170	524.140	502 KAR 012:010
434.845	921 KAR 001:020	525	922 KAR 002:280
438.310	782 KAR 001:010	527	922 KAR 002:280
439	501 KAR 006:030	527.100	922 KAR 001:565
	501 KAR 006:290	527.110	922 KAR 001:565
439.179	501 KAR 003:130	529	922 KAR 002:280
439.250	501 KAR 006:250	529.010	040 KAR 006:030
439.352	501 KAR 001:050		502 KAR 012:010
439.356	501 KAR 001:050	529.100	502 KAR 012:010
439.358	501 KAR 001:050	529.130	040 KAR 006:030
439.551	501 KAR 006:250	529.140	040 KAR 006:030
439.553	501 KAR 006:250	529.150	040 KAR 006:030
439.3105-439.3108	501 KAR 006:250	530	922 KAR 002:280
440.050	907 KAR 003:170	530.020	502 KAR 012:010
440.120	907 KAR 023:020E	530.064	502 KAR 012:010
	907 KAR 023:020	531.310	502 KAR 012:010
441	501 KAR 003:150	532.043	501 KAR 001:050
441.045	501 KAR 002:060	532.060	501 KAR 002:020
	501 KAR 003:110		501 KAR 001:050
	501 KAR 003:120	532.100	501 KAR 002:020
	501 KAR 003:170		501 KAR 002:050
	501 KAR 007:040		501 KAR 002:060
	501 KAR 007:060		501 KAR 002:070
	501 KAR 007:090		501 KAR 003:130
	501 KAR 007:120		501 KAR 007:120
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441.046	502 KAR 014:010	533.200	013 KAR 003:020
441.055	501 KAR 003:110	533.210	013 KAR 003:020

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	922 KAR 001:360E		781 KAR 001:050
	922 KAR 001:360		782 KAR 001:010
	922 KAR 001:470		922 KAR 002:160E
	922 KAR 001:530		922 KAR 002:160
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	922 KAR 002:160E	39 C.F.R.	803 KAR 002:402
	922 KAR 002:160	40 C.F.R.	401 KAR 051:010
605.090	922 KAR 001:360E		902 KAR 020:016
	922 KAR 001:360		902 KAR 048:010
605.100	922 KAR 001:530		902 KAR 048:040
605.120	922 KAR 001:565	42 C.F.R.	902 KAR 020:016
	922 KAR 002:160E		902 KAR 020:018
	922 KAR 002:160		906 KAR 001:110
605.130	922 KAR 001:530		907 KAR 001:005
610.110	922 KAR 001:360E		907 KAR 001:030
	922 KAR 001:360		907 KAR 001:604
	922 KAR 001:565		907 KAR 003:170
620	902 KAR 020:016		907 KAR 010:815
620.020	201 KAR 020:320		907 KAR 010:830
	907 KAR 017:005		907 KAR 017:005
	907 KAR 020:001		907 KAR 017:010
	922 KAR 001:565		907 KAR 020:001
	922 KAR 002:160E		907 KAR 020:020
620.020-620.050	040 KAR 003:020		907 KAR 023:020E
	922 KAR 002:160		907 KAR 023:020
620.030	502 KAR 012:010	45 C.F.R.	502 KAR 012:010
	906 KAR 001:180		806 KAR 017:470
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620.050-620.120	922 KAR 002:280		902 KAR 020:016
620.051	922 KAR 001:470		902 KAR 020:018
620.090	922 KAR 001:565		902 KAR 020:081
620.140	922 KAR 001:565		902 KAR 020:106
620.142	922 KAR 001:565		906 KAR 001:110
620.170	922 KAR 001:530		907 KAR 001:030
	922 KAR 001:565		907 KAR 017:010
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	922 KAR 002:280		921 KAR 001:390
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	302 KAR 050:046		921 KAR 001:400
	302 KAR 050:056		921 KAR 003:026E
	921 KAR 003:026E		921 KAR 003:027E
	921 KAR 003:027E		921 KAR 003:027
	921 KAR 003:027		921 KAR 004:116E
	922 KAR 002:160E		921 KAR 004:116
16 C.F.R.	922 KAR 002:160		922 KAR 001:530
	201 KAR 015:110E		922 KAR 002:160E
20 C.F.R.	201 KAR 015:110		922 KAR 002:160
	907 KAR 017:005		922 KAR 002:280
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	921 KAR 002:015E		502 KAR 010:110
	921 KAR 002:015		502 KAR 010:120
	922 KAR 002:160E		791 KAR 001:060
	922 KAR 002:160	59 C.F.R.	301 KAR 002:224
	923 KAR 002:470	7 U.S.C.	302 KAR 050:021
23 C.F.R.	603 KAR 010:011E		302 KAR 050:031
	603 KAR 010:040E		302 KAR 050:046
	603 KAR 010:040		302 KAR 050:056
29 C.F.R.	105 KAR 001:210		302 KAR 050:080
	803 KAR 002:321E		921 KAR 003:026E
	803 KAR 002:321		921 KAR 003:027E
	803 KAR 002:330E		921 KAR 003:027
	803 KAR 002:411		922 KAR 002:160E
	803 KAR 002:419		922 KAR 002:160
	803 KAR 002:426E	8 U.S.C.	907 KAR 020:001
	803 KAR 002:426		921 KAR 002:015E
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34 C.F.R.	016 KAR 004:020	18 U.S.C.	502 KAR 013:010
	781 KAR 001:010		502 KAR 013:030
	781 KAR 001:020		502 KAR 013:040
	781 KAR 001:030		502 KAR 013:050

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	016 KAR 004:020		921 KAR 001:400E
	016 KAR 005:010		921 KAR 001:400
	702 KAR 007:065		921 KAR 002:015E
	782 KAR 001:010		921 KAR 002:015
	921 KAR 003:026E		921 KAR 004:116E
	921 KAR 003:027E		921 KAR 004:116
	921 KAR 003:027		921 KAR 004:122E
	302 KAR 050:031		921 KAR 004:122
21 U.S.C.	902 KAR 002:230E		922 KAR 001:360E
23 U.S.C.	603 KAR 010:011E		922 KAR 001:360
	603 KAR 010:040E		922 KAR 001:470
25 U.S.C.	922 KAR 002:160E		922 KAR 001:530
26 U.S.C.	922 KAR 002:160		922 KAR 001:565
	103 KAR 016:320		922 KAR 002:160E
	105 KAR 001:330		922 KAR 002:160
	301 KAR 004:091		922 KAR 002:280
29 U.S.C.	921 KAR 001:020	45 U.S.C.	922 KAR 005:070
	101 KAR 001:345		803 KAR 001:063
	201 KAR 015:110E	49 U.S.C.	907 KAR 003:170
	201 KAR 015:110		502 KAR 010:120
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	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		
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	907 KAR 020:001		
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	922 KAR 002:160		
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42 U.S.C.	201 KAR 002:412E		
	201 KAR 006:040		
	300 KAR 006:010		
	401 KAR 051:010		
	502 KAR 031:020		
	725 KAR 002:015		
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	907 KAR 010:815		
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	907 KAR 017:005		
	907 KAR 017:010		
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	907 KAR 023:020		
	910 KAR 001:190		

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
016 KAR 004:060	9/3/2021	To be amended, Filing deadline 03-03-2023
016 KAR 005:060	2/3/2022	To be amended, filing deadline 08-02-2023
705 KAR 004:041	2/11/2022	Remain in Effect without Amendment
907 KAR 015:075	2/11/2022	Remain in Effect without Amendment

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 48th year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
401 KAR 048:320	8-4-2021		
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		
902 KAR 008:170	12-6-2021		
921 KAR 001:390	1-4-2022		
921 KAR 002:090	6-24-2021		
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		
922 KAR 001:510	11-23-2021		
922 KAR 002:190	6-24-2021		

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- 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
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- Office of Dementia Services
- Alzheimer's and dementia services curriculum review and approval; 910 KAR 004:010

ALCOHOL AND DRUG COUNSELORS

- Supervision experience; 201 KAR 035:070

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- Application procedures for temporary licensure; 201 KAR 043:020
- Code of ethical standards and standards of practice; 201 KAR 043:043
- Complaint and disciplinary process; 201 KAR 043:060
- Fees; 201 KAR 043:030
- Renewals; 201 KAR 043:080
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- 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

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- Barbering school enrollment and postgraduate requirements; 201 KAR 014:105
- Examinations; school and board; 201 KAR 014:115
- Fees; 201 KAR 014:180
- Inspection of shops and schools; 201 KAR 014:040
- Instructor requirements; 201 KAR 014:125
- Place of business requirements; 201 KAR 014:065
- Retaking of examination; 201 KAR 014:015
- Sanitation requirements; 201 KAR 014:085
- School equipment; plant layout; 201 KAR 014:110
- School records; 201 KAR 014:150

BOARDS AND COMMISSIONS

See also Occupations and Professions

See listing below for specific subject headings:

- Alcohol and Drug Counselors; 201 KAR Chapter 022
- Applied Behavior Analysis Licensing; 201 KAR Chapter 043
- Barbering; 201 KAR Chapter 014

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

Examiners of Psychology; 201 KAR Chapter 026

Licensure and Certification for Dietitians and Nutritionists; 201 KAR Chapter 033

Licensure for Long-Term Care Administrators; 201 KAR Chapter 006

Licensure for Massage Therapy; 201 KAR Chapter 042

Medical Imaging and Radiation Therapy; 201 KAR Chapter 046

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- Certificate of Need nonsubstantive review; 900 KAR 006:075
- Expenditure minimums; 900 KAR 006:030
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- Forms; 900 KAR 006:055
- Notification requirements; 900 KAR 006:110
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