



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on July 14, 2022, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 1 [Online agenda updated as needed](#)

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

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

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VOLUME 49, NUMBER 1– JULY 1, 2022

The following agenda may not take into consideration all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies. Deferrals and withdrawals may be made any time prior to or during the meeting.



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, July 14, 2022 at 1 p.m.
Annex Room 149



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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Student and Administrative Services

011 KAR 004:080. Student aid applications.

KHEAA Grant Programs

011 KAR 005:145. CAP grant award determination procedure.

Kentucky Educational Excellence Scholarship Program

011 KAR 015:090. Kentucky Educational Excellence Scholarship (KEES) Program.

Early Childhood Development Scholarship Program

011 KAR 016:020. Early Childhood Development Scholarship Program disbursement process.

Dual Credit Scholarship Program

011 KAR 022:010. Dual Credit Scholarship Program.

Optometry Scholarship Program

011 KAR 023:010. Optometry Scholarship Program.

STATE BOARD OF ELECTIONS

Statewide Voter Registration

031 KAR 003:031E. Voting precinct and address of overseas voter whose last place of residence is in the Commonwealth is no longer a recognized residential address. ("E" Expires 01-23-2023) (Filed with Ordinary)

Forms and Procedures

031 KAR 004:071E. Recanvas procedures. ("E" Expires 01-23-2023) (Filed with Ordinary)

031 KAR 004:131E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically. ("E" Expires 01-23-2023) (Filed with Ordinary)

031 KAR 004:141E. Submission of the federal postcard application via electronic mail. ("E" Expires 01-23-2023) (Filed with Ordinary)

031 KAR 004:196E. Consolidation of precincts and precinct election officers. ("E" Expires 01-23-2023) (Filed with Ordinary)

031 KAR 004:201E. Chain of custody for records during an election contest. ("E" Expires 01-23-2023) (Filed with Ordinary)

031 KAR 004:210E. Establishment of risk-limiting audit pilot program. ("E" Expires 01-23-2023) (Filed with Ordinary)

Voting

031 KAR 005:011E. Use of the federal writ-in absentee ballot. ("E" Expires 01-23-2023) (Filed with Ordinary)

031 KAR 005:026E. Ballot standards and election security. ("E" Expires 01-23-2023) (Filed with Ordinary)

PERSONNEL CABINET

Personnel Cabinet, Classified

101 KAR 002:046. Applying for employment, qualifications and examinations.

101 KAR 002:066. Certification and selection of eligible applicants for employment.

101 KAR 002:095E. Classified service general requirements. (Filed with Ordinary) ("E" expires 01-10-2023) (Deferred from June)

101 KAR 002:095. Classified service general requirements. (Filed with Emergency)

101 KAR 002:102. Classified leave general requirements.

101 KAR 002:190. Employee performance management system.

Personnel Cabinet, Unclassified

101 KAR 003:015. Leave requirements for unclassified service.

Personnel Cabinet, General

101 KAR 006:020E. Kentucky Employees Charitable Campaign. (Filed with Ordinary) ("E" expires 01-10-2023) ("E" expires 01-10-2023) (Deferred from June)

101 KAR 006:020. Kentucky Employees Charitable Campaign. (Filed with Emergency)

FINANCE AND ADMINISTRATION CABINET

Kentucky Retirement Systems

105 KAR 001:390. Employment after retirement.

105 KAR 001:450E. Quasi-governmental employer reports on independent contractors and leased employees. (Filed with Ordinary) ("E" expires 01-30-2023)

VOLUME 49, NUMBER 1– JULY 1, 2022

BOARDS AND COMMISSIONS

Board of Pharmacy

- 201 KAR 002:015. Continuing education.
- 201 KAR 002:020. Examination.
- 201 KAR 002:050. Licenses and permits; fees.
- 201 KAR 002:225. Special limited pharmacy permit- Medical gas.
- 201 KAR 002:430. Emergency orders and hearings. (Amended After Comments) (Deferred from February)

Board of Dentistry

- 201 KAR 008:520. Fees and fines.

Real Estate Commission

- 201 KAR 011:121. Standards of professional conduct.

Board of Embalmers and Funeral Directors

- 201 KAR 015:030E. Fees. (Filed with Ordinary) ("E" expires 01-02-2023) (Deferred from June)
- 201 KAR 015:030. Fees. (Filed with Emergency)
- 201 KAR 015:040E. Examination. (Filed with Ordinary) ("E" expires 01-02-2023) (Deferred from June)
- 201 KAR 015:040. Examination. (Filed with Emergency)
- 201 KAR 015:050E. Apprenticeship and supervision requirements. (Filed with Ordinary) ("E" expires 01-02-2023) (Deferred from June)
- 201 KAR 015:050. Apprenticeship and supervision requirements. (Filed with Emergency)
- 201 KAR 015:110E. Funeral establishment criteria. (Filed with Ordinary) ("E" expires 01-02-2023) (Deferred from June)
- 201 KAR 015:110. Funeral establishment criteria. (Filed with Emergency)
- 201 KAR 015:125E. Surface transportation permit. (Filed with Ordinary) ("E" expires 01-02-2023) (Deferred from June)
- 201 KAR 015:125. Surface transportation permit. (Filed with Emergency)

Board of Nursing

- 201 KAR 020:070. Licensure by examination. (Filed with Emergency)
- 201 KAR 020:240. Fees for applications and for services.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Emergency Medical Services

- 202 KAR 007:545. License classifications. (Filed with Emergency)
- 202 KAR 007:560E. Ground vehicle staff. (Filed with Ordinary) ("E" expires 01-28-2023)

TOURISM, ARTS AND HERITAGE CABINET

Heritage Council

- 300 KAR 006:011E. Historic rehabilitation tax credit certifications. (Filed with Ordinary) ("E" expires 01-24-2023)

Department of Fish and Wildlife Services

Fish

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

Game

- 301 KAR 002:132. Elk hunting seasons, permits, zones, and requirements.
- 301 KAR 002:172. Deer hunting seasons, zones, and requirements.
- 301 KAR 002:221. Waterfowl seasons and limits.

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)

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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)

LABOR CABINET

Office of Unemployment Insurance

787 KAR 001:360E. Overpayment waivers. (Filed with Ordinary) ("E" expires 01-23-2023)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Workforce Investment

Employment Services

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

Department of Workforce Investment

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)

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 Workers' Claims

803 KAR 025:195. Utilization review, appeal of utilization review decisions and medical bill audit. (Filed with Emergency)

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control

Advertising Distilled Spirits and Wine

804 KAR 001:102. General advertising practices.

Malt Beverage Equipment, Supplies and Service

804 KAR 011:041. Growlers.

Malt Beverages and Wine

804 KAR 014:011. Brewing and winemaking for personal use.

Department of Insurance

Agents, Consultants, Solicitors and Adjustors

806 KAR 009:380. Limited lines self-service storage space insurance requirements.

806 KAR 009:390. Portable electronic retailer license.

Health Insurance Contracts

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

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

State Health Plan

900 KAR 005:020E. State Health Plan for facilities and services. ("E" expires 11-26-2022) (Filed with Ordinary) (Emergency Amended After Comments) (Deferred from May)

900 KAR 005:020. State Health Plan for facilities and services. (Filed with Emergency) (Comments Received; SOC ext., due 6-15-2022)

Certificate of Need

900 KAR 006:075E. Certificate of need nonsubstantive review. ("E" expires 11-26-2022) (Filed with Ordinary) (Emergency Amended After Comments) (Deferred from June)

900 KAR 006:075. Certificate of Need nonsubstantive review. (Filed with Emergency) (Comments Received; SOC ext., due 6-15-2022)

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Essential Personal Care Visitor Program

900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines. (Filed with Ordinary) ("E" expires 11-18-2022) (Emergency Amended After Comments) (Deferred from June)

900 KAR 014:010. Essential personal care visitor programs; visitation guidelines. (Filed with Emergency) (Comments Received; SOC due 06-15-2022)

Department for Public Health Communicable Diseases

902 KAR 002:020E. Reportable disease surveillance. (Filed with Ordinary) ("E" expires 01-21-2023)

Department for Public Health Health Services and Facilities

902 KAR 020:016. Hospitals; operations and services. (Amended After Comments) (Deferred from June)

902 KAR 020:106. Operation and services; ambulatory surgical center. (Amended After Comments) (Deferred from June)

Early Intervention System

902 KAR 030:120. Evaluation and eligibility. (Filed with Emergency) (Comments Received; SOC due 06-15-2022)

Office of Inspector General

906 KAR 001:110. Critical access hospital services. (Amended After Comments) (Deferred from June)

Department for Behavioral Health, Developmental and Intellectual Disabilities Institutional Care

908 KAR 003:010. Patient's rights. (Filed with Emergency) (Deferred from June)

Department for Community Based Services Child Welfare

922 KAR 001:310. Standards for child-placing agencies. (Comments Received; SOC ext. due 07-15-2022)

922 KAR 001:315. Standards for child-placing agencies placing children who are not in the custody of the cabinet. (Comments Received; SOC ext. due 07-15-2022)

922 KAR 001:340. Standards for independent living programs. (Comments Received; SOC ext. due 07-15-2022)

3. REGULATIONS REMOVED FROM JULY'S AGENDA

BOARDS AND COMMISSIONS

Board of Emergency Medical Services

202 KAR 007:560. Ground vehicle staff. (Filed with Emergency) (Withdrawn by Agency)

BOARDS AND COMMISSIONS

Board of Dentistry

201 KAR 008:550. Anesthesia and sedation related to dentistry. (Comments Received; SOC due 07-15-2022)

201 KAR 008:600. Mobile dental facilities and portable dental units. (Comments Received; SOC ext., due 06-15-2022) (Withdrawn; SOC not filed)

EDUCATION AND WORKFORCE DEVELOPMENT 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)

Department of Workers' Claims

803 KAR 025:195E. Utilization review, appeal of utilization review decisions, and medical bill audit. (Filed with Ordinary) ("E" expires 01-10-2023) (Comments Received; SOC due 06-15-2022) (Deferred from July)

**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. Other statutes or legislation may affect a regulation's actual end date.

STATEMENT OF EMERGENCY
103 KAR 043:340E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1), KRS 11.065, KRS 12.020, KRS 12.040, KRS 12.250, KRS 12.270, KRS 42.012, KRS 45.301, KRS 131.020; 131.130, and KRS 138.226, in order to meet an imminent threat to the public health, safety, or welfare.

The Kentucky Department of Revenue reports that for the fiscal year beginning July 1, 2022, and ending June 30, 2023, the annual survey value that sets the average wholesale price of gasoline in the Commonwealth of Kentucky will increase more than 110% from the value for the current fiscal year. This increase would raise the gas tax in Kentucky by two cents (\$0.02), taking the tax from 26 cents (\$0.26) to 28 cents (\$0.28) per gallon. It would also raise the tax on diesel fuel from 23 cents (\$0.23) to 25 cents (\$0.25) per gallon.

This gas tax hike would come at a time when Kentuckians are facing significant inflation, including surging gas prices. According to the Automobile Association of America ("AAA"), as of May 31, 2022, the average price of gas in Kentucky was \$4.306 per gallon, up from \$3.804 per gallon a month ago, and \$2.847 a year ago. On May 13, 2022, AAA reported that Kentucky's average gas prices at that time jumped 28 cents to \$4.43 per gallon – the highest increase in the nation that day – after reporting on May 11, that Kentucky's average gas prices had reached an all-time high at \$4.16 per gallon. Nationally, the average price for a gallon of gas hit a record \$4.62 on May 31, which was 52 percent (52%) higher than in 2021. That record average price jumped to \$4.67 on June 1, 2022.

Freezing the average wholesale price of gasoline and the annual survey value at the current rate to ensure the state gas tax will not increase on or after July 1, 2022, will help protect Kentuckians from the harm a higher gas tax would bring on top of other negative effects of rising inflation. The state gas tax will remain at 26 cents (\$0.26) per gallon, and the state tax on diesel fuel and other special fuels will remain at 23 cents (\$0.23) per gallon. The Department of Revenue anticipates the freeze of the state gas tax will be necessary until mid-January of 2023, when the General Assembly will convene for its 2023 Regular Session.

The Secretary of the Kentucky Transportation Cabinet reports that the freeze will have no material impact on the Transportation Cabinet budget, and will not impact any planned or ongoing work.

Under KRS 138.226, the Department of Revenue shall administer the taxes provided under KRS 138.210 to 138.490, and may prescribe and adopt administrative regulations relating to the administration of those taxes. KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws of the Commonwealth. Under KRS 42.012, the Secretary of the Finance and Administration Cabinet is the chief financial officer of the Commonwealth and the adviser of the Governor in financial matters, and must at all times protect the financial interests of Kentucky.

This administrative regulation must be filed as soon as possible to protect Kentuckians from the increase in the gas tax, and also to provide notification of the average wholesale price of gasoline and special fuels to dealers licensed in the Commonwealth of Kentucky. Under KRS 138.220(4) the Department of Revenue must notify licensed dealers at least twenty (20) days in advance of July 1, 2022. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as future market conditions may affect the necessity of an administrative regulation.

ANDY BESHEAR, Governor
THOMAS B. MILLER, Commissioner

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Emergency Administrative Regulation)

103 KAR 043:340E. Excise taxes on gasoline and special fuels; average wholesale price of gasoline and annual survey value.

EFFECTIVE: June 2, 2022

RELATES TO: KRS 131.020, 131.130, 138.210, 138.220, 138.226, 138.228, 138.290

STATUTORY AUTHORITY: KRS 11.065, 12.020, 12.040, 12.050, 12.250, 12.270, 42.012, 45.301, 131.020, 131.130, 138.210; 138.220, 138.226, 138.228

NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.226 provides that the Department of Revenue shall administer the taxes provided under KRS 138.210 to 138.490, and authorizes the Department of Revenue to prescribe and, adopt administrative regulations relating to the administration of those taxes. The department determines and adjusts the average wholesale price of gasoline rounded to the nearest one-tenth of one cent (\$0.001) used for calculating the excises taxes imposed under KRS 138.220 to be paid by a dealer receiving gasoline or special fuel. This emergency administrative regulation establishes the average wholesale price of gasoline as determined by the department effective July 1, 2022, and is being promulgated in order to meet an imminent threat to the public health, safety, or welfare. The Kentucky Department of Revenue reports that for the fiscal year beginning July 1, 2022, and ending June 30, 2023, the annual survey value that sets the average wholesale price of gasoline in the Commonwealth of Kentucky will increase more than 110% from the value for the current fiscal year. This increase would raise the gas tax in Kentucky by two cents (\$0.02), taking the tax from 26 cents (\$0.26) to 28 cents (\$0.28) per gallon. It would also raise the tax on diesel fuel from 23 cents (\$0.23) to 25 cents (\$0.25) per gallon. This gas tax hike would come at a time when Kentuckians are facing significant inflation, including surging gas prices. According to the Automobile Association of America ("AAA"), as of May 31, 2022, the average price of gas in Kentucky was \$4.306 per gallon, up from \$3.804 per gallon a month ago, and \$2.847 a year ago. On May 13, 2022, AAA reported that Kentucky's average gas prices at that time jumped 28 cents to \$4.43 per gallon – the highest increase in the nation that day – after reporting on May 11, that Kentucky's average gas prices had reached an all-time high at \$4.16 per gallon. Nationally, the average price for a gallon of gas hit a record \$4.62 on May 31, which was 52 percent (52%) higher than in 2021. That record average price jumped to \$4.67 on June 1, 2022. Freezing the average wholesale price of gasoline and the annual survey value at the current rate to ensure the state gas tax will not increase on or after July 1, 2022, will help protect Kentuckians from the harm a higher gas tax would bring on top of other negative effects of rising inflation. The state gas tax will remain at 26 cents (\$0.26) per gallon, and the state tax on diesel fuel and other special fuels will remain at 23 cents (\$0.23) per gallon. The Department of Revenue anticipates the freeze of the state gas tax will be necessary until mid-January of 2023, when the General Assembly will convene for its 2023 Regular Session.

This administrative regulation must be filed as soon as possible to protect Kentuckians from the increase in the gas tax, and also to provide notification of the average wholesale price of gasoline and special fuels to dealers licensed in the Commonwealth of Kentucky. Under KRS 138.220(4) the Department of Revenue must notify licensed dealers at least twenty (20) days in advance of July 1, 2022.

Section 1. Definitions.

(1) "Annual survey value" has the same meaning as provided

under KRS 138.210(3)

(2) "Average wholesale price" has the same meaning as provided under KRS 138.210(4).

(3) "Dealer" has the same meaning as provided under KRS 138.210(6).

(4) "Gasoline" has the same meaning as provided under KRS 138.210(11).

(5) "Received" has the same meaning as provided under KRS 138.210(15).

(6) "Special fuels" has the same meaning as provided under KRS 138.210(18).

Section 2. Average Wholesale Price of Gasoline and Annual Survey Value. Effective July 1, 2022, the average wholesale price of gasoline and the annual survey value under KRS 138.228 shall be two dollars and seventeen and seven-tenths cents (\$2.177) per gallon, which is the average wholesale price of gasoline and the annual survey value for fiscal year 2021-2022.

Section 3. Excise Taxes on Gasoline. Effective July 1, 2022, the excise tax imposed under KRS 138.220 on gasoline, including liquified petroleum, received in this State shall be nineteen and six-tenths cents (\$0.196) per gallon, which is the current excise tax on gasoline, including liquified petroleum, for fiscal year 2021-2022. When combined with the five cents (\$0.05) per gallon supplemental highway user motor fuel tax and the one point four cents (\$0.014) per gallon petroleum environmental assurance fee, the total state tax on gasoline is twenty-six cents (\$0.26) per gallon.

Section 4. Excise Taxes on Diesel Fuel and Other Special Fuel. Effective July 1, 2022, the excise tax imposed under KRS 138.220 on special fuel received in this State shall be nineteen and six-tenths cents (\$0.196) per gallon, which is the current excise tax on special fuel for fiscal year 2021-2022. When combined with the two cents (\$0.02) per gallon supplemental highway user motor fuel tax and the one point four cents (\$0.014) per gallon petroleum environmental assurance fee, the total state tax on special fuel is twenty-three cents (\$0.23) per gallon.

Section 5. Relief from Penalties. No dealer shall be found in violation of the reporting requirements under KRS 138.240 to 138.260, or subject to the civil penalties imposed under KRS 138.290, for computing and reporting the gasoline and special fuel tax and supplemental highway user motor fuel tax imposed under KRS 138.220 in accordance with this regulation.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 2, 2022

FILED WITH LRC: June 2, 2022 at 1:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2022, at 10:00 a.m., at 501 High Street, 11th Floor Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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: Gary Morris, Executive Director, Office of Tax Policy and Regulation, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-9565, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary C. Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the average wholesale price of gasoline to be used in the computation of the State excise taxes on gasoline and special fuels imposed under KRS 138.220.

(b) The necessity of this administrative regulation: The annual survey value that sets the average wholesale price of gasoline in the Commonwealth of Kentucky will increase more than 110% from the value for the current fiscal year. This increase will raise the gas tax in Kentucky by two cents (\$0.02), taking the tax to 28 cents (\$0.28) per gallon. It would also raise the tax on diesel fuel from 23 cents (\$0.23) to 25 cents (\$0.25) per gallon. This gas tax hike would come at a time when Kentuckians are facing significant inflation, including surging gas prices. According to the Automobile Association of America ("AAA"), as of May 31, 2022, the average price of gas in Kentucky was \$4.306 per gallon, up from \$3.804 per gallon a month ago, and \$2.847 a year ago. On May 13, 2022, AAA reported that Kentucky's average gas prices at that time jumped 28 cents to \$4.43 per gallon – the highest increase in the nation that day – after reporting on May 11, that Kentucky's average gas prices had reached an all-time high at \$4.16 per gallon. Nationally, the average price for a gallon of gas hit a record \$4.62 on May 31, which was 52 percent (52%) higher than in 2021. That record average price jumped to \$4.67 on June 1, 2022. Freezing the average wholesale price of gasoline and the annual survey value at the current rate to ensure the state gas tax will not increase on or after July 1, 2022, will help protect Kentuckians from the harm a higher gas tax would bring on top of other negative effects of rising inflation. The state gas tax will remain at 26 cents (\$0.26) per gallon and the state tax on diesel fuel and other special fuels will remain at 23 cents (\$0.23) per gallon. The Department of Revenue anticipates the freeze of the state gas tax will be necessary until mid-January of 2023, when the General Assembly will convene for its 2023 Regular Session. Therefore, this emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) and KRS 138.226 in order to meet an imminent threat to the public health, safety, or welfare.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 138.226 authorizes the Department of Revenue to prescribe, adopt, and enforce administrative regulations relating to the administration of the taxes provided under KRS 138.210 to 138.490. KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws of the Commonwealth. Under KRS 42.012, the Secretary of the Finance and Administration Cabinet is the chief financial officer of the Commonwealth and the adviser of the Governor in financial matters, and must at all times protect the financial interests of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The department determines and adjusts the average wholesale price of gasoline rounded to the nearest one-tenth of one cent (\$0.001) used for calculating the excises taxes imposed under KRS 138.220 to be paid by a dealer receiving gasoline or special fuel. This administrative regulation establishes the average wholesale price of gasoline as determined by the department effective July 1, 2022.

(2) If 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

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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects dealers receiving gasoline or special fuel who pass the tax on to consumers purchasing gasoline or special fuel. While dealers will be affected in that they will continue to compute, report, and pay tax using the current average wholesale price, consumers purchasing gasoline and special fuels will be affected most significantly because the excise taxes imposed under KRS 138.220 and passed to consumers will not increase on July 1, 2022.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Dealers will continue to compute, report and pay tax based upon the current average wholesale price of gasoline.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not require dealers to incur any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will allow dealers to keep the price of gasoline lower because the State tax on gas will be computed using the current average wholesale price.

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

(a) Initially: The Department of Revenue will not incur any additional costs to implement this administrative regulation initially or on a continuing basis.

(b) On a continuing basis: (please see the response to (5)(a))

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: n/a

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

(9) TIERING: Is tiering applied? Tiering was not applied; all dealers in the Commonwealth of Kentucky will compute, report, and pay the tax on gasoline and special fuel in the same manner.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, Office of Sales and Excise Tax, Transportation Cabinet, and any municipalities receiving funds from the Transportation Cabinet will be impacted by this administrative regulation. This administrative regulation sets forth the average wholesale price of gasoline to be used in the computation of the State excise taxes on gasoline and special fuels imposed under KRS 138.220.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 136.226 authorizes the Department of Revenue to prescribe and adopt administrative regulations relating to the administration of the excise taxes imposed under KRS Chapter 138 on gasoline and special fuels received by dealers.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 freezes the State tax on gasoline and special fuels to 26 cents and 23 cents respectively, per gallon, effective July 1, 2022, which is the current excise tax on gasoline and special fuels. Revenue generated was \$748,377,115 during fiscal year 2020-2021.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? (please see the response to (3)(a))

(c) How much will it cost to administer this program for the first year? The Department of Revenue currently administers the excise taxes that are the subject of this administrative regulation. Therefore, there will be no additional cost to administer this program for the first year or any subsequent years.

(d) How much will it cost to administer this program for subsequent years? (please see the response to (3)(c))

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: This administrative regulation freezes the State tax on gasoline and special fuels to 26 cents and 23 cents, respectively, per gallon, effective July 1, 2022. As a result of this administrative regulation, the Department estimates \$35.4 million in savings to citizens purchasing gas from a licensed dealer in the Commonwealth through mid-January of 2023, as the Department anticipates the freeze of the state gas tax will be necessary through that time, when the General Assembly will convene for its 2023 Regular Session.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The excise taxes imposed under KRS 138.220 on dealers receiving the gasoline or special fuel may be added to the selling price charged by the dealer or other person paying the tax. Therefore, no additional cost savings or expenditures will be incurred by the dealer.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? (please see the response to (4)(a))

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not result in any costs to the regulated entities in future years. (please see the response to (4)(a))

(d) How much will it cost the regulated entities for subsequent years? (please see response to (4)(a))

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

Cost Savings (+/-): n/a

Expenditures (+/-): n/a

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will have a positive economic impact on citizens of the Commonwealth of Kentucky because the taxes on gasoline and special fuels will remain constant at 26 cents per gallon on gasoline, including liquified petroleum, and 23 cents per gallon on diesel and other special fuels. This administrative regulation will not have an overall negative or adverse economic impact.

**STATEMENT OF EMERGENCY
907 KAR 23:020E**

This emergency administrative regulation is being promulgated to establish and fully implement the single state managed care organization (MCO) pharmacy benefits manager (PBM) required by 2020's Senate Bill 50. This emergency administrative regulation is further being amended to implement critically needed 340B data tracking requirements. Implementing 340B data tracking requirements will allow the department to stay in compliance with SB 50 and assure that the department stays in compliance with the duplicate discount provision pursuant to 42 U.S.C. 256b(a)(5)(A)(i). In implementing SB 50, this emergency administrative regulation is being promulgated to clarify that a \$10.64 dispensing fee will be paid once per month per drug per pharmacy for all Medicaid outpatient prescriptions. In addition, this administrative regulation will allow for additional dispensing fees to be paid for compounded drugs and certain substance use disorder (SUD) drugs. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with the legislative mandate established in 2020's SB 50 to reorganize the outpatient pharmacy benefits managed by each contracted MCO's PBM to a single PBM for the entire managed care population. The single MCO PBM was procured and commenced operations on July 1, 2021. This emergency administrative regulation is also needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding. Failure to continue the single MCO PBM and comply with a received federal approval could result in a loss of federal funds. Finally, DMS needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients. Emergency implementation of this administrative regulation is necessary to ensure that the existing independent pharmacies remain viable and continue to reliably serve the Medicaid population in geographically diverse areas of the state.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation. This emergency administrative regulation has the same number as an administrative regulation filed within the previous nine (9) months. This administrative regulation differs from the administrative regulation filed within the previous nine (9) months by including two new sections relating to 340B reimbursement. These amendments were necessary to comply with federal requirements relating to data submissions within the 340B program. The administrative regulation is also amended to allow certain substance use disorder (SUD) drugs to receive additional dispensing fees per month. This amendment was necessary following analysis that the applicable standard of care for certain SUD drugs justified multiple dispensing fees per month. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Secretary

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

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

EFFECTIVE: June 1, 2022

RELATES TO: KRS 205.5510 to 205.5520, 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.622, 205.6316(4), 217.015, 42 C.F.R. 440.120, 447.45, 447.500 - 447.520, 42 U.S.C. 256b, 1396a - 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5514(1)(b), 205.560, 205.561(2), 205.6316(4), 205.647(5), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity

presented by federal law to qualify for federal Medicaid funds. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish the professional dispensing fee for covered drugs. This administrative regulation establishes the Medicaid Program reimbursement requirements, including the professional dispensing fee, for covered outpatient drugs dispensed to all enrolled Medicaid recipients~~[who are not enrolled with a managed care organization]~~.

Section 1. Reimbursement. Reimbursement to a pharmacy or medical provider participating in the Medicaid Program for a covered outpatient drug provided to an eligible recipient shall be determined in accordance with the requirements established in this section. (1) A rebate agreement in accordance with 42 U.S.C. 1396r-8(a) shall be signed by the drug manufacturer, or the drug shall be provided based on an exemption from the rebate requirement established by 907 KAR 23:010, Section 5(3).

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

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

(a) National Drug Code (NDC); or

(b) Drug or active ingredient name, strength, and dosage form.

(4) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

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

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

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

(5) Reimbursement shall be denied if:

(a) The recipient is ineligible on the date of service;

(b) The drug is excluded from coverage in accordance with 907 KAR 23:010; or

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

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

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

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

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

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

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

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

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

(a) National Average Drug Acquisition Cost or NADAC, plus the professional dispensing fee, as established in Section 3;

(b) Wholesale acquisition cost or WAC, plus the professional dispensing fee, as established in Section 3;

(c) Federal upper limit or FUL, plus the professional dispensing fee, as established in Section 3;

(d) Maximum allowable cost or MAC, plus the professional dispensing fee, as established in Section 3; or

(e) The provider's usual and customary charge to the public, as identified by the claim charge[price].

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

(4) Pursuant to KRS 205.5510 to 205.5520:

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

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

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

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

(3)(a) As warranted by the applicable standard of care, the professional dispensing fee for a qualifying drug that is dispensed for the treatment of a substance use disorder shall be \$10.64 per pharmacy provider per recipient per drug reimbursed once every seven (7) days.

(b) Any additional dispenses after the first dispensing shall be warranted by the applicable standard of care.

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

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

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

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

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

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

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

(6) [340B Pharmacy Transactions.

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

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

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

(7) Physician administered drugs (PAD).

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

(b) Non-340B purchased PAD. Reimbursement for drug cost for a drug administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, not purchased through the 340B Program, and submitted for reimbursement as a medical benefit shall be reimbursed only for the drug cost by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. A professional dispensing fee shall not be paid for PAD.

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

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

Section 5. 340B Pharmacy Transactions for Fee-For-Service.

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

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

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

Section 6. 340B Pharmacy Transactions for Managed Care. (1)

A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department and be reimbursed pursuant to Section 2 of this administrative regulation.

(2) A 340B covered entity pharmacy shall notify the department on its own behalf and on behalf of any contracted pharmacy if it intends to use 340B drugs to fill prescriptions for qualified pharmacy claims within the managed care Medicaid program.

(3)(a) A covered entity that intends to use 340B drugs to fill prescriptions for qualified pharmacy claims shall submit a complete and accurate "Kentucky Medicaid 340B Participation Form".

1. A form shall be filed by the fifteenth (15th) of the last month of a quarter in order to be effective for that quarter. A form that is submitted later than the fifteenth (15th) of the last month of a quarter shall be effective for the following quarter and until revoked.

2. The form shall be effective until revoked pursuant to subsection (4) of this section.

(b) Any covered entity that no longer intends to participate and use 340B drugs to fill prescriptions for qualified pharmacy claims shall submit a complete and accurate "Kentucky Medicaid 340B Nonparticipation Form".

(4) All submissions shall be via electronic mail to an email account designated on the Kentucky Pharmacy Program website located at: <https://chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx>

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(5) The following entities, as relevant, shall review each previous quarter's eligible pharmacy claims:

(a) The covered entity, or the entity's designated claims administrator; and

(b) The contract pharmacy, or the entity's designated claims administrator.

Section 7. The maximum allowable cost, or MAC, shall be determined by taking into account each drug's cost, rebate status (non-rebateable or rebateable) in accordance with 42 U.S.C. 1396r-8(a), marketplace status (obsolete, terminated, or regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors considered shall include clinical indications of drug substitution, utilization, and availability in the marketplace.

(1) Drug pricing resources used to compare estimated acquisition costs for multiple-source drugs shall include comprehensive data files maintained by a vendor under contract to the department, such as:

(a) NADAC as published by CMS;

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

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

(d) ASP as published by CMS;

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

(f) Pharmacy providers; or

(g) Wholesalers.

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

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

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

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

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

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

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

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

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

Section 8.~~[Section 6.]~~ Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 9.~~[Section 7.]~~ Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "Kentucky Medicaid MAC Price Research Request Form", 2012; [is incorporated by reference.]

(b) "Kentucky Medicaid 340B Participation Form", 2022;

(c) "Kentucky Medicaid 340B Nonparticipation Form", 2022.

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

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

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

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 20, 2022

FILED WITH LRC: June 1, 2022 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment implements 2020's SB 50 and the department's awarded request for proposals as required by that legislation. The amendment further implements needed 340B data tracking measures in order to ensure that the Medicaid program is able to comply with federal law relating to duplicate discounts. 340B pharmacies are required to inform the department whether they will participate or not in providing 340B medications to Medicaid recipients. These changes are part of a new Section 5 and 6 of the administrative regulation that consolidate most 340B provisions. Section 5 is for Fee-For-Service 340B transactions and Section 6 is for MCO transactions. The administrative regulation is

also amended to allow certain substance use disorder (SUD) drugs to receive additional dispensing fees per month by allowing the dispensing fee to be available once every seven days. The administrative regulation is amended to clarify when the professional dispensing fee can be assessed, clarify clotting factor reimbursement, and establish professional dispensing fees for compounded drugs. The regulation is further amended to remove cost-sharing and comply with 2021 Senate Bill 55's removal of all co-pays. In addition, the regulation is amended to clarify that both in-house and contract 340B pharmacy reimbursement do not include the 340B ceiling price in the lowest of logic methodology. In addition, clotting factor reimbursement is now addressed in Section 2 of the administrative regulation, as a result, Section 4(8) became redundant and is being deleted. Finally, additional citations have been included in the "Relates To" and "Statutory Authority" sections.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to implement 2020's SB 50 and the department's awarded request for proposals as required by that legislation. In addition, 340B pharmacy claims are better tracked in order to comply with federal requirements.

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to be reimbursed by the DMS, participating providers will have to submit pharmacy or medical claims for covered outpatient drugs in accordance with this administrative regulation and applicable billing rules. In addition, 340B providers will need to submit participation or nonparticipation forms in order to inform DMS if they will be utilizing 340B drugs to fulfill Medicaid pharmacy claims.

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

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

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

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

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

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

and state matching funds of general and agency appropriations.

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

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

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

FISCAL NOTE

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent

years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities. As drafted, DMS anticipates that this administrative regulation will provide equivalent or greater dispensing fee reimbursement for pharmacies than was available under the pharmacy reimbursement system prior to the passage of 2020's SB 50.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

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. Other statutes or legislation may affect a regulation's actual end date.

BOARDS AND COMMISSIONS

Board of Nursing

(Emergency As Amended at ARRS, June 14, 2022)

201 KAR 20:070E. Licensure by examination.

EFFECTIVE: June 14, 2022

Prior versions:

Emergency Amendment: 48 Ky.R. 2702

RELATES TO: KRS 194A.540, 314.041, 314.051(3), (6), 314.103, 314.109, 314.475

STATUTORY AUTHORITY: KRS 39A.190, 314.041(2), 314.051(3), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination. This Emergency Amendment is promulgated pursuant to KRS 39A.190.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program.

(1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);

2. The licensure application fee as established in 201 KAR 20:240;

3. A criminal record check 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, and including payment of any required fee to the KSP and the FBI;

4. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);

5. A letter of explanation that addresses each conviction, if applicable;

6. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on any professional or business license in another jurisdiction; and

7. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications;

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and

(e) Apply to take and pass the National Council Licensure Examination.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination.

(3)(a) Except as provided in paragraph (b) of this subsection, the name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates.

(b) If the name does not appear on the list, the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.

(c) The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the applicable~~one and one-half (1.5) contact hour~~ continuing education courses~~course on pediatric abusive head trauma within three (3) years of licensure~~ as required by 201 KAR 20:215, Section 5~~(3)~~.

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)3 of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In this~~the~~ case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480~~, Section 1(4) and (4),~~ are met.

(3) To qualify as direct supervision pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall be physically present in the facility and immediately available to the applicant during work hours while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice pursuant to KRS 314.475 as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination after two (2) attempts, the provisional license shall be voided.

(6) A provisional license shall be valid for a period not to exceed six (6) months.

Section 5. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

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

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and

(b) "Certified List of Out-of-State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the agency's Web site at <https://kbn.ky.gov>.

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.

LABOR CABINET
Department of Workers' Claims
(Emergency Amended After Comments)

803 KAR 25:195E. Utilization review, appeal of utilization review decisions, and medical bill audit.

EFFECTIVE: June 14, 2022

Prior versions -

New Emergency Administrative Regulation: 48 Ky.R.

2710

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), (6), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(5) provides the commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(8) requires the commissioner to adopt or develop a pharmaceutical formulary and treatment guidelines; utilization review assists in the proper implementation of the pharmaceutical formulary and treatment guidelines. This administrative regulation ensures[insures] that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and medical bill audit program.

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

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

(3) "Carrier" is defined by KRS 342.0011(6).

(4) "Commissioner" is defined by KRS 342.0011(9).

(5) "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or

medication under review is not medically necessary or appropriate and, therefore, payment is not recommended.

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

(7) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(8) "Medically necessary" or "medical necessity" means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating, an illness, injury, disease or its symptoms, and that are:

(a) In accordance with generally accepted standards of medical practice;

(b) Clinically appropriate, in terms of type, frequency, extent site and duration; and

(c) Considered effective for the patient's illness, injury, or disease.

(9) "Medical payment obligor" means any self-insured employer, carrier, insurance carrier, self-insurer, or any person acting on behalf of or as an agent of the self-insured employer, carrier, insurance carrier, or self-insurer.

(10) "Medical provider" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and advanced practice registered nurses, acting within the scope of their license

(11) "Physician" is defined by KRS 342.0011(32).

(12) "Preauthorization" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(13) "Same medical specialty" means a branch of medical practice focused regularly and routinely on a defined group of patients, diseases, skills, body part, or type of injury and performed by a physician with the same or similar qualifications.

~~(14)~~~~(43)~~ "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.

~~(15)~~~~(44)~~ "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each medical payment obligor describing the procedures governing utilization review and medical bill audit activities.

~~(16)~~~~(45)~~ "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Utilization Review and Medical Bill Audit Program.

(1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy comply with KRS Chapter 342 and 803 KAR Chapter 25;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval. (1) A medical payment obligor shall fully implement and maintain a utilization review and medical bill audit program.

(2) A medical payment obligor shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice

from the commissioner.

(4) A medical payment obligor who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a medical payment obligor or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

(6) A ~~medical payment obligor [carrier who contracts with an approved vendor for utilization review services]~~ shall provide annually to the commissioner summaries of the number of utilization reviews conducted, ~~[utilization reviews waived in accordance with KRS 342.035(5)(c),]~~ utilization reviews resulting in an approval, and utilization reviews resulting in a denial. The annual report ~~[of the approved vendor]~~ shall be filed with the commissioner no later than August 1 for the preceding year, including any fiscal year ending on or before June 30.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures for making decisions;

(2) A statement that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the:

(a) Qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit; and

(b) The manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096 or 803 KAR 25:110;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

4. The extent of the review;

5. The conclusions of the reviewer; and

6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b); and

(10) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information.

Section 5. Claim Selection Criteria. (1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035 (5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed \$3000;

(d) The total lost work days cumulatively exceed thirty (30) days; or

(e) An administrative law judge orders a review.

(2) Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of notice that a claims selection criteria has been met unless additional information is required, in which case, utilization review shall be waived within two (2) business days following receipt of the requested information.

(a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived by the medical payment obligor:

1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, a single request shall be made within two (2) additional business days.

2. The requested information shall be submitted by the medical provider within ten (10) business days.

3. The initial utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within seven (7) business [ten (10) calendar] days of the initiation of the utilization review process, unless additional information is required. If additional information is required, a single request shall be made within two (2) additional business days.

2. The requested information shall be submitted by the medical provider within ten (10) business days.

3. The initial utilization review decision shall be rendered within two (2) business days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated within five (5) business [seven (7) calendar] days of receipt to assure:

(a) Compliance with applicable fee schedules, in accordance with 803 KAR Chapter 25;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096 or 803 KAR 25:110.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. The following professionals shall issue an initial utilization review approval:

(a) A physician;

(b) A registered nurse;

(c) A licensed practical nurse;

(d) A medical records technician; or

(e) Other personnel whose training and experience qualify them to issue decisions on medical necessity or appropriateness.

(2) Only a physician may issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

(a) Be issued to both the medical provider and the employee in a timely manner but no more than two (2) business days after initiation of the utilization review process unless additional information was required, in which case, the written notice of denial shall be issued no later than two (2) business days after the initial utilization review decision~~ten (10) calendar days from the initiation of the utilization review process~~;

(b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(c) Contain:

1. A statement of the medical reasons for denial;
2. The name, state of licensure and medical license number of the reviewer; and
3. An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within ten (10) business~~fourteen (14) calendar~~ days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of the same medical specialty~~at least the same qualifications~~ as the medical provider whose treatment is being reconsidered.

(c) A written reconsideration decision shall be rendered within seven (7) business~~ten (10) calendar~~ days of receipt of a request for reconsideration unless a peer-to-peer conference is requested, in which case, the written reconsideration decision shall be rendered within five (5) business days after the day on which the peer-to-peer conference was held. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2)

~~[(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:~~

~~1. A board eligible or certified physician in the appropriate specialty or subspecialty; or~~

~~2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.~~

~~(b) A written decision shall be rendered within ten (10) calendar days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".~~

~~(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.~~

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within ten (10)

business~~fourteen (14) calendar~~ days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within seven (7) business~~ten (10) calendar~~ days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 9. Peer-to-Peer Conference. (1) If the medical payment obligor denies preauthorization following utilization review, it shall issue a written notice of denial as required in Section 7 of this administrative regulation.

(2) The medical provider whose recommendation for treatment is denied may request reconsideration, and may require the reconsideration include a peer-to-peer conference with a second utilization review physician.

(3) The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date or dates for the conference not less than five (5) business days after the date of the request unless the peer-to-peer conference request stems from a denial issued pursuant to 803 KAR 25:270, in which case, a date or dates not less than two (2) business days after the date of the request. In either case, the parties may by agreement hold the conference in a shorter time period; and

(c) A one (1)-hour period during the date or dates specified during which the requesting medical provider, or a designee, will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The reviewing physician participating in the peer-to-peer conference shall be of the same medical specialty as the medical provider requesting reconsideration.

(5) Failure of the reviewing physician to participate during the date and time specified shall result in the approval of the request for preauthorization and approval of the recommended treatment unless good cause exists for the failure to participate. In the event of good cause for failure to participate in the peer-to-peer conference, the reviewing physician shall contact the requesting medical provider to reschedule the peer-to-peer conference. The rescheduled peer-to-peer conference shall be held no later than two (2) business days following the original conference date. Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.

(6) A written reconsideration decision shall be rendered within five (5) business days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION."

(7) If a Final Utilization Review Decision is rendered denying authorization for treatment before an award has been entered by or agreement approved by an administrative law judge, the requesting medical provider or the injured employee may file a medical dispute pursuant to 803 KAR 25:012. If a Final Utilization Review Decision is rendered denying authorization for treatment after an award has been entered by or agreement approved by an administrative law judge, the employer shall file a medical dispute pursuant to 803 KAR 25:012.

(8) Pursuant to KRS 342.285(1), a decision of an administrative law judge on a medical dispute is subject to review by the workers' compensation board under the procedures set out in 803 KAR 25:010, Section 22.

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

SCOTT WHILHOIT, Commissioner

APPROVED BY AGENCY: June 14, 2022

FILED WITH LRC: June 14, 2022 at 3:00 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation governs medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to KRS Chapter 342.

(b) The necessity of this administrative regulation: KRS 342.035(5)(c) requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to KRS Chapter 342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.020 makes employers and their payment obligors responsible for payment of reasonable and necessary medical treatment for the cure and relief of work-place injuries and occupational diseases. Utilization review assists employers and employees in determining whether medical treatment is reasonable and necessary. Additionally, KRS 342.020(7)(f) requires employers with a managed care system to establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee. This regulation provides guidance to stakeholders regarding the requirements of a utilization review program and its implementation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation provides guidance to stakeholders regarding the requirements of a statutorily required utilization review program and its implementation.

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

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

(b) The necessity of the amendment to this administrative regulation: To respond to stakeholder comments.

(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: Insurance carriers, self-insured groups, self-insured employers, and injured 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: Insurance carriers, self-insured groups, and self-insured employers will be required to have a system of utilization review to assess the reasonableness and necessity of medical treatment. Entities utilizing a managed care organization must include utilization review as part of that program. Employees will receive appropriate medical treatment in a timely manner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs are expected to remain consistent with current costs.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Employers, medical payment obligors, and employees may be assured that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, is cost ineffective, and not harmful to the employee.

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

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

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

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

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

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

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

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.035, and 342.260.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on state or local government because the activities associated with the emergency administrative regulation are currently performed by those entities; however, the same cannot be said absent this emergency administrative regulation.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, June 14, 2022)

201 KAR 20:085. Licensure periods and miscellaneous requirements.

RELATES TO: KRS 61.878, 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.071, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.071(1) requires the board to establish licensure periods by administrative regulation for licenses issued by the board. This administrative regulation establishes the licensure periods and ~~it also establishes~~ miscellaneous requirements.

Section 1. (1) A nursing license or credential issued during the first six (6) months of a licensure period shall expire at the end (October 31) of the current licensure period.

(2) A nursing license or credential issued during the last six (6) months of a licensure period shall expire at the end (October 31) of the succeeding licensure period.

Section 2. Licensure Periods. ~~[(1)]~~ The licensure period for all licenses and credentials, except for provisional, inactive, and retired status licenses, shall be for one (1) year beginning on November 1.

Section 3. For the purposes of the practice of nursing, a nurse shall use the name under which he or she is licensed with the board of nursing.

Section 4. (1) A nurse shall provide the board with an electronic mail (email) address to receive communications from the board.

(2) This requirement shall also apply to dialysis technicians and certified professional midwives.

(3) The email address provided shall be exempt from disclosure pursuant to KRS 61.878(1)(a).

Section 5. (1) A nurse shall provide the board with Workforce Data as part of the nurse's[their] licensure renewal application under 201 KAR 20:370.

(2) The Workforce Data is collected for statistical purposes and shall be exempt from disclosure pursuant to KRS 61.878(1)(a).

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.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, June 14, 2022)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 194A.540, 314.031, 314.041, 314.051, 314.091, 314.103, 314.109, 314.475, 314.991

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.103, 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 to 314.991. KRS 314.041(7) and 314.051(8) authorize the

board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement.

(1) To be eligible for licensure by endorsement, an applicant shall:

(a)1. Have completed a state approved program of nursing equivalent to Kentucky requirements; or

2. Have completed ~~requirements found[that portion of a state-approved program of nursing that is]~~ equivalent to a state[Kentucky] program of nursing;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report and submit a certified or attested copy of each disciplinary action taken or pending on a nursing or other professional or business license by another jurisdiction and a letter of explanation;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);

(g) Request the U.S. jurisdiction, territory, or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:

1.a. Name of the program of nursing completed and date of graduation; or

b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and

2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by the licensing authority and is not subject to disciplinary action;

(h) Submit a criminal record check 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, and including payment of any required fee to the KSP and the FBI; and

(i) Submit evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications as approved by the board.

(2) An application shall be valid for a period of one (1) year. The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After one (1) year~~[six (6) months]~~ if the requirements for licensure have not been met, the applicant shall:

- (a) Submit a new application;
- (b) Submit the current licensure application fee as established by 201 KAR 20:240; and

(c) Meet the requirements established in this section.

~~(4)[(a)] The applicant shall meet all of the [complete the three (3)-hour] continuing education course [on domestic violence within three (3) years of licensure as required by KRS 194A.540.~~

~~(b) The applicant shall complete the one and one-half (1.5) contact hour continuing education course on pediatric abusive head trauma within three (3) years of licensure as required by learning requirements in 201 KAR 20:215, Section 5[(3)] that are required for the applicant's licensure.~~

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (1)(h) of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Nursing Practice and Continuing Education Requirements.

(1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets all of the requirements of Section 1(1)(a) through (i), except for paragraph (g) of this administrative regulation shall be issued a temporary work permit, but not until the report is received from the FBI and any conviction is addressed by the board.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures shall be used in the development of the examination;

(2) The examination shall be available to the board in the English language;

(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content

weighting;

(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination shall be 0.80 or higher;

(6) The examination shall be revised after each administration to ensure currency and security of content; and

(7) The examination shall be given under strict security measures.

Section 5. Applicants for LPN License Pursuant to KRS 314.041 ~~(16)~~~~(13)~~. An applicant for an LPN license pursuant to KRS 314.041 ~~(16)~~~~(13)~~ shall meet the requirements of this administrative regulation.

Section 6. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, June 14, 2022)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, for:

(a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) ~~For~~ RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) Licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) Licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) Retired licensure status, Application for Retired Status;

(g) APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);

(h) APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or

(i) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

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(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. An application shall lapse and the fee shall be forfeited if the application is not completed:

(1) For an application for licensure by endorsement, within one (1) year[six (6) months] from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 1/2016, Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 02/2022[02/2024], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 02/2022[02/2024], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 02/2022[02/2024], Kentucky Board of Nursing;

(h) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2022[02/2024], Kentucky Board of Nursing; and

(i) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at [https://kbn.ky.gov/conpro/Pages/Laws-and-](https://kbn.ky.gov/conpro/Pages/Laws-and-Regulations.aspx)

[Regulations.aspx.\[https://kbn.ky.gov/legalopinions/Pages/laws.aspx\]](https://kbn.ky.gov/legalopinions/Pages/laws.aspx)

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

BOARDS AND COMMISSIONS

Board of Licensure for Massage Therapy (As Amended at Interim Joint Committee on Licensing, Occupations, and Administrative Regulations, June 2, 2022)

201 KAR 42:020. Fees.

RELATES TO: KRS 309.356, 309.357[~~309.362~~(2), (3)]

STATUTORY AUTHORITY: KRS 309.355(3), 309.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357 requires the board to establish reasonable fees for the licensure of massage therapists. KRS 309.357[309.362](2) and (3) authorize the issuance of an inactive license and reinstatement. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:

(a) Made payable as required by KRS 309.356 to the Kentucky State Treasurer[State Treasury]; and

(b) Paid by:

1. Cashier's check;

2. Certified check;

3. Money order;

4. Personal check; or

5. Online payment by credit card, debit card, or electronic check.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

(3) The application fee and the initial licensure fee established in Section 2(1) of this administrative regulation shall be nonrefundable.

(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be \$200[425].

(2)(a) The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be \$200[400].

(b) If the license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late renewal shall be \$225[450].

(c) If the license is renewed sixty-one (61) to ninety(90)[ninety-one (91)][~~ninety (90)~~] days after the expiration of the license, the late renewal fee shall be \$250[200].

(d) ~~If a license has been expired for ninety-one (91) [if a license is not renewed within] [ninety (90) days] or more [of expiration of the license], the licensee shall apply for reinstatement.~~ [the applicant shall comply with KRS 309.357(6).]

(3) The licensee may apply to reinstate the license by paying the late renewal fee of \$250 and the following reinstatement fee:

(a) For applications for reinstatement submitted after ninety (90) days, but before one (1) year after the license expired, \$100;

(b) For applications for reinstatement submitted after one (1) year, but before two (2) years after the license expired, \$150;

(c) For applications for reinstatement submitted after two (2) years, but before three (3) years after the license expired, \$200;

(d) For applications for reinstatement submitted after three (3) years, but before four (4) years after the license expired, \$250; or

(e) For applications for reinstatement submitted after four (4) years, but before five (5) years after the license expired, \$300.

(f) A license shall not be reinstated under subsection/Section 21 (2)(d) of this section if more than five (5) years have passed since the license expired. A person may apply for and obtain a new license by meeting the current requirements for licensure.

(4)(3) A licensee shall be in good standing with the board at the time the licensee elects inactive status.

(5)(4)(a) The annual renewal date for an inactive license shall remain the original issue date of the license.

(b) The fee for the issuance of an inactive license shall be fifty (50) dollars.

(c) The annual renewal fee for an inactive license shall be fifty (50) [thirty-five (35)] dollars.

(6)(5) If the inactive license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late inactive renewal shall be seventy (70) dollars [52-50].

(7)(6) If the inactive license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be eighty-five (85) [seventy (70)] dollars.

(8)(7) The application fee for restoring [moving] a license from inactive to active status shall be fifty (50) dollars and shall not be prorated.

(9)(8) A licensee who elects inactive status or an inactive licensee electing to activate his or her license shall complete and submit an Application for Inactive Status, Renewal of Inactive Status, or Return to Active Status in addition to the fee referenced in subsection (7) of this section. An applicant shall affix a two (2) inch by two (2) inch or larger passport quality color photograph of the applicant to the Application for Inactive Status, Renewal of Inactive Status, or Return to Active Status.

(10)(9) A licensee who elects to give notice of the licensee's retirement and voluntarily surrender his or her massage therapy license shall complete and submit a notarized written request [Voluntary Retirement Non-Renewal form].

(11) The fee for an initial certificate of good standing for a program of massage therapy instruction in accordance with 201 KAR 42:080, Section 2, shall be \$125.

(12) The annual fee for renewal of a certificate of good standing for a program of massage therapy instruction in accordance with 201 KAR 42:080, Section 3, shall be seventy-five (75) dollars.

(13) The fee for a one (1) time certificate of good standing shall be fifty (50) dollars. This is only applicable to: out-of-state schools who have a graduate applying to the board for licensure as a massage therapist and therefore complete the Certificate of Good Standing application, as incorporated by reference in 201 KAR 42:080 for the period of time in which the graduate was in attendance.

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

(a) "Application for Inactive Status, Renewal of Inactive Status, or Return to Active Status", June 2021 is incorporated by reference. [October 2016; and

(b) "Voluntary Retirement Non-Renewal", October 2016.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street [Division of Occupations and Professions, 911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://bmt.ky.gov/>.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

BOARDS AND COMMISSIONS

Kentucky Applied Behavior Analysis Licensing Board (As Amended at ARRS, June 14, 2022)

201 KAR 43:010. Application procedures for licensure.

RELATES TO: KRS 319C.070, 319C.080(1), (2)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for licensure.

Section 1. Application Procedures. (1) An Application for Licensure as a behavior analyst shall [or assistant behavior analyst may] be submitted after the requirements established in KRS 319C.080(1) [and (2)] are met.

(2) An Application for Licensure as an assistant behavior analyst shall be submitted after the requirements established in KRS 319C.080(2) are met.

(3) The application required by subsections (1) and (2) of this section shall be made by submitting a completed Form ABA-001, Application for Licensure, to the board. The application shall include:

(a) A certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that [the board shall take disciplinary action in accordance with KRS 319C.070 if the application contains] a misrepresentation or falsification in the application is grounds for denial or revocation of the license at any time; [and]

(b) A copy of the degree obtained; [An official transcript for all levels of education required for licensure.]

[c)] (4)] A check or money order payable to the Kentucky State Treasurer for the application review [fee] and [the] licensure fee as required by 201 KAR 43:030;

[d)] (5)] Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1) for applicants seeking licensure as a behavior analyst and KRS 319C.080(2) for applicants seeking licensure as an assistant behavior analyst; and

[e)] (6)] Proof of completion of at least five (5) hours of training in:

1. [(a)] Adult abuse and neglect;

2. [(b)] Child abuse, neglect, and dependency; or

3. [(c)] A combination of subparagraphs 1. [(a)] and 2. [(b)] of this paragraph [subsection]. The completed proof [proof(s)] shall indicate that abuse, neglect, or dependency was explicitly covered in the training.

(4) [(7)] Applicants for licensure as an assistant behavior analyst shall also submit a completed Supervisory Plan, Form ABA-002, as incorporated by reference in 201 KAR 43:050, for board approval.

(5) [(8)] A licensed assistant behavior analyst may apply for licensure as a licensed behavior analyst at any time within the two (2) year licensure period after meeting the requirements established in this administrative regulation. A final Report of Supervision, Form ABA-003, as incorporated by reference in 201 KAR 43:050, shall also be submitted for board approval.

Section 2. Applications Committee. The applications committee shall consist of at least two (2) board members appointed by the chair of the board. The applications committee may be assisted by the board staff and counsel to the board. The applications committee shall: [Licensure of Behavior Analysts. The applicant for licensure as a behavior analyst shall submit:]

(1) Review applications for licensure including renewals and reinstatements; [A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;]

(2) Review Supervisory Plans and Reports of Supervision;~~[Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1); and]~~

(3) Make recommendations to the board to approve, defer, or deny applications; and~~[Proof of completion of at least five (5) hours of training in:~~

- ~~(a) Adult abuse and neglect prevention;~~
- ~~(b) Child abuse, neglect, and dependency prevention; or~~
- ~~(c) A combination of paragraphs (a) and (b) of this subsection.]~~

(4) Make recommendations to the board to approve or require revisions to Supervisory Plans and Reports of Supervision.

Section 3. ~~[Licensure of Assistant Behavior Analysts. The applicant for licensure as an assistant behavior analyst shall submit:~~

(1) A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;

(2) Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(2); and

- (3) Proof of completion of at least five (5) hours of training in:
- ~~(a) Adult abuse and neglect prevention;~~
- ~~(b) Child abuse, neglect, and dependency prevention; or~~
- ~~(c) A combination of paragraphs (a) and (b) of this subsection.~~

Section 4. Incorporation by Reference. (1) Form ABA-001, "Application for Licensure", ~~May 2022~~October 2021 [October 2015], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC32[914 Leewood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at aba.ky.gov.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

BOARDS AND COMMISSIONS

Kentucky Applied Behavior Analysis Licensing Board (As Amended at ARRS, June 14, 2022)

201 KAR 43:020. Application procedures for temporary licensure.

RELATES TO: KRS 319C.070, 319C.080(3)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for temporary licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for temporary licensure.

Section 1. Application procedures. (1) An application for a temporary license as a behavior analyst or assistant behavior analyst ~~shall~~may be submitted after the requirements established in KRS 319C.080(3) are met.

(2) The application required by subsection (1) of this section shall be made by submitting to the board a completed Form ABA-001, Application for Licensure, as incorporated by reference in 201 KAR 43:010.

(a) The application shall include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;
2. Applicant is aware that~~[the board may take disciplinary action in accordance with KRS 319C.070 if the application contains]~~ a misrepresentation or falsification in the application is

grounds for denial or revocation of the license; and

3. Applicant is aware that ~~any~~[the] temporary license issued expires **two (2)**~~four (4)~~[shall expire two (2)] years from the issuance date and **may be renewed only once, if the temporary licensee produces a record signed by the supervisor with his or her renewal application indicating that fieldwork hours toward a BACB credential were being accumulated every month while credentialed as a temporary licensee or produces documentation showing extenuating circumstances that prevented the accumulation of fieldwork hours, such as illness of the temporary licensee, maternity leave of the temporary licensee, or the temporary licensee's displacement from employment**~~[shall not be renewed]~~.

(b) If the applicant has completed the coursework through a Behavior Analyst Certification Board (BACB) or Association for Behavior Analysis International (ABAI) Verified Course Sequence (VCS)~~[BACB-approved program]~~, the application shall include an official~~[original, certified]~~ post-secondary transcript and VCS course sequence number.

(c) If the applicant has completed coursework from a non-BACB or non-ABAI VCS~~[approved]~~ program, the application shall include an official post-secondary transcript and course syllabi for all behavior-analytic coursework showing that the applicant has met the most current BACB coursework requirements for eligibility to sit for the Board Certified Behavior Analyst (BCBA) examination for applicants applying for a temporary license as a behavior analyst or the Board Certified Assistant Behavior Analyst examination for applicants applying for a temporary license as an assistant behavior analyst.~~[for a Board Certified Behavior Analyst@ or Board Certified Assistant Behavior Analyst.]~~

(3) The applicant shall submit check or money order payable to the Kentucky State Treasurer for the application review ~~[fee]~~and [the] licensure fee as required by 201 KAR 43:030.~~[.]~~

(4) The applicant shall submit proof of compliance with the ~~[educational, examination, and credentialing]~~ requirements established in KRS 319C.080~~(3)~~~~[(4); and]~~

(5) The applicant shall submit proof of completion of at least five (5) hours of training in:

- ~~(a) Adult abuse and neglect;~~
- ~~(b) Child abuse, neglect, and dependency; or~~
- ~~(c) A combination of paragraphs (a) and (b) of this subsection.~~

The completed ~~proof~~proofs(s)] shall indicate that abuse, neglect, or dependency was explicitly covered in the training.

(6) Applicants for temporary licensure as a behavior analyst or assistant behavior analyst shall also submit a completed Supervisory Plan for board approval, Form ABA-002, as incorporated by reference in 201 KAR 43:050.

(7) An application for full licensure may be submitted at any time within the ~~two (2)~~four (4)] year ~~[period]~~ temporary licensure period after meeting the requirements established in KRS 319C.080(1) and (2). A final Report of Supervision, Form ABA-003, as incorporated by reference in 201 KAR 43:050, shall also be submitted for board approval.~~[~~

Section 2. ~~Temporary Licensure of Behavior Analysts. The applicant for temporary licensure as a behavior analyst shall:~~

(1) ~~Submit a check or money order payable to the Kentucky State Treasurer for the application review fee and the temporary licensure fee as required by 201 KAR 43:030;~~

(2) ~~Submit proof of compliance with the requirements established in KRS 319C.080(3); and~~

(3) ~~Submit proof of completion of at least five (5) hours of training in:~~

- ~~(a) Adult abuse and neglect prevention; and~~
- ~~(b) Child abuse, neglect, and dependency prevention.~~

Section 3. ~~Temporary Licensure of Assistant Behavior Analysts. The applicant for temporary licensure as an assistant behavior analyst shall:~~

(1) ~~Submit a check or money order payable to the Kentucky State Treasurer for the application review fee and the temporary licensure fee as required by 201 KAR 43:030;~~

(2) ~~Submit proof of compliance with the requirements~~

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established in KRS 319C.080(3); and

(3) Submit proof of completion of at least five (5) hours of training in:

- (a) Adult abuse and neglect prevention; and
- (b) Child abuse, neglect, and dependency prevention.]

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, June 14, 2022)

201 KAR 43:030. Fees.

RELATES TO: KRS 319C.060(2)(f), 319C.080(1), (2), (3)

STATUTORY AUTHORITY: KRS 319C.060(2)(f), 319C.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(f) requires the board to promulgate administrative regulations establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes those fees.

Section 1. Application and Licensure Fees for Licensed Behavior Analysts. (1) An applicant for licensure as a licensed behavior analyst shall pay the following:

(a) A ~~\$400~~~~[100—nonrefundable]~~ application review and licensure fee~~;~~ for the first two (2) year licensure period~~;~~~~and]~~

(b) A licensed assistant behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their~~[A \$300 licensure fee for the first]~~ two (2) year licensure period shall pay a \$100 non-refundable application review fee;

(c) A temporary licensed behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their two (2) year~~four (4)]~~ licensure period shall pay a non-refundable \$100 application review fee; and

(d) A temporary licensed assistant behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their two (2) year~~four (4)]~~ licensure period shall pay a non-refundable \$100 application review fee.

(2) The licensure renewal fee for a licensed behavior analyst for each subsequent, two (2) year licensure period shall be \$300.

Section 2. Application and Licensure Fees for Licensed Assistant Behavior Analysts. (1) An applicant for licensure as a licensed assistant behavior analyst shall pay the following:

(a) A ~~\$300~~~~[100—nonrefundable]~~ application review and licensure fee~~;~~ for the first two (2) year licensure period~~;~~~~and]~~

(b) A temporary licensed assistant behavior analyst applying for licensure as a licensed assistant behavior analyst for the remainder of the two (2)]~~four (4)]~~~~[A \$200 licensure fee for the first two (2)]~~ year licensure period shall pay a \$100 non-refundable application review fee.

(2) The licensure renewal fee for a licensed assistant behavior analyst for each subsequent, two (2) year licensure period shall be \$200.

Section 3. Application and Temporary Licensure Fees. (1) An applicant for a temporary license as a behavior analyst shall pay a \$300 [the following:

(a) A ~~\$100 nonrefundable]~~ application review [fee;] and[

(b) A ~~\$200 temporary]~~ licensure fee for the two (2)]~~four (4)]~~~~[two (2)]~~ year temporary licensure period.

(2) The licensure renewal fee for a temporary licensed behavior analyst for a one (1) time subsequent two (2) year licensure period shall be \$200.

(3) An applicant for a temporary license as an assistant behavior analyst shall pay a \$200 [the following:

(a) A ~~\$100 nonrefundable]~~ application review [fee;] and[

(b) A ~~\$100 temporary]~~ licensure fee for the two (2)]~~four (4)]~~~~[two (2)]~~ year temporary licensure period.

(4) The licensure renewal fee for a temporary licensed assistant behavior analyst for a one (1) time subsequent two (2) year licensure period shall be \$100.

Section 4. Fees for Inactive Status. (1) A licensed behavior analyst or a licensed assistant behavior analyst who applies for inactive status shall pay a fee of \$100.

(2) A licensed behavior analyst or a licensed assistant behavior analyst who applies to renew their inactive status shall pay a fee of \$100.

Section 5. Fee for Retired Status. A licensed behavior analyst or a licensed assistant behavior analyst who applies for retired status shall pay a fee of \$100 dollars.

Section 6. Fees for Late Renewal or Reinstatement~~[—of a Licensed Behavior Analyst and Licensed Assistant Behavior Analyst]~~. (1) A ~~licensee~~~~[licensed behavior analyst or a licensed assistant behavior analyst]~~ who files to renew his or her license after its renewal date but within thirty (30) days of that renewal date shall pay a late fee of fifty (50) dollars in addition to the fee set forth in Section 1 or 2 of this administrative regulation.

(2) A licensed behavior analyst or a licensed assistant behavior analyst who files to reinstate his or her ~~expired~~ license more than thirty (30) days after its renewal date [but within three (3) years of that renewal date] shall pay a reinstatement fee of \$250 in addition to the renewal fee set forth in Section 1 ~~[—of]~~ 2, or 3 of this administrative regulation.

(3) A licensed behavior analyst or a licensed assistant behavior analyst who applies to reinstate following a period of board-approved inactive status or retirement shall pay a reinstatement fee of \$100 in addition to the renewal fee set forth in Section 1 or 2 of this administrative regulation.

Section 7. For applications that are denied, the applicant may request a fifty (50) percent refund of the application and licensure review fee in writing to the board administrator within ninety (90) days.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, June 14, 2022)

201 KAR 43:040. Code of ethical standards and standards of practice.

RELATES TO: KRS 202A.400, 319C.060(1), (2)(c), 620.030, 645.270

STATUTORY AUTHORITY: KRS 319C.060(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(c) requires the board to adopt a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes the code of ethical standards and standards of practice for licensees.

Section 1. Definitions. (1) "BACB Code" means the Behavior Analyst Certification Board (~~[the]~~~~BACB~~~~['])~~ January 1, 2022 Ethics Code for Behavior Analysts.

(2) ~~[In addition to the definition set forth in the BACB Code,]~~ "Behavior analyst" means a person ~~[was]~~ licensed under KRS Chapter 319C as a licensed behavior analyst, a licensed assistant behavior analyst, or a temporary licensee.

(3)~~[(2)]~~ ~~[In addition to the definition set forth in the BACB Code,]~~ "Client" means:

(a) A client as defined in the BACB Code:

(b) A person who receives behavior analytic assessment, intervention, consultation, treatment, or other professional services for the purpose of practicing applied behavior analysis; **and**

(c) A corporate entity or other organization **shall be considered the client** if the professional contract is to provide a professional service of benefit to the corporate entity or organization; **and**

(d) The **A** legal guardian of a minor or a legally incompetent adult **shall be considered the client** for a decision-making purpose who meets the requirements established in Section 2 of this administrative regulation.

(4) **(3)** "Confidential information" means information revealed by a client or clients or otherwise obtained by a behavior analyst in a professional relationship and includes all **protected health information (PHI) and educational records** **data, assessments, and recommended interventions as confidential**.

(5) **(4)** **"Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if the authority has been lawfully delegated to the magistrate or administrator.**

(6) **(5)** "Kentucky Code" means the Code of Ethics set forth in this administrative regulation.

(6) **(7)** "Professional relationship" means a mutually agreed upon relationship between a behavior analyst and a client for the purpose of the client obtaining the behavior analyst's professional expertise.

(7) **(8)** **(6)** "Professional service" means all actions of the behavior analyst in the context of a professional relationship with a client.

(9) **(7)** **"Technician" [Supervisee]" means a person who functions under the extended authority of the behavior analyst to implement [provide] behavioral services.**

(10) **(8)** **[In addition to the definition set forth in the BACB Code, "Trainee" means a person who is acquiring experience in applied behavior analysis toward an eligibility requirement for either a Board Certified Behavior Analyst (BCBA) or Board Certified Assistant Behavior Analyst (BCaBA) [BCBA or BCaBA] certification credential.]**

Section 2. Administration and Enforcement of the Code of Ethics. (1) Notwithstanding the requirements of the BACB Code, the changes established in the Kentucky Code shall be mandatory and shall supersede any conflicting provisions of the BACB Code.

(2) Except as superseded by the provisions of this administrative regulation and the Kentucky Code, the BACB Code shall be the mandatory ethics code for Kentucky Applied Behavior Analysts.

Section 3. Additional Requirements for Kentucky Licensees.

(1) Reporting of abuse of children and vulnerable adults. The behavior analyst shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.

(2) Disclosure without informed written consent. The behavior analyst shall disclose confidential information without the informed consent of the client if the behavior analyst has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.

Section 4. Incorporation by Reference. (1) "Ethics Code for Behavior Analysts", Behavior Analyst Certification Board, January 1, 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Behavior Analyst Certification Board's Web site at <https://www.bacb.com/wp-content/ethics-code-for-behavior-analysts/>.

Requirements. (1) Identification of a client. A client shall be a person who receives:

(a) An evaluation, assessment, or professional services;

(b) Other professional services for the purpose of practicing applied behavior analysis or applied behavior analysis interventions; or

(c) Consultation regarding applied behavior analysis or applied behavior analysis interventions in the context of a professional relationship.

(2) A corporate entity or other organization shall be considered the client if the professional contract is to provide a professional service of benefit to the corporate entity or organization.

(3) A legal guardian of a minor or legally incompetent adult shall be considered the client for a decision-making purpose.

(4) A person identified as a client pursuant to subsections (1) to (3) of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.

Section 3. Competence. (1) Limits on practice. The behavior analyst shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

(2) Maintaining competency. The behavior analyst shall maintain current competency in the areas in which he or she practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.

(3) Adding new services and techniques. The behavior analyst, if developing competency in a service or technique that is new either to the behavior analyst or new to the profession, shall engage in ongoing consultation with other behavior analysts or relevant professionals and shall obtain appropriate education and training. The behavior analyst shall inform a client of the innovative nature and the known risks associated with the service, so that the client can exercise freedom of choice concerning the service.

(4) Referral. The behavior analyst shall make or recommend a referral to other professional, technical, or administrative resources if a referral is clearly in the best interests of the client.

(5) Sufficient professional information. A behavior analyst rendering a formal professional opinion in a report, letter, or testimony about a person shall not do so without direct and substantial professional contact with or a formal assessment of that person.

(6) Maintenance and retention of records.

(a) The behavior analyst rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include:

1. The presenting problem, purpose, or diagnosis from another mental health professional;

2. The fee arrangement;

3. The date and substance of each professional contact or service;

4. Test results or other evaluative results obtained and the basic test data from which the results were derived;

5. Notation and results of a formal consult with another provider; and

6. A copy of all test or other evaluative reports prepared as part of the professional relationship.

(b) The behavior analyst shall ensure that all records are maintained for a period of not less than six (6) years after the last date that services were rendered.

(c) The behavior analyst shall store and dispose of written, electronic and other records in a manner which shall ensure their confidentiality.

(d) For each person supervised pursuant to KRS Chapter 319C, the behavior analyst shall maintain for a period of not less than six (6) years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.

(7) Continuity of care. The behavior analyst shall make arrangements for another appropriate professional or professionals to provide for an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.

~~Section 4. Impaired Objectivity and Dual Relationships. (1) Impaired behavior analyst.~~

~~(a) The behavior analyst shall not undertake or continue a professional relationship with a client if the objectivity or competency of the behavior analyst is impaired due to a mental, emotional, physiologic, pharmacologic, or substance abuse condition.~~

~~(b) If an impairment develops after a professional relationship has been initiated, the behavior analyst shall:~~

- ~~1. Terminate the relationship in an appropriate manner;~~
- ~~2. Notify the client in writing of the termination; and~~
- ~~3. Assist the client in obtaining services from another professional.~~

~~(2) Prohibited dual relationships.~~

~~(a) The behavior analyst shall not undertake or continue a professional relationship with a client, or the client's parent or legal guardian, if the objectivity or competency of the behavior analyst is impaired because of the behavior analyst's present or previous familial, social, sexual, emotional, financial, supervisory, administrative, or legal relationship with the client or a relevant person associated with or related to the client.~~

~~(b) The behavior analyst, in interacting with a client, or the client's parent or legal guardian, shall not:~~

- ~~1. Engage in verbal or physical behavior toward the client, or the client's parent or legal guardian, which is sexually seductive, demeaning, or harassing;~~
- ~~2. Engage in sexual intercourse or other physical intimacy with the client or the client's parent or legal guardian; or~~
- ~~3. Enter into a potentially exploitative relationship with the client, or the client's parent or legal guardian.~~

~~(c) The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the behavior analyst.~~

~~Section 5. Client Welfare. (1) Providing explanation of procedures. The behavior analyst shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The behavior analyst shall keep the client fully informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.~~

~~(2) Termination of services.~~

~~(a) If professional services are terminated, the behavior analyst shall offer to assist the client in obtaining services from another professional.~~

~~(b) The behavior analyst shall:~~

- ~~1. Terminate a professional relationship if the client is not benefiting from the services; and~~
- ~~2. Prepare the client appropriately for the termination.~~

~~(3) Stereotyping. The behavior analyst shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis, which would interfere with the objective provision of professional services to the client.~~

~~(4) Solicitation of business by clients. The behavior analyst providing services to an individual client shall not induce that client, or the client's parent or legal guardian, to solicit business on behalf of the behavior analyst.~~

~~(5) Referrals on request. The behavior analyst providing services to a client shall make an appropriate referral of the client to another professional if requested to do so by the client.~~

~~Section 6. Welfare of Supervisees and Research Subjects. (1) Welfare of supervisees. The behavior analyst shall not exploit a supervisee.~~

~~(2) Welfare of research subjects. The behavior analyst shall respect the dignity and protect the welfare of his or her research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research~~

~~subjects.~~

~~Section 7. Protecting the Confidentiality of Clients. (1) General. The behavior analyst shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the behavior analyst shall obtain the informed written consent of the client prior to disclosing confidential information.~~

~~(2) Disclosure without informed written consent. The behavior analyst shall disclose confidential information without the informed consent of the client if the behavior analyst has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.~~

~~(3) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:~~

~~(a) Apply to information that pertains to:~~

- ~~1. The corporation or organization; or~~
- ~~2. An individual, including personal information, if the information is obtained in the proper course of the contract; and~~

~~(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:~~

- ~~1. Obtained in a separate professional relationship between the behavior analyst and the individual; and~~
- ~~2. Subject to the confidentiality requirements established in this section.~~

~~(4) Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the behavior analyst to a client or clients, the behavior analyst shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.~~

~~(5) Multiple clients. If service is rendered to more than one (1) client during a joint session, the behavior analyst shall, at the beginning of the professional relationship, clarify to all parties the manner in which confidentiality shall be handled.~~

~~(6) Legally dependent clients. At the beginning of a professional relationship, the behavior analyst shall inform a client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality with respect to his or her communications with the behavior analyst.~~

~~(7) Limited access to client records. The behavior analyst shall limit access to client records to preserve their confidentiality and shall ensure that all persons working under the behavior analyst's authority comply with the requirements for confidentiality of client material.~~

~~(8) Release of confidential information. The behavior analyst shall release confidential information upon court order or to conform with state law, including KRS 422.317, or federal law or regulation.~~

~~(9) Reporting of abuse of children and vulnerable adults. The behavior analyst shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.~~

~~(10) Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with other appropriate professionals concerning the welfare of the client, the behavior analyst may share confidential information about the client if the behavior analyst takes reasonable steps to ensure that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.~~

~~(11) Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the behavior analyst shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client identification.~~

~~(12) Observation and electronic recording. The behavior analyst shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.~~

~~(13) Confidentiality after termination of professional relationship. The behavior analyst shall continue to treat as confidential information regarding a client after the professional relationship between the behavior analyst and the client has ceased.~~

~~Section 8. Representation of Services. (1) Display of credentials. The behavior analyst shall display his or her current credential to practice on the premises of his or her professional office.~~

~~(2) Misrepresentation of qualifications. The behavior analyst shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.~~

~~(3) Misrepresentation of affiliations. The behavior analyst shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the behavior analyst is associated.~~

~~(4) False or misleading information. The behavior analyst shall not include false or misleading information in a public statement concerning professional services offered.~~

~~(5) Misrepresentation of services or products. The behavior analyst shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:~~

~~(a) The service or product;~~

~~(b) The degree of his or her responsibility for the service or product; or~~

~~(c) The nature of his or her association with the service or product.~~

~~(6) Correction of misrepresentation by others. The behavior analyst shall correct others who misrepresent the behavior analyst's professional qualifications or affiliations.~~

~~Section 9. Disclosure of Cost of Services. The behavior analyst shall not mislead or withhold from a client, prospective client, or third party payor, information about the cost of his or her professional services.~~

~~Section 10. Assessment Procedures. (1) Confidential information. The behavior analyst shall treat as confidential assessment results or interpretations regarding an individual.~~

~~(2) Protection of integrity of assessment procedures. The behavior analyst shall not disseminate a test in a way that may invalidate it.~~

~~(3) Information for professional users. The behavior analyst offering an assessment procedure or automated interpretation service to another professional shall:~~

~~(a) Accompany this offering by a manual or other printed material which describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population;~~

~~(b) State the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly; and~~

~~(c) Ensure that advertisements for the assessment procedure or interpretive service are factual.~~

~~Section 11. Delegating professional responsibility. The behavior analyst shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide professional services.]~~

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BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, June 14, 2022)

201 KAR 43:050. Requirements for supervision.

RELATES TO: KRS 319C.050(1) ~~and~~ 319C.060(2)(a)-(d)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)-(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate an administrative regulation governing the supervision of a licensed assistant behavior analyst, temporarily licensed behavior analyst, and temporarily licensed assistant behavior analyst. This administrative regulation establishes the requirements for supervision.

Section 1. Definitions. (1) "Direct supervision" means in-person interactions between the supervisor and the licensee under his or her supervision which includes direct observation of actual service provision to individuals.

(2) "General supervision" means interactions between the supervisor and the licensee under his or her supervision involving real time visual and auditory contact, conducted in-person or via electronic means.

(3) "Licensed supervisee" means an individual permitted to practice applied behavior analysis under the direction of a Licensed Behavior Analyst qualified to supervise while holding licensure in Kentucky as a:

(a) Licensed assistant behavior analyst; ~~permitted to practice the items from the most current BACB BCaBA Task List or BCaBA Test Content Outline under the direction of a Licensed Behavior Analyst qualified to supervise.~~

(b) Temporarily licensed behavior analyst; ~~permitted to practice the items from the most current BACB BCBA Task List or BCBA Test Content Outline under the direction of a Licensed Behavior Analyst qualified to supervise.~~

(c) Temporarily licensed assistant behavior analyst; ~~permitted to practice the items from the most current BACB BCaBA Task List or BCaBA Test Content Outline under the direction of a Licensed Behavior Analyst qualified to supervise licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst permitted to practice the items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts under the direction of a Licensed Behavior Analyst qualified to supervise.~~ licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst permitted to practice the items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts under the direction of a Licensed Behavior Analyst qualified to supervise].

(4) "Paraprofessional" means a person who assists in delivering behavior analysis services and practices under the direction and close supervision of a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst qualified to supervise.

(5) "Supervisee" means a person as defined by KRS 319C.010(10) who is a paraprofessional ~~not licensed but acts under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst to provide applied behavior analysis services; and limits their practice to the items from the most current BACB Registered Behavior Technician Task List.~~

(6) "Supervisor" means a Licensed Behavior Analyst in good standing that meets the qualifications to supervise under his or her Behavior Analyst Certification Board (BACB) Board Certified Behavior Analyst (BCBA).

(7) "Trainee" means a person who is enrolled in an Association for Behavior Analysis International (ABAI) accredited program or Verified Course Sequence (VCS) while acquiring experience in applied behavior analysis toward an

eligibility requirement for either a Behavior Analyst Certification Board (BACB) Certified Behavior Analyst (BCBA) or BACB Board Certified Assistant Behavior Analyst (BCaBA) credentialing examination.

[(5) "Unlicensed supervisee" means an individual accruing fieldwork/experience toward fulfilling eligibility requirements for BCaBA or BCBA certification without a license permitted to practice the items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts under the direction of an individual qualified to supervise under the Behavior Analyst Certification Board's (BACB) supervision standards under limited conditions.]

Section 2. Qualifications to Supervise. In order to provide supervision to a licensed supervisee[assistant behavior analyst, a temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst], a Licensed Behavior Analyst[licensed behavior analyst] shall:

(1) Be licensed in good standing in Kentucky; and

(2) Have completed supervision training as identified in the Behavior Analyst Certification Board's (BACB) Certificant Registry[Be currently certified by the Behavior Analyst Certification Board as a:

(a) [(1)] [Board-Certified Behavior Analyst] [(BCBA); or

(b) [(2)] [Board-Certified Behavior Analyst—Doctoral] [(BCBA-D); and

(3) Meet and maintain qualifications to supervise under the Behavior Analyst Certification Board's (BACB) supervision requirements].

Section 3. Supervisory Plan and Report of Supervision[Supervisor Responsibilities]. (1) [Except as provided in Section 15][16] of this administrative regulation, a supervisory arrangement shall be submitted to the board for approval using a completed Supervisory Plan][the Application for Licensure Form][, as incorporated by reference in 201 KAR 43:010, by][with][the supervisor and the licensed supervisee][assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst petitioning the board in writing][.

[(2)] The supervisor and the licensed supervisee shall jointly complete and the licensed supervisee shall submit to the board a completed Supervisory Plan upon application for licensure and again annually or biennially[biannually] as required by subsection (3) of this section[in this administrative regulation].

[(2)][(3)] The supervisor and the licensed supervisee shall jointly complete and the licensed supervisee shall submit to the board a Report of Supervision either annually or biennially[biannually] as required by subsection (3) of this section[in this administrative regulation. A final Report of Supervision shall also be submitted to the board by the licensed supervisee at the end of the supervisory relationship in accordance with Section 10(2) of this administrative regulation].

[(3)][(4)] In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.

(a) A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a Report of Supervision and an updated Supervisory Plan every two (2) years prior to renewal.

(b) A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a Report of Supervision and an updated Supervisory Plan annually on or before the anniversary of the date of licensure as a licensed assistant behavior analyst and prior to renewal.

(c) A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a Report of Supervision and an updated Supervisory Plan annually on or before the anniversary of the date of licensure as a temporarily

licensed behavior analyst or temporarily licensed assistant behavior analyst. A final Report of Supervision shall[must] be submitted by the licensed supervisee upon application for full licensure.

[(4)][(5)] The Supervisory Plan shall include a minimum of three (3) measurable goals for supervision and shall focus on extending the supervisee's skills beyond the scope of practice as a paraprofessional as it relates to applied behavior analysis, within the following areas, and a minimum of two (2) goals shall encompass competencies included in paragraphs (a) through (e) of this subsection:

(a) Behavior-change procedures;

(b) Concepts and principles;

(c) Ethical and professional issues;

(d) Measurement, data display, and interpretation;

(e) Selecting and implementing interventions;

(f) Personnel supervision and management;

(g) Experimental design; and

(h) Behaviorism and philosophical foundations[a majority of items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts].

[(5)][(6)] The Report of Supervision shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, including the strengths and weaknesses;

(c) The methods that the supervisor and licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to plan, report, and evaluate the supervisory process; and

(d) Any other information, which the supervisor deems relevant to an adequate assessment of the practice of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

[(6)][(7)] The licensed supervisee[supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst], or temporarily licensed assistant behavior analyst shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement by submitting an updated [Annual] Supervisory Plan no later than thirty (30) days after a change in the effective date of the arrangement or change. A final Report of Supervision shall also be submitted by the licensed supervisee at the termination of any supervisory relationship[in accordance with Section 10(2) of this administrative regulation].

[(8)] The board may require additional supervised practice if recommended by the supervisor on a licensee's Supervisory Plan or Report of Supervision.]

Section 4. Supervisory Responsibilities. (1) The supervisor shall assure that the practice of each licensed supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst] is in compliance with this administrative regulation. [The supervisor shall include in the Annual Supervisory Plan and keep in the record as required by subsection (6) of this section review, discussions, and recommendations and shall focus on:

(a) Case background information;

(b) Planned behavioral assessment procedures;

(c) Assessment outcomes;

(d) data collection procedures;

(e) Intervention procedures and materials;

(f) Intervention outcome data;

(g) Modifications of intervention procedures;

(h) Ethical issues associated with behavior change services or employment; and

(i) Professional development needs and opportunities.]

(2) The supervisor shall report to the board an apparent violation of KRS Chapter 319C on the part of the licensed

~~supervisee[licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst].~~

(3) The supervisor shall inform the board ~~administrator in writing or electronically[immediately]~~ of a change in the ability to supervise, or in the ability of a licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ to function in the practice as a licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor to ensure that these duties are competently performed.

(4) The supervisor shall control, direct, or limit the behavior analytic duties performed by the licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor to ensure that these duties are competently performed.

(5)(a) The supervisor of record shall be responsible for the behavior analytic duties of the licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor.

(b) If the board initiates an investigation concerning a licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor, the investigation shall include the supervisor of record.

(6)(a) For each ~~supervisee and licensed supervisee[person supervised]~~, the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session.

(b) This record shall be maintained for a period of not fewer than ~~seven (7)[six (6)]~~ years after the last date of supervision.

Section 5. ~~Multiple Supervisors.~~[(1) In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.

(2) The board may require additional supervised practice if recommended by the supervisor on a licensee's Annual Supervisory Plan or Annual Report of Supervision.

(3)(a) The supervisor shall provide reports to the board of the supervision of each licensed ~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~ practicing under the direction of the supervisor as follows:

1. A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a report every two (2) years on the anniversary of the date of licensure as a licensed assistant behavior analyst.

2. A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a report annually on the anniversary of the date of licensure as a licensed assistant behavior analyst.

3. A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a report annually on the anniversary of the date of licensure as a temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst.

(b) The report shall be submitted on the Annual Report of Supervision which shall include:

1. A description of the frequency, format, and duration of supervision;

2. An assessment of the functioning of the licensed ~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~, including the strengths and weaknesses; and

3. Any other information which the supervisor deems relevant to an adequate assessment of the practice of the licensed ~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~.

Section 6.] (1) If a licensed ~~supervisee[assistant behavior~~

~~analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and ~~their licensed supervisee[they]~~ shall ~~each~~ provide ~~individual~~ Supervisory Plans and Reports of Supervision to the board ~~for each supervisor[as well as]and[copies to each other]~~.

(2) A request to have more than two (2) supervisors at one (1) time shall be subject to board approval and shall be submitted by new applicants on the licensure application and the [Annual] Supervisory Plan and by existing licensees on the [Annual] Supervisory Plan, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 6.[Section 7.] Supervisor Experience. If a licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor is a behavior analyst with less than five (5) years of fulltime, post-certification practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all assessments ~~and treatment plans~~ to assess the competency of the licensed supervisee to render ~~applied behavior analytic services~~;

(2) Review ~~[treatment plans,]~~ notes and correspondence on an as-needed basis ~~[to assess the competency of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to render applied behavior analytic services]~~;

(3) ~~Jointly establish a supervisory plan with the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:~~

(a) Be updated or revised and submitted to the board with the regular report of supervision;

(b) Include intended format, and goals to be accomplished through the supervisory process; and

(c) Include methods that the licensed ~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~ practicing under the direction of the supervisor shall employ to evaluate the supervisory process;

(4) ~~Conduct[Have]~~ general supervision of the work performed by the licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor at least twice per month;

(4) [(5)] Have direct supervision of the work performed by the licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor at least once every three (3) months;

(5) [(6)] Have direct knowledge of the size and complexity of the caseload for each licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor;

(6) [(7)] Limit and control the caseload as appropriate to the level of competence of each licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor;

(7) [(8)] Have knowledge of the techniques being used by the licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~; and

(8) [(9)] Have knowledge of the physical and emotional well-being of each licensed ~~supervisee[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 7.~~[Section 8.] Licensed Supervisee Experience.~~ If the licensed assistant behavior analyst~~[or temporarily licensed behavior analyst]~~ is a behavior analyst with more than five (5) years of fulltime, post-certification practice, or its equivalent, the supervisor of record shall:

(1) Review and countersign assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

~~[(3) Jointly establish a supervisory plan with each licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:~~

~~(a) Be updated or revised and submitted to the board with the regular report of supervision;~~

~~(b) Include intended format, and goals to be accomplished through the supervisory process; and~~

~~(c) Include methods that the supervisor and licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;]~~

~~[(4)]~~ Have general supervision of the work performed by each licensed assistant behavior analyst~~[or temporarily licensed behavior analyst]~~ practicing under the direction of the supervisor at least once per month;

~~[(5)]~~ Have direct supervision of the work performed by each licensed assistant behavior analyst~~[or temporarily licensed behavior analyst]~~ practicing under the direction of the supervisor at least twice a year;

~~[(6)]~~ Have direct knowledge of the size and complexity of the caseloads for each licensed assistant behavior analyst~~[or temporarily licensed behavior analyst]~~ practicing under the direction of the supervisor;

~~[(7)]~~ Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst~~[or temporarily licensed behavior analyst]~~;

~~[(8)]~~ Have knowledge of the techniques being used by each licensed assistant behavior analyst~~[or temporarily licensed behavior analyst]~~; and

~~[(9)]~~ Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst~~[or temporarily licensed behavior analyst]~~ practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 8.~~[Section 9.] Supervision Requirements.~~ (1)~~[(a)]~~ A licensed assistant behavior analyst shall meet these supervision requirements, even if he or she is not currently providing behavior analytic services, unless having obtained Inactive status by the board.

~~[(2)]~~~~[(b)]~~ If the licensed assistant behavior analyst is not currently providing behavior analytic services, supervision may focus on guiding the development and maintenance of the licensed assistant behavior analyst's professional knowledge and skills and remaining current with the professional literature in the field.[]

~~(2) Upon resumption of practice, the licensed assistant behavior analyst shall document compliance with continuing education requirements and shall report on his or her activities and employment related to behavior analysis during the period in which the analyst did not practice.]~~

Section 9.~~[Section 10.] Supervision for Part-Time Practice.~~ Supervision requirements for part-time practice may be modified by the board upon approval of the submitted plan. Additional modifications of the format, frequency, or duration of supervision may be submitted for approval by the board.

Section 10.~~[Section 11.] Supervisory Changes. (1) Upon a change of supervisor, an updated]Annual]Supervisory Plan shall be submitted by the]supervisor that is starting~~

~~supervision and the]licensed supervisee.]assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst][to the board for approval.] This plan may require additional supervision than was previously approved by the board.]~~

~~[(2) Upon termination of the supervisory relationship, the final]Annual]Report of Supervision shall be submitted to the board by the supervisee]supervisor that is discontinuing supervision]within thirty (30) days of the termination.~~

Section 11.~~[Section 12.] Licensed Supervisee Responsibilities.~~~~[Responsibilities of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ The licensed supervisee~~[assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst]~~ shall:

(1) Keep the supervisor adequately informed at all times of his or her activities and ability to function;

(2) Seek supervision as needed in addition to a regularly scheduled supervisory session;

(3) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(4) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 3~~[5]~~ of this administrative regulation; and

(5) Report to the board any apparent violation of KRS Chapter 319C on the part of the supervisor.

Section 11.~~[Section 12.]~~~~[Section 13.] Identification of Provider in Billing.~~ The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the supervisee, licensed supervisee, or supervisor~~[assistant behavior analyst, temporarily licensed behavior analyst, trainee, supervisee, technician, or other provider and supervised by the licensed behavior analyst].~~

Section 12.~~[Section 13.]~~~~[Section 14.] Disciplinary Procedures and Supervision of a Disciplined License Holder.~~ (1) The board shall appoint an approved supervisor to supervise a disciplined license holder for the period of time defined by the final order or settlement agreement conferring the discipline.

(2) When specified by the final order or settlement agreement, the disciplined license holder shall be responsible for paying the costs of supervision.

(3) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined license holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined license holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Ensure that the disciplined license holder's practice is in compliance with KRS Chapter 319C and 201 KAR Chapter 43;

(f) Report to the board any apparent violation of KRS Chapter 319C on the part of the disciplined license holder;

(g) Immediately report to the board, in writing, a change in the ability to supervise, or in the ability of the disciplined license holder to function in the practice of a licensed behavior analyst in a competent manner;

(h) Review and countersign assessments as needed or appropriate;

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined license holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined license holder's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined license holder; and

(m) Have knowledge of the disciplined license holder's physical and emotional wellbeing when it has direct bearing on the disciplined license holder's competence to practice.

(4) The supervisor shall control, direct, or limit the disciplined license holder's practice to ensure that the disciplined license holder's practice is competent.

(5) The supervisor shall contact the board liaison with any concern or problem with the disciplined license holder, his or her practice, or the supervision process.

(6)(a) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision.

(b) The meeting shall include the supervisor, disciplined license holder, and board liaison.

(c) A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 13.~~**Section 14.**~~~~**Section 15.**~~ Board Liaison for Disciplined License Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising licensed behavior analyst from a list provided by the board;

(2) Provide the supervising licensed behavior analyst with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action;

(3) Ensure that the supervising licensed behavior analyst is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board and has immunity commensurate with that of a board member;

(4) Provide the supervising licensed behavior analyst with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined license holder. The notification letter shall:

(a) State the name of the supervising licensed behavior analyst; and

(b) Specify that the disciplined license holder shall meet with the supervising licensed behavior analyst and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising licensed behavior analyst and disciplined license holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined license holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the Report of Supervision to the board for approval.

(a) The liaison shall place the Report of Supervision on the agenda for review and approval at the next regularly scheduled board meeting.

(b) In the interim, the supervising licensed behavior analyst and disciplined license holder shall continue to meet;

(8) Remain available to the supervising licensed behavior analyst to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising licensed behavior analyst;

(10) Review the quarterly Report of Supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising licensed behavior analyst and the disciplined license holder at the end of the term of supervision to summarize the supervision.

Section 14.~~**Section 15.**~~~~**Section 16.**~~ **Training. Trainees shall:**

~~**(1) Graduate Training.**~~~~**Unlicensed supervisees shall:**~~

~~**(1) Be enrolled in coursework at a Verified Course Sequence (VCS) that meets the most current coursework requirements for eligibility to sit for a Behavior Analyst Certification Board's (BACB) exam;**~~

~~**(2) Be supervised by a Licensed Behavior Analyst (an individual) qualified to supervise under the BACB supervision standards;**~~

~~**(2) Be permitted, without a license as defined in KRS 319C.010, to practice applied behavior analysis under the close supervision and direction of a qualified supervisor;**~~

~~**(3) Not identify his or her status as a licensed behavior analyst, licensed assistant behavior analyst, temporary licensed behavior analyst, or temporary licensed assistant behavior analyst; and Meet the BACB's most current experience requirements for individuals accruing fieldwork hours to fulfill the eligibility requirements for a BCBA or BCaBA certification exam;**~~

~~**(4) Clearly identify his or her status as an unlicensed supervisee to all clients and payors; and**~~

~~**(5) Give to all clients and payors the name of the supervisor or supervisors responsible for his or her work.**~~~~**[Applied behavior analysis graduate students. Graduate-level applied behavior analysis students who are providing services in mental health care settings including independent practice settings shall:**~~

~~**(1) Be supervised by a behavior analyst licensed by the board in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;**~~

~~**(2) Be registered for credit in his or her course of study;**~~

~~**(3) Clearly identify his or her status as unlicensed trainees to all clients and payors;**~~

~~**(4) Give to all clients and payors the name of the licensed behavior analyst responsible for his or her work; and**~~

~~**(5) Not accept employment or placement to perform the same or similar activities following the completion of his or her university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board].**~~

Section 15.~~**Section 16.**~~~~**Section 17.**~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [ABA-003, "Annual Report of Supervision", July 2015; and
(b) **Form** ABA-002, "[Annual]Supervisory Plan", **May 2022**~~**October 2021**~~; and

(b) **Form** ABA-003, "Report of Supervision", **May 2022**~~**October 2021**~~~~[July 2015]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 500 Mero Street, 2 SC 32[911 Leawood Drive], Frankfort, Kentucky 40602, [(502) 892-4249/564-3296,] Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at aba.ky.gov.

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BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, June 14, 2022)

201 KAR 43:060. Complaint and disciplinary process.

RELATES TO: KRS 319C.050(4), 319C.060(2), 319C.070, 319C.110

STATUTORY AUTHORITY: KRS 319C.060(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2) requires the board to promulgate an administrative

regulation governing the regulation of licensees. KRS 319C.070, 319C.050(4), and 319C.110 require the board to investigate and take disciplinary action against licensees who violate KRS Chapter 319C and the associated administrative regulations. This administrative regulation details the process by which the board completes those investigations and takes that action.

Section 1. Definitions. (1) "Act" means KRS Chapter 319C.

(2) "Board" is defined by KRS 319C.010(3).

(3) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS Chapter 319C or 201 KAR Chapter 43.

(4) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a licensee or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(6) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in unlicensed practice or using a title without holding a license.

(7) "Order" means the whole or a part of a final disposition of a hearing.

(8) "Presiding officer" means the person appointed by the board to preside at a hearing held pursuant to KRS Chapter 13B, and shall include a hearing officer, a member or members of the hearing panel, or both.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) Source of initiating complaint. An initiating complaint may be initiated by the board, by the public, or by a governmental agency. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.

(2) Form of initiating complaint. Initiating complaints shall:

(a) Be in writing;

(b) Clearly identify the person against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify by signature the person making the initiating complaint; and

(e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) Receipt of initiating complaint. An initiating complaint shall be submitted to the Board Office at the Department of Professional Licensing/Office of Occupations and Professions.

(4) Response. A copy of the initiating complaint shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint:

(a) Within fifteen (15) days of the date on which the initiating complaint was mailed; or

(b) 1. Within a specified period of time if an extension is requested in writing by the respondent and granted by the board. In order to be granted an extension, the respondent shall provide proof of good cause justifying the extension.

2. Good cause includes instances such as family emergencies, medical needs, and undue hardship.

(5) Complaint Committee.

(a) The complaint committee shall consist of three (3) [no more than two (2)] board members appointed by the chair of the board to:

1. Review initiating complaints, responses, and investigative reports;

2. Participate in informal proceedings to resolve formal complaints; and

3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.

(b) The complaint committee may be assisted by the board

staff and counsel to the board.

(6) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or the complaint committee shall review the initiating complaint and response. The board, upon recommendation of the complaint committee, shall determine if an investigation is warranted, and if so, the board shall appoint an agent or representative of the board to conduct an investigation of the initiating complaint.

(7) Investigation.

(a) If the board directs that an investigation be completed, the respondent shall be interviewed as a part of that investigation. With the consent of the respondent, a meeting may be scheduled at which time the respondent may respond further to the allegations of the initiating complaint. The board and the respondent shall have the right to be represented at the meeting by legal counsel. The respondent's failure to submit to an interview or cooperate with an investigation shall not deprive the board of the authority to take action pursuant to paragraph (c) of this subsection.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of complaint and investigative report. Based on consideration of the complaint; the investigative report, if any; and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act.

1. If it is determined that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall provide written notice to notify the person or entity making the initiating complaint and the respondent that no further action shall be taken at the present time.

2.a. If it is determined that there is a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall issue a formal complaint against the licensee or applicant.

b. In the case of a prima facie violation of KRS 319C.020(1) and the respondent is not a licensee or an applicant, the board shall take one (1) or all of the following actions:

(i) Issue a cease and desist order;

(ii) File suit to enjoin the violator pursuant to KRS 319C.050(2); or

(iii) Seek criminal prosecution pursuant to KRS 319C.050(2).]

~~(d) If a board member participates in the review of a matter, either as a member of the complaint committee or as the investigator, that person shall not vote according to the process outlined in paragraph (c) of this subsection. However, that person may be counted as a present member for the purposes of establishing and maintaining a quorum of the board.]~~

Section 3. Formal Complaint. If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

Section 4. Formal Response. (1) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing.

(2) Allegations not properly responded to shall be deemed admitted.

(3)(a) The board may, if there is good cause, permit the late filing of a response.

(b) Good cause includes instances such as family emergencies, medical needs, and undue hardship.

Section 5. Composition of the Hearing Panel. Disciplinary actions shall be heard by a hearing officer and:

(1) The full board or a quorum of the board;

(2) A hearing panel consisting of at least one (1) board member appointed by the board; or

(3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 6. Notification of Complainant. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the person or entity making the initiating complaint of the outcome of the action in writing.

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BOARDS AND COMMISSIONS

**Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, June 14, 2022)**

201 KAR 43:071. Repeal of 201 KAR 43:070.

RELATES TO: KRS 319C.060(1)

STATUTORY AUTHORITY: KRS 319C.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the Kentucky Applied Behavior Analysis Board to promulgate administrative regulations required to establish qualifications and requirements for supervisees of a behavior analyst. This administrative regulation repeals 201 KAR 43:070 because the necessary substantive provisions of that administrative regulation have been incorporated into 201 KAR 43:050[other existing administrative regulation] concerning the same subject matter for improved efficiency and ease of use.

Section 1. 201 KAR 43:070, Supervisees, is hereby repealed.

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BOARDS AND COMMISSIONS

**Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, June 14, 2022)**

201 KAR 43:080. Renewals.

RELATES TO: KRS 319C.050, 319C.060

STATUTORY AUTHORITY: KRS 319C.050, 319C.060(2), 319C.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish conditions for the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

Section 1. Renewal. (1) A behavior analyst[er—assistant behavior analyst] shall biennially, on or before the last day of the calendar month during which the license was issued:

(a)[(4)] File a completed Renewal and Reinstatement Application, [for Licensure Renewal] Form ABA-004; and

(b)[(2)] Pay to the board the renewal fee established by 201 KAR 43:030.

(2) An assistant behavior analyst shall biennially, on or before the last day of the calendar month during which the license was issued:

(a) File a completed Renewal and Reinstatement Application Form ABA-004;

(b) Have a current, approved Report of Supervision and Supervisory Plan; and

(c) Pay the renewal fee established by 201 KAR 43:030.

(3) A temporary licensed behavior analyst shall, within the two (2) year period, renew their license one time by:

(a) Filing a completed Renewal and Reinstatement Application, Form ABA-004;

(b) Having a current, approved Report of Supervision and Supervisory Plan; and

(c) Paying the renewal fee established by 201 KAR 43:030.

Section 2. Late Renewal. A behavior analyst or assistant behavior analyst who fails to renew his or her license on or before the last day of the calendar month during which the license was issued may submit his or her application on or before the last day of the calendar month following the month in which the license was issued if accompanied by the appropriate late fee as required by 201 KAR 43:030.

Section 3. Expiration of License. (1) A license that is not renewed before the last day of the calendar month following the calendar month during which the license was issued shall be expired and lapsed for failure to renew.

(2) Upon expiration of the license for failure to renew, a behavior analyst or assistant behavior analyst shall not practice in the Commonwealth of Kentucky.

Section 4. Reinstatement. After the last day of the calendar month following the month in which the license was issued, a person whose license has expired for failure to renew shall submit, in order to have his or her license reinstatement request considered by the Board:

(1) Payment of the reinstatement fee established by 201 KAR 43:030;

(2) Completion of the Renewal and Reinstatement Application, Form ABA-004[Application for License Renewal]; and

(3) Documentation of employment from the time of expiration of employment until the present.

Section 5. Incorporation by Reference. (1) Form ABA-004, "[Application for Licensure] Renewal and Reinstatement Application", May 2022[October 2021] July 2015], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC 32[944 Leawood Drive], Frankfort, Kentucky 40601, (502) 892-4249[564-3296], Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at aba.ky.gov.

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BOARDS AND COMMISSIONS

**Kentucky Applied Behavior Analysis Licensing Board
(As Amended at ARRS, June 14, 2022)**

201 KAR 43:090. Voluntary inactive and retired status.

RELATES TO: KRS 319C

STATUTORY AUTHORITY: KRS 319C.050(1), 319C.060[319C]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.050 and 319.060 require the Applied Behavior Analysis Licensing Board to promulgate administrative regulations establishing licensure requirements and licensure and renewal fees.[319C authorizes the board to promulgate administrative regulations required to establish conditions for inactive and retired status.] This administrative regulation establishes requirements relating to[procedures] for inactive and retired status.

Section 1. Conditions for Inactive Status. Inactive status may be granted to a licensee who is currently not working as a behavior analyst or assistant behavior analyst within the Commonwealth of Kentucky but intends to resume providing those services in the future.

Section 2. Application for Inactive Status. (1) A licensee

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requesting inactive status shall submit a completed ~~an~~ "Application for Inactive or Retired Status", Form ABA-005, to the board and include the following information:

- (a) Current home address, email address, and phone number;
- (b) Final date of employment in the practice of applied behavior analysis within the Commonwealth of Kentucky; and
- (c) Anticipated date of return to employment in the practice of applied behavior analysis within the Commonwealth of Kentucky.

(2) Terms and Responsibilities. Individuals on inactive status shall:

- (a) Continue to receive general licensure updates from the board; and
- (b) Comply with the code of ethical standards as established in 201 KAR 43:040.

Section 3. Reactivation Requirement for Inactive Status. A licensee seeking restoration to active status shall:

(1) Notify the board prior to returning to practice in Kentucky by submitting a Renewal and Reinstatement Application, Form ABA-004, incorporated by reference in 201 KAR 43:080 and paying the required fees as established in 201 KAR 43:030, including a reinstatement fee.

(2) A licensee seeking reinstatement shall also meet certification and licensure requirements as provided in KRS 319C.080 and show an active BCBA certification.

(3) Individuals on inactive status shall not practice or use state licensure initials, including LBA, LaBA, TLBA, and TLaBA.

(4) Failure to complete reinstatement of a license prior to practicing applied behavior analysis in Kentucky shall constitute a violation of the Kentucky Applied Behavior Analyst Board code of ethical standards as established in 201 KAR 43:040 and shall result in referral to the board for the complaint and ~~or~~ disciplinary process, in accordance with the procedures outlined in 201 KAR 43:060.

(5) Upon resumption of practice, the licensed assistant behavior analyst shall document compliance with supervisory requirements and shall report on his or her activities and employment related to behavior analysis during the period in which the analyst did not practice.

Section 4. Conditions for Retired Status. (1) Retired status is an acknowledgement of service that may be granted to a licensed behavior analyst or licensed assistant behavior analyst who has retired and will no longer be conducting the practice of applied behavior analysis in any jurisdiction.

(2) The board may grant retired status to a licensee if the individual:

- (a) Is at least sixty-five (65) years of age; ~~or~~
- (b) Has been a license holder in the Commonwealth of Kentucky for at least twenty-five (25) years; or
- (c) Suffers an illness or medical disability that renders the licensee unable to continue the practice of applied behavior analysis.

Section 5. Application for Retired Status. (1) Retired status may be granted to a licensee upon submission of a completed an "Application for Inactive or Retired Status", Form ABA-005, to the board and should include the following information:

- (a) Current home address, email address, and phone number;
- (b) Condition~~Condition(s)~~ meeting eligibility for retired status; and
- (c) Final date of employment in the practice of applied behavior analysis within the Commonwealth of Kentucky.

(2) Terms and Responsibilities. A credential holder granted retired status by the board shall:

- (a) Be relieved of the obligation to pay the renewal fees under 201 KAR 43:030; ~~and~~
- (b) Use the designation "-R" at the end of the acronym for the appropriate credential such as, LBA-R or LaBA-R; and
- (c) Shall comply with the code of ethical standards as established in 201 KAR 43:040.

Section 6. Incorporation by Reference. (1) Form ABA-005,

"Application for Inactive or Retired Status", October 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be found on the board's Web site at aba.ky.gov.

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BOARDS AND COMMISSIONS

Kentucky Applied Behavior Analysis Licensing Board (As Amended at ARRS, June 14, 2022)

201 KAR 43:100. Telehealth and telepractice.

RELATES TO: KRS 319C.140(2)

STATUTORY AUTHORITY: KRS 319C.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.140(2) requires the Applied Behavior Analysis Licensing Board~~board~~ to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.

Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth. (1) A licensee who provides applied behavior analytic services via telehealth shall:

(a) Maintain competence with the technologies utilized, including understanding and adequately addressing the actual and potential impact of those technologies on clients, supervisees, or other professionals;

(b) Maintain compliance with KRS Chapter 319C, 201 KAR Chapter 43, and all other applicable federal, state, and local laws;

(c) At the onset of the delivery of care via telehealth, identify appropriate emergency response contacts local to the client so that those contacts shall be readily accessible if there is~~in the event of~~ an emergency;

(d) Protect and maintain the confidentiality of data and information in accordance with all applicable federal, state, and local laws; and

(e) Dispose of data and information only in accordance with federal, state, and local law and in a manner that protects the data and information from unauthorized access.

(2) If applied~~Applied~~ behavior analysis commences~~with a client shall not commence~~ via telehealth.

~~(a) An initial, in-person meeting for the licensee and client who prospectively utilize telehealth shall occur.~~

~~(b) The licensee shall, at the initial~~~~in-person~~ meeting with the client:

~~(a)~~~~[1-]~~ Make reasonable attempts to verify the identity of the client;

~~(b)~~~~[2-]~~ Obtain alternative means of contacting the client other than electronically;

~~(c)~~~~[3-]~~ Provide to the client alternative means of contacting the licensee other than electronically;

~~(d)~~~~[4-]~~ Document if the client has the necessary knowledge and skills to benefit from the type of telehealth to be provided by the licensee; and

~~(e)~~~~[5-]~~ Inform the client in writing about and obtain the client's informed written consent regarding:

~~1.~~~~[a-]~~ The limitations of using technology in the provision of applied behavior analytic services;

~~2.~~~~[b-]~~ Potential risks to confidentiality of information due to technology in the provision of applied behavior analytic services;

~~3.~~~~[c-]~~ Potential risks of disruption in the use of telehealth technology;

~~4.~~~~[d-]~~ When and how the licensee will respond to routine

electronic messages;

5.[e.] In what circumstances the licensee will use alternative communications for emergency purposes;

6.[f.] Who else may have access to client communications with the licensee;

7.[g.] How communications can be directed to a specific licensee;

8.[h.] How the licensee stores electronic communications from the client; and

9.[i.] That the licensee or client may elect to discontinue the provision of services through telehealth at any time.

Section 2. Jurisdictional Considerations. (1) A person providing applied behavior analytic services via telehealth to a person physically located in Kentucky while services are provided shall be required to be licensed by the board.

(2) A person providing applied behavior analytic services via telehealth from a physical location in Kentucky shall be required to be licensed by the board and may be subject to licensure requirements in other states if[where the] services are received by the client in another state.

Section 3. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services shall not:

(1) Engage in false, misleading, or deceptive advertising; or[and]

(2) Split fees.

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TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 14, 2022)

301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

RELATES TO: KRS 150.022, 150.023

STATUTORY AUTHORITY: KRS 150.022, 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department of Fish and Wildlife Resources to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. KRS 150.022 requires that a meeting of sportsmen in a commission[wildlife] district be held to nominate five (5) candidates for membership on the Kentucky Fish and Wildlife Commission. These five (5) candidate names shall then be submitted to the Governor for his or her selection. This administrative regulation establishes the procedures for nominating the [five-(5)] candidates for commission membership[member].

Section 1. Scheduling of Meetings and Notification of the Public. (1) At least thirty (30) days prior to the expiration of the term of a member of the Fish and Wildlife Resources Commission, the commissioner shall select the time and place for a public meeting to select a list of five (5) nominees to submit to the governor. The meeting shall be held within a county of the commission[wildlife] district that shall be/is centrally located and easily accessible to the majority of the sportsmen of that district.

(2) The location of the meeting shall be in a public building with facilities adequate to accommodate the expected turnout. If more participants attend than the facilities can reasonably accommodate, the commissioner (or his or her designee) may order a change in location, if a suitable site is readily available, or may take whatever steps he or she deems necessary to ensure[insure] the orderly and safe conduct of the meeting.

(3) Each meeting shall be called to order at 7:30 p.m. local prevailing time. If a change of location is called as established[provided for] in subsection (2) of this section, the commissioner shall delay the beginning of the meeting for at least

one (1) hour. The commissioner[He] may also delay the beginning of the meeting for any other reason [he or she deems] necessary, but [under no circumstances may] the commissioner shall not convene the meeting earlier than the stated starting time.

(4) The facilities where the meeting is held shall be made available to the public by at least 6 p.m. local prevailing time.

(5) The commissioner shall cause to be published in each newspaper in the district a legal notice announcing the purpose, time, and place of the meeting. The commissioner[He] shall also prepare and distribute news releases announcing the meeting to all major mass media outlets in the district. In addition, the commissioner shall prepare and distribute posters about the meeting for posting at each county courthouse in the district and at those places where sportsmen are known to gather or frequent.

Section 2. Conduct of the Meeting. (1) The commissioner, or an official of the department designated by the commissioner, shall serve as chair[chairman] of the meeting~~[,]~~ and ~~[this chairman]~~ shall be the final arbiter of any disputes or procedural questions that[which may] arise during the course of the meeting.

(2) After calling the meeting to order, the chair[chairman] shall explain the purpose of the meeting and the rules under which it shall[will] be conducted.

(3) The chair[chairman] shall then open the floor to nominations.

(4) As each name is placed in nomination, the nominee shall sign an affidavit attesting to his or her residency in the district.

(5) The chair[chairman] shall not close the nominations until he or she has called three (3) times for additional nominations and has received none. Motions to close the nominations shall not be recognized while there are still those waiting to place a name in nomination.

(6) If[Should] no more than five (5) names are[be] placed in nomination, the chair[chairman] shall declare that the purpose of the meeting has been fulfilled and shall adjourn the meeting.

Section 3. Balloting to Select Five (5) Nominees. (1) If[Should] more than five (5) names are[be] placed in nomination, the list of nominees shall be narrowed to five (5) names by secret ballots cast by the qualified sportsmen in attendance.

(2) The chair[chairman] shall direct each nominee to appoint at least one (1) individual to serve on a balloting committee. The chair[chairman] shall determine the number needed for this committee, and each nominee shall be allowed an equal number of committee members.

(3) Members of the balloting committee shall distribute ballots to the participants in the meeting. Each ballot shall consist of two (2) parts: an affidavit by which each participant shall attest to his or her legal right to participate in the selection process as established[stipulated] in KRS 150.022 and a ballot with which the participant may vote for one (1) nominee.

(4) Each eligible participant shall complete the information requested on the affidavit and ~~[then all shall]~~ swear an oath attesting to the veracity of that information.

(5) Each eligible participant shall then vote for the nominee of his or her choice on the ballot provided. Ballot boxes, overseen by personnel of the department, shall[will] be available at designated exits. Each eligible participant shall hand the department employee his or her signed affidavit and shall place his or her ballot in the ballot box.

(6) After depositing his or her ballot, each participant shall immediately leave the meeting room and shall not return until all ballots are cast and the ballot boxes are closed.

(7) The ballot boxes shall be opened in the presence of the balloting committee, who shall count the ballots in the presence of the chair[chairman] or his or her designee[designee(s)].

~~[(8) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.]~~

~~[(8)][(9)]~~ Each member of the balloting committee shall sign an affidavit attesting to the ballot count and to the fact that, to the best of his or her knowledge, the process of distributing and counting the ballots was conducted in a fair and impartial manner. The

chair[chairman] shall obtain a written statement from any committee member who feels that irregularities did occur during the course of the meeting.

(9) Immediately after the ballots are counted and the results certified by the balloting committee, the chair[chairman] shall announce the full results of the balloting and shall then adjourn the meeting.

Section 4. Resolving Disputes. (1) In the event of a tie vote for fifth and sixth place, the chair[chairman] shall settle the issue by the toss of a coin. Tie votes that[which] do not affect the outcome of the selection of the five (5) names shall[will] not be resolved.

(2) Any other disputes, whether over vote counts or over procedural matters, shall be arbitrated immediately by the chair[chairman], whose decision shall be binding unless subsequently overturned by the commission or the courts [-as stipulated below].

(3) Any individual who is aggrieved by a decision of the chair[chairman] or by any other action at the meeting may appeal in writing to the Fish and Wildlife Resources Commission. An appeal shall be made within ten (10) calendar days after the meeting.

(4) Upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(5) Any party aggrieved by a final order of the commission may appeal to Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 5. Submission of the List of Nominees to the Governor.

(1) The commissioner shall, within five (5) working days after the meeting, submit to the governor the names of the five (5) nominees chosen at the meeting.

(2) If balloting was used to limit the list to five (5) names, the commissioner shall not submit any ballot totals to the governor.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, June 14, 2022)**

502 KAR 30:010. Definitions for 502 KAR Chapter 30[Criminal History Record Information System].

RELATES TO: KRS 15A.160, 17.140

STATUTORY AUTHORITY: KRS 15A.160, 17.140(1), 17.150(6) [17.080]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.140(1) requires a centralized criminal history record information system to be established in the Justice and Public Safety Cabinet under the direction, control, and supervision of the commissioner of the Department of Kentucky State Police. KRS 15A.160 authorizes[provides and] [17.080 provide][that] the secretary of the Justice and Public Safety Cabinet to[may] adopt [such] administrative regulations to[as] [are][necessary to properly] administer the cabinet. KRS 17.150(6) requires the secretary of the Justice and Public Safety Cabinet to adopt administrative regulations necessary to carry out the provisions of the centralized criminal history record information system and insure the accuracy of criminal history record information being reported to the system. [KRS 17.140 requires the Justice and Public Safety Cabinet to establish][establishes][the centralized criminal history record information system, under the direction, control and supervision of the Commissioner of the Department of the Kentucky State Police.] This administrative regulation establishes the definitions to be used in the administration of the centralized criminal history record information system.

Section 1. Definitions. [As employed in 502 KAR 30:010 through 502 KAR 30:070, unless the context requires otherwise:]

(1) "Administration of criminal justice":

(a) Means performance of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders; and;

(b) [The administration of criminal justice] Includes criminal identification activities and dissemination of CHRI. ["Criminal History Record Information System" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.]

(2) "Criminal history record information[,"] or "CHRI"[,] [hereinafter referred to as CHRI,] means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including[but not limited to,] sentencing, correctional supervision, and release. [CHRI shall not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system, or the evaluative information, such as statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. CHRI shall be limited to information concerning persons who have attained the age of eighteen (18) and shall not include any information concerning criminal offenses of acts of delinquency committed by any person before that person has attained the age of eighteen (18); provided, however, that if a person under the age of eighteen (18) is adjudicated as an adult and found guilty in a circuit court, information relating to such criminal offense shall be deemed CHRI. CHRI shall not include any information concerning any offense which is not punishable by incarceration.]

(3) "Criminal History Record Information System" means a system including equipment, facilities, procedures, agreements, and organization[organizations] thereof, for the collection, processing, preservation, or dissemination of criminal history record information. ["Criminal justice agency" means:

(a) Courts for purposes agreed upon between the secretary and Chief Justice;

(b) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution of the retarded; state police, State Fire Marshal, Board of Alcoholic Beverage Control; Justice Cabinet; Cabinet for Human Resources; Transportation Cabinet; Corrections Cabinet; and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents.]

(4) "Criminal justice agency" means:

(a) The persons and entities listed in KRS 17.150(1);

(b) The Court of Justice and the Administrative Office of the Courts to the extent and for purposes agreed upon between the secretary and Chief Justice; or

(c) [that] A government agency or any subunit [that] thereof that[which] performs the administration of criminal justice pursuant to a statute or executive order, and[which] allocates a substantial part of its annual budget to the administration of criminal justice[; or

(c) Any other agency as agreed upon by the secretary.

(d) The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden of a prison, mental hospital or institution; state

~~police, State Fire Marshal; Department of Alcoholic Beverage Control; Justice and Public Safety Cabinet; Department of Corrections; and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents].~~ ["Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of CHRI.]

(5) "Disposition":

(a) Means information disclosing that criminal proceedings have been:

1. Concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, and also disclosing the nature of the termination of proceedings; or

2. ~~Information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for the~~ such postponement; ~~and~~ [-]

(b) ~~Includes~~ Dispositions shall include, but not be limited to: Acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, conviction ~~(convicted)~~, youthful offender determination, death ~~(deceased)~~, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled or released from correctional supervision, or any other disposition deemed appropriate by the court.

(6) ~~["NLETS" means the National Law Enforcement Telecommunication System.~~

~~(7) "Nonconviction data" means~~ arrest information obtained ~~without disposition if an interval of one (1) year has elapsed~~ from the date of arrest ~~to~~ and no active prosecution of the date of disposition, in matters that do not result in a conviction, ~~including~~ charges is pending; all information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, ~~including~~ as well as all acquittals and ~~all~~ dismissals.

~~(7) "NLETS" means the National Law Enforcement Telecommunication System.]~~ ["Uniform offense report"

~~hereinafter "UOR-1," means the report form developed pursuant to KRS 15A.190 and 17.150 on which every felony case, every misdemeanor case of theft by unlawful taking or disposition, every case of unauthorized use of a motor vehicle, and every other instance where there is an allegation that a criminal offense has been committed against a victim's person or property and a uniform citation will not suffice, shall be recorded and reported by forwarding a completed UOR-1 form to the Kentucky State Police, Records Section, hereinafter Records.~~

~~(8) "Court disposition uniform offense report," hereinafter "UOR-3," means that report form developed pursuant to KRS 15A.190 and 17.150 on which either preliminary or final court dispositions on all criminal offenses involving arrest(s) other than those reported on a uniform citation shall be recorded with final dispositions on all cases reported by forwarding a completed UOR-3 to Records.~~

~~(9) "NLETS" means the National Law Enforcement Telecommunication System.]~~

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, June 14, 2022)

502 KAR 30:020. Arrest and disposition reporting procedure.

RELATES TO: KRS 17.110, 17.115, 17.140

STATUTORY AUTHORITY: 15A.160, ~~[47.080,]~~ 17.150(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.140(1) requires a centralized criminal history record information system to be established in the Justice and Public Safety Cabinet under the direction, control, and supervision of the commissioner of the Department of Kentucky State Police. KRS 17.110(1) ~~requires~~ mandates that all city and county law enforcement agencies ~~shall~~ submit to the Justice and Public Safety Cabinet, Department of Kentucky State Police, photographs, a set of fingerprints, and a description report of the offense on all persons arrested ~~on a felony charge~~. KRS 17.115(2) requires persons in charge of any penal or correctional institution to provide the cabinet with fingerprints and descriptions on all persons committed to their custody or detained by them on cases where fingerprints and descriptions are taken, together with a report of the disposition. KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet. KRS 17.150(6) ~~requires~~ authorizes the secretary of the cabinet ~~Justice~~ to adopt administrative regulations ~~that are~~ necessary to carry out the provisions of the centralized criminal history record information system and insure the accuracy of ~~said~~ criminal history record information being reported to the system. This administrative regulation establishes arrest and disposition reporting procedures.

Section 1. Offense Reporting Procedure. ~~[Within thirty (30) days of the arrest for an offense covered by KRS 17.110, two (2) sets of fingerprint cards, a mug shot or the negative of the mug shot, and a general description report (UOR-1) of the offense shall submitted to Records. Further,]~~ Law enforcement and criminal justice agencies shall cooperate with the Criminal Identification and Records Branch by complying with the use of a "unique numbering system" to allow court disposition tracing. The "unique numbering system" shall be accomplished by the issuance of a Uniform Citation with every ~~felony~~ arrest as it relates to this administrative regulation ~~[502 KAR 30:020]~~ subject to an agreement with the Chief Justice of the Supreme Court of Kentucky as set out in Section 2(2) of this administrative regulation.

Section 2. Disposition Reporting Procedures.

(1) Dispositions shall be submitted from each city and county law enforcement agency to the Criminal Identification and Records Branch ~~in the form of the Uniform Offense Report (UOR-3).~~ [or any subsequent disposition reporting instrument required by the Department of Kentucky State Police].

(2) Upon suitable written agreement with the Chief Justice of the Kentucky Supreme Court and the secretary of the Justice and Public Safety Cabinet, a unique tracking number shall/will be assigned to each offender at the time of arrest. This unique number shall/will be utilized throughout the movement of the offender through the criminal justice system, thereby enabling the Administrative Office of the Courts to provide a system compatible format ~~computer tape~~ to the Criminal Identification and Records Branch for automatic update of court dispositions in the CHRI files.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, June 14, 2022)

502 KAR 30:030. Audit of Criminal History Record Information System.

RELATES TO: KRS 17.140, 17.150, 28 C.F.R. 20.21(e)
STATUTORY AUTHORITY: KRS 15A.160, ~~[17.080,]~~ 17.150(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.140(1) ~~requires[establishes]~~ a centralized criminal history record information system to be established in the Justice and Public Safety Cabinet under the direction, control, and supervision of the commissioner of the Department of Kentucky State Police. KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to adopt administrative regulations to administer the cabinet. KRS 17.150(6) requires the secretary of the Justice and Public Safety Cabinet to ~~provides that the Secretary of Justice shall~~ adopt administrative regulations ~~[that are]~~ necessary to carry out the provisions of the centralized criminal history record information system and insure the accuracy of criminal history record information being reported to the ~~[centralized criminal history record information]~~ system. This administrative regulation establishes the requirements for audits of the centralized criminal history record information system and law enforcement and criminal justice agencies ~~that[which]~~ submit or receive criminal history record information to or from the centralized criminal history record information system.

Section 1. The Criminal Identification and Records Branch[Records Section] shall annually conduct an in-house audit of a random representative sample of hard copy data contained in the centralized Criminal History Record Information System. The scope of the audit shall include ~~[but is not limited to]:~~

- (1) Adherence to federal and state administrative regulations;
- (2) Completeness and accuracy of CHRI;
- (3) CHRI dissemination procedures;
- (4) Security; and
- (5) Compliance with mandated access and review procedures.

~~The[Said]~~ audit shall be conducted in accordance with guidelines set out in 28 C.F.R. ~~[;]~~ 20.21(e) ~~[utilizing the standard audit instrument as prescribed by Records]~~. A report of the audit findings shall be submitted by the administrative head of the Criminal Identification and Records Branch to the commissioner, Department of Kentucky State Police and the secretary of the Justice and Public Safety Cabinet on or before January 10 of each year.

Section 2. The Criminal Identification and Records Branch[Records] shall conduct, on an annual basis, audits of at least four (4) criminal justice agencies, submitting or receiving data from or to the centralized Criminal History Record Information System. ~~The criminal justice[Said]~~ agencies shall be picked at random. ~~The[Such]~~ audits shall be conducted in accordance with guidelines set out in 28 C.F.R. ~~[;]~~ 20.21(e), utilizing the standard audit instrument. A report of the audit findings shall be submitted to the administrative head of the respective criminal justice agency within thirty (30) working days after the audit has been completed. The scope of the audit shall include ~~[but not be limited to]:~~

- (1) Adherence to federal and state administrative regulations;
- (2) Completeness and accuracy of CHRI;
- (3) CHRI dissemination procedures;
- (4) Security; and
- (5) Compliance with mandated access and review procedures.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, June 14, 2022)

502 KAR 30:050. Security of centralized criminal history record information.

RELATES TO: KRS 17.140, 17.150
STATUTORY AUTHORITY: KRS 15A.160 ~~15A.060~~, ~~[17.080,]~~ 17.140, 17.150(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~[17.080]~~ authorizes the Secretary of Justice to institute rules and administrative regulations and direct proceedings and actions for administration of laws and functions that are invested in the Justice Cabinet. KRS 17.140 requires a centralized criminal history record information system to be established[establishes,] in the Justice and Public Safety Cabinet under the direction, control, and supervision of the commissioner of the Department of Kentucky State Police. KRS 17.140 defines a centralized criminal history record information system as the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation, or dissemination of criminal history records maintained by the Justice Cabinet. KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet. KRS 17.150(6) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement the criminal history record information system. This administrative regulation sets specific security standards to preserve the CHRI in an acceptable state.

Section 1. Procedures shall be implemented in the centralized criminal history record information system to insure that access to criminal history record information is restricted to authorized persons. The ability to access, modify, change, update, purge, or destroy ~~[such]~~ information shall be limited to authorized criminal justice personnel, or other authorized persons who provide operational support, such as programming or maintenance. Technologically advanced software ~~or[and/or]~~ hardware designs shall be implemented to prevent unauthorized access to criminal history record information.

Section 2. Procedures shall be implemented in the centralized criminal history information system to determine what persons have authority to enter in areas where criminal history information is stored and implement access control measures to insure entry is limited to specific areas where authorization is valid. Further, access control measures shall be implemented to insure unauthorized persons are totally denied access to areas where criminal history record information is stored. ~~[Said]~~ Access constraints shall include ~~[but not be limited to:]~~ the system facilities, systems operating environments, data file contents, whether while in use or when stored in media library, and system documentation.

Section 3. Procedures shall be implemented in the centralized criminal history information system to insure that computer operations ~~that[which]~~ support the criminal history record information data base, whether dedicated or shared, operate in accordance with procedures developed or approved by the Justice and Public Safety Cabinet, and further insure that:

(1) CHRI is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by unauthorized persons.

(2) Operational programs shall be ~~are~~ used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than designated terminals within the Criminal Identification and Records Branch.

(3) The destruction, partial deletion, total deletion, or record correction shall be ~~is~~ limited to designated terminals under the direct control of Criminal Identification and Records Branch[records].

(4) Operational programs shall beare] used to detect and store for the output of designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program or file.

(5) The programs specified in subsections (2) and (4) of this section shall beare] known only to criminal justice agency employees responsible for criminal history record information system control or individuals in agencies pursuant to a specific written agreement with the Justice and Public Safety Cabinet to provide the[such] programs, and the operational programs shall beprogram(s) are] continuously kept under maximum security conditions.

(6) Procedures shall beare] instituted to assure that any individual or agency authorized direct access is responsible for:

- (a) The physical security of criminal history record information under its control or in its custody; and
- (b) The protections of [such] information from unauthorized access, disclosure, or dissemination.

Section 4. Procedures shall be implemented in the centralized criminal history record information system to protect CHRI from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

Section 5. Emergency Plans Required. Written plans and instructions dealing with emergencies described in Section 4 of this administrative regulation shall be developed in manual form and cover all foreseeable incidents ranging from minor accidents to major disasters causing the destruction of computer facilities, entire data bases, and[and/or] CHRI contained in manual files. Employees of the centralized criminal history record information system shall be trained in procedures and specifically assigned responsibilities in case of an emergency. Plans and instructions shall include[should be inclusive of, but not limited to,] emergency shutdown and evacuation procedures, a disaster recovery plan to restart critical system functions, procedures for backup files for critical data such as fingerprint cards, and duplicate system designs. The commissioner of the Department of Kentucky State Police shall make available needed personnel to reinstitute the centralized criminal history record information system as soon as feasible after accident or disaster.

~~[Section 6. The records commander shall institute procedures for the screening, supervising, and disciplining of agency personnel in order to minimize the risk of compromising internal security. A background investigation of all prospective employees for records shall be conducted. The scope of the background investigation shall include]~~[be inclusive of, but not limited to]:

~~(1) Verification of all items as listed on the employment application;~~

~~(2) Moral character;~~

~~(3) Financial history;~~

~~(4) Individual as well as spouse arrest history inclusive of juvenile files; and~~

~~(5) Agency personnel records. All records employees shall]~~[will] ~~[agree to and sign nondisclosure statements and notice of security breach forms. The records commander shall so notify the Commissioner of the State Police as to any violation of security policy. A violation of said security policy shall include]~~[, but not be limited to,] ~~[the intentional violation or wanton disregard of the]~~[any or all] ~~[security policies with regard to criminal history record information as set forth by section policy or]~~[;] ~~[the compromising of an employee's security by committing, facilitating, or being a party to a crime. Upon notification by the records commander of a security compromise, the commissioner shall take immediate appropriate administrative action.]~~

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JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(As Amended at ARRS, June 14, 2022)

502 KAR 30:060. Dissemination of criminal history record information.

RELATES TO: KRS 11.160(1)(e), 11.160(2)(e), 15.540, 17.115, 17.140, 17.147, 17.151, 17.152[47.1522], 17.160, 17.167(4), [454.650,] 237.110(7), 311A.100

STATUTORY AUTHORITY: KRS 15.382, 15A.150, ~~[15.382,]~~ 17.150(6), 17.160(3), 17.165, 17.167, 156.483, 160.151, 160.380, 161.148, 199.462 ~~(5)~~[(4)], 216.793, 238.525, 281A.040, 281A.300, 324.045, 329.030, 329A.025, 351.090, 351.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.115 requires[authorizes] ~~[provides that]~~ the Justice and Public Safety Cabinet to[shall] cooperate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification. KRS 17.147(6) requires[provides that] the Department of Kentucky State Police to[shall] supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs. ~~[Further,]~~KRS 17.150(6) requires the Secretary of the Justice and Public Safety Cabinet to adopt administrative regulations to carry out the provisions of the criminal history record information system. This administrative regulation establishes the conditions required for[under which] the dissemination of data from the criminal history record information system ~~[may disseminate data]~~.

Section 1. Dissemination of Criminal History Record Information (CHRI). Use of CHRI disseminated to noncriminal justice agencies shall be limited ~~[to the purpose for which it was given]~~. An agency or individual shall not confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information itself. ~~[Dissemination of] CHRI shall be regulated by the specific category of criminal history record information. These categories shall include:~~

(1) Nonconviction data. Dissemination of nonconviction data shall not include ~~[, with the exception of the computerized Kentucky State Police] files available for access~~[accessed] by an open records[record] request ~~[directly to]~~ The dissemination[Department] of nonconviction data shall ~~[State Police,] be limited, [whether] directly or through an intermediary, to:~~

(a) Criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment; ~~[;]~~

(b) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court order, as determined by the General Counsel of the ~~[;]~~ Justice and Public Safety Cabinet; ~~[;]~~

(c) Individuals and agencies pursuant to a specific agreement ~~[as outlined in 502 KAR 30:040]~~ with the Department of Kentucky State Police, to provide services required for the administration of criminal justice pursuant to that agreement; and ~~[;]~~

(d) Individuals and agencies for the express purpose of evaluation research, or statistical activities pursuant to an agreement with the Criminal Identification and Records Branch of the Kentucky State Police ~~[Records]~~. The agreement shall:

1. Limit the use of data to evaluation, research, or statistical purposes;

2. Insure the confidentiality and security of the data consistent with these administrative regulations; and

3. Provide sanctions for violations of the agreement.

(2) Conviction data. Dissemination of conviction data shall be limited as follows:

(a) Juvenile records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall not be released to the public without court order. This restriction shall not apply to juveniles ~~[who were]~~ tried as an adult.

(b) Criminal history record checks for employment or volunteer

purposes.

1. CHR[~~Criminal history record information~~] concerning[~~of~~] a conviction[nature] may be disseminated to potential employers of persons. To obtain CHR[~~Criminal history record information~~] regarding convictions, a prospective employee or volunteer through the potential employer shall complete the following relevant form that, located on the Kentucky State Police Web site, [prescribed by this administrative regulation,][which] is appropriate for the request;

a. Request for Conviction Records – Employment/Professional License;

b. Request for Conviction Records/Minors;

c. Request for Conviction Records/Long-Term Care Facility;

d. Request for Conviction Records/Child Care;

e. Request for Conviction Records – Fire Department, Ambulance Service, Rescue Squad;

f. Request for Conviction Records – Commercial Guide License; or

g. Request for Criminal History Record Information - Secondary Metal Recycler Certificate.

2. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the potential employer, or other entity requesting the CHR, signature of the prospective employee or volunteer, and a witness signature. The form shall also include sex, race, date of birth, Social Security number, and previous addresses of the prospective employee or volunteer.

3. The prospective employer shall be responsible for the completion of the appropriate form and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer, with the necessary release form.

(c) Nonemployment criminal records checks.

1. CHR[~~Criminal history record information~~] regarding[~~of~~] a conviction[nature] may be disseminated to individuals, entities, or organizations in regard to potential adoptive or foster home providers, an adult household member of a potential adoptive or foster home provider, or for emigration or housing. To obtain CHR[~~Criminal history record information~~] regarding convictions, an individual shall complete the following relevant form that, located on the Kentucky State Police Web site, [prescribed by this administrative regulation,][which] is appropriate for the request;

a. Request for Conviction Records/Adoptions and Foster Homes;

b. Request for Conviction Records/Emigration; or

c. Request for Conviction Records/Housing.

2. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the recipient individual, entity or organization, signature of the person about whom the CHR is being requested [individual requester], and a witness signature. The form shall also include sex, race, date of birth, Social Security number and previous addresses of the person about whom the CHR is being requested [individual applicant]. [The applicable forms shall be as follows:

1. Request for KSP Conviction Records/Housing, 10/03 edition; and

2. Request for Conviction Records/Emigration, 10/03 edition.]

3. The applicant shall be responsible for the completion of the form and shall submit a check or money order in the amount of twenty (20) dollars, made payable to the Kentucky State Treasurer.]

(d) In regard to employment criminal records checks, the prospective employer shall be responsible for the completion of the appropriate form as indicated in paragraph (b) of this subsection and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer.

(e) If the criminal records check is nonemployment in nature, the applicant shall be responsible for the completion of the form as listed in paragraph (c) of this subsection and shall submit a check or money order in the amount of twenty (20) dollars, made payable

to the Kentucky State Treasurer.]

(d)[(f)] Pursuant to KRS 17.167(4), employees and members of fire departments, ambulance services, and rescue squads shall be exempted from a [the] fee[required in this section].

(e)[(g)] The fee in this section shall not apply to applications for a license, or a renewal of a license, to carry a concealed deadly weapon. The fees for this license are provided in KRS 237.110(7).

Section 2. Electronic Log. (1)[As outlined in 502 KAR 30:040,] The computerized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHR from the computerized criminal history record information system shall electronically log all disseminations of CHR.

(2) The log shall contain [at least] the following information:

(a) The name of the agency and individual receiving CHR;[f]

(b) The date of release;[f]

(c) The individual to whom the CHR relates;[f]

(d) The items of CHR released;[f] and[f]

(e) In the case of secondary dissemination, the agency which provided the CHR.

(3) Transaction logs shall be maintained in a records subject accessible state for at least twelve (12) months from the date of CHR dissemination.

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

(a) "Request for Conviction Records – Employment/Professional License", 2008;

(b) "Request for Conviction Records/Minors", 2008;

(c) "Request for Conviction Records/Long-Term Care Facility", 2008;

(d) "Request for Conviction Records/Child Care", 2008;

(e) "Request for Conviction Records – Fire Department, Ambulance Service, Rescue Squad", 2003;

(f) "Request for Conviction Records – Commercial Guide License", 2008;

(g) "Request for Criminal History Record Information - Secondary Metal Recycler Certificate", 2012;

(h) "Request for Conviction Records/Adoptions and Foster Homes", 2009;

(i) "Request for Conviction Records/Emigration", 2008; and

(j) "Request for Conviction Records/Housing", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Police, Criminal Identification and Records Branch, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m. This material is also on the agency Web site at <http://kentuckystatepolice.org/forms/background-check-forms/>.

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

(a) "Request for Conviction Records – Employment/Professional License", 10/08 edition;

(b) "Request for Conviction Records/Child Care", 9/08 edition;

(c) "Request for Conviction Records/Adoptions and Foster Homes", 9/08 edition;

(d) "Request for Conviction Records/Lottery", 10/08 edition;

(e) "Request for Conviction Records/Long-Term Care Facility", 10/08 edition;

(f) "Request for Conviction Records/Kentucky Department of Mines and Minerals", 10/08 edition;

(g) "Request for Conviction Records/Fire Department, Ambulance Service and Rescue Squad", 10/03 edition;

(h) "Request for Conviction Records/Minors", 10/08 edition;

(i) "Request for Conviction Records/Nonpublic Schools", 9/08 edition;

(j) "Request for Conviction Records/Department of Education", 9/08 edition;

(k) "Request for Conviction Records/Legislative Research Commission", 10/08 edition;

(l) "Request for Conviction Records/Housing", 10/08 edition;
(m) "Request for Conviction Records/Emigration", 9/08 edition;
and
(n) "Request for Conviction Records/Public Schools", 10/08 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Post 12 at 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-2221, Monday through Friday, 8 a.m. until 4:30 p.m.]

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email brenn.combs@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(As Amended at ARRS, June 14, 2022)

**781 KAR 1:010. Office of Vocational Rehabilitation[
Department of Vocational Rehabilitation] appeal procedures.**

RELATES TO: KRS 151B.190, 151B.200, 34 C.F.R. Part 361, 29 U.S.C. 722

STATUTORY AUTHORITY: KRS 13B.170, 151B.195(1), 29 U.S.C. 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. 29 U.S.C. 722(c) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation services. Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner to promulgate administrative regulations for the department. This administrative regulation establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

Section 1. Definitions. (1) "Administrative hearing" is defined by[has the same meaning as] KRS 13B.010(2).

(2) "Administrative review" means an informal process through which [the office personnel not involved in the initial decision conduct [conducts] a review of an office decision to ensure the decision complies with office policy.] The review shall be conducted by office personnel not involved in the initial decision.]

(3) "Appellant" means an applicant, potentially eligible, or eligible individual who requests an appeal of an office decision in accordance with this section.

(4) "Applicant" means an individual who submits an application for vocational rehabilitation services.

(5) "Branch manager" means the office staff who is responsible for the operations of an office branch.

(6) "Case record" means the official written or electronic record of the vocational rehabilitation case of an applicant, potentially eligible, or eligible individual.

(7) "Competitive integrated employment" is defined by[has the same meaning as] 34 C.F.R. 361.5(c)(9).

(8)[(2)] "Eligible individual" means an applicant for vocational rehabilitation services who the office determines is an individual with a disability who requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

(9)[(3)] "Executive director" means the Executive Director of the Office of Vocational Rehabilitation.

(10) "Hearing officer" is an individual who meets the qualifications established/set forth in KRS 13B.010(7) and who has knowledge of the laws applicable to the office.

(11)[(4)] "Office" means the Office of Vocational Rehabilitation[and its appropriate staff members who are authorized under state law to perform the functions of the state

regarding the state plan and its supplement].

(12) "Office Appeal Form" means[is] the office form incorporated by referenced and used by an applicant, potentially eligible, or eligible individual to request an appeal of an office decision.

(13) "Potentially eligible individual" means an individual who might[may] be eligible for vocational rehabilitation services, but whose eligibility has not yet been determined.

(14) "Secretary" means the Secretary of the Education and Workforce Development Cabinet.

Section 2. Right to Appeal[Hearing Officer].

(1) The office shall notify every applicant, potentially eligible individual, or eligible individual that the individual has the right to appeal any determination made by the office that affects the provision, denial, reduction, suspension, or cessation of that individual's vocational rehabilitation services.

[(1) To conduct a hearing under this administrative regulation, a hearing officer shall not:

(a) Be an employee of a public agency, other than an administrative law judge, hearing examiner, or employee of an institution of higher education;

(b) Be a member of the Vocational Rehabilitation Council;

(c) Have been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; or

(d) Have personal or financial interest that would be in conflict with the objectivity of the individual.]

(2) The office shall provide to every applicant, potentially eligible individual, or eligible individual:

(a) As established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, the procedure for requesting an appeal, including the name and address of office staff to whom a request for appeal shall be submitted; and

(b) The Office Appeal Form.

[(2) To conduct a hearing under this administrative regulation, a hearing officer shall:

(a) Have knowledge of the delivery of vocational rehabilitation services, the federal and state laws and the administrative regulations governing the provision of vocational rehabilitation services; and

(b) Have training with respect to the performance of official duties.]

(3) A request for appeal shall be submitted using the Office Appeal Form and shall be submitted to the office within fourteen (14) days of receipt of written notice of an office decision[], or receipt of verbal notice of an office decision, as determined by the date in the case record.

(4) An appellant shall have the right to be represented by an advocate or attorney at all appellate proceedings, and the appellant shall bear all cost for [such] representation.

(5) Upon receipt of a request for an administrative hearing, the office shall:

(a) Conduct an administrative review of the decision on appeal prior to the administrative hearing; and

(b) Convene an administrative hearing within sixty (60) days, except that a time extension, not to exceed one (1) year, shall be granted upon agreement by both parties.

(6) During an appeal, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained through:

1. Misrepresentation;

2. Fraud;

3. Collusion; or

4. Criminal conduct; or

(b) The appellant requests the action.

Section 3. Administrative Review. (1) Upon receipt of a notice of appeal, the office shall conduct an informal administrative review of the decision.[An applicant or eligible individual may request an informal administrative review conducted by an office staff member from the director of program services or a designee.]

(2) The director or designee shall select a[an] branch

~~manager[administrator from a district] not involved in the action in question who shall conduct the administrative review of the decision within ten (10) days.~~

~~(3) The [administrator shall conduct the] administrative review shall be conducted either in person or by teleconference, and the appellant shall be invited to participate.~~

~~(4) The branch manager[administrator] shall issue a written a determination within five (5) business days[make a determination] and notify[forward a copy to] the appellant via electronic mail or U.S. Mail[individual and the office within five (5) days of the administrative review].~~

~~[(5) The applicant or eligible individual shall attend the administrative review and may be represented by an advocate or counsel.]~~

Section 4. Mediation. (1) The appellant shall have the right to participate in mediation before an administrative hearing is convened[office and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation].

(2) The office shall maintain a list of qualified mediators.

(3) If mediation is requested, the office shall:

(a) Choose a mediator from the list and schedule the mediation for a date prior to an administrative hearing;

(b) Convene the mediation in a location convenient to the office and the appellant[,], and provide reasonable accommodations if requested;

(c) Bear the cost of mediation; and

(d) Send a representative of the office to the mediation who is authorized to bind the office to an agreement.[The Director of Program Services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.

~~(4) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation.]~~

~~[(4)][(5)] The appellant[applicant or eligible individual] shall attend the mediation.~~

~~[(5)][(6)] Discussions or agreements arising from the mediation[process] shall be confidential and shall not be used as evidence in any subsequent administrative hearing or civil proceeding.~~

(6) An agreement reached by the parties through mediation shall be documented in writing, signed by both parties prior to the conclusion of the mediation, and a copy shall be issued to both parties.

Section 5. Administrative Hearing[Right of Appeal and Information]. The office shall conduct an administrative hearing in accordance with KRS Chapter 13B and Section 2 of this administrative regulation if/when the appellant elects not to participate in mediation[,], or if the mediation did not result in an agreement.[An applicant or eligible individual may appeal to the Director of Program Services determinations made by the office affecting:

~~(a) Furnishing of vocational rehabilitation benefits; or~~

~~(b) Denial, reduction, suspension, or cessation of vocational rehabilitation services.~~

~~(2) An applicant or eligible individual shall:~~

~~(a) Be informed of the:~~

~~1. Entitlements available under this administrative regulation;~~

~~2. Right to appeal;~~

~~3. Right to be represented by an advocate or counsel; and~~

~~4. Names and addresses of office individuals with whom an appeal shall be filed.~~

~~(b) Request an appeal:~~

~~1. In writing;~~

~~2. By telephone through direct contact with the Director of Program Services or a designee; or~~

~~3. On tape, except that a voice mail message shall not constitute a request for a hearing.~~

~~(3) The director of program services or a designee shall convene a hearing within sixty (60) days of a request made pursuant to subsection (1) of this section. Reasonable time~~

~~extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:~~

~~(a) KRS Chapter 13B; and~~

~~(b) This administrative regulation.~~

~~(4) Pending a final determination of a hearing or other final resolution, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:~~

~~(a) It has evidence that the service was obtained by an applicant or eligible individual through:~~

~~1. Misrepresentation;~~

~~2. Fraud;~~

~~3. Collusion; or~~

~~4. Criminal conduct; or~~

~~(b) The applicant or eligible individual, or an authorized representative, requests this action.]~~

Section 6. Client Assistance Program. The office shall advise an applicant, potentially eligible individual, or eligible individual of:

(1) The existence of the Client Assistance Program[created by KRS 151B.225];

(2) The services provided by the program; and

(3) How to contact a program representative.

Section 7. ~~Appeal Time and Hearing Procedures.~~ (1) An applicant or eligible individual shall file an appeal:

~~(a) Within sixty (60) days of becoming aware, through the exercise of due diligence, of an office determination affecting the provision or denial of vocational rehabilitation services.~~

~~(b) By contacting the Director of Program Services.~~

~~(2) An applicant or eligible individual shall, at the time of requesting a hearing:~~

~~(a) Identify accommodations required; and~~

~~(b) Submit an issue statement for the hearing.~~

~~(3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the office and Statewide Council for Vocational Rehabilitation.]~~

Section 7.[Section 8.] Findings and Decision. (1) The hearing officer shall issue a recommended order in accordance with KRS 13B.110,[complete and submit to both parties and the Secretary of the Education Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension].

(2) Either party shall have the right to submit exceptions to the recommended order to the secretary[secretary] as established[set forth] in KRS 13B.110,[twenty (20) days from the date the recommended order is mailed within which to file exceptions to the Secretary of the Education Cabinet.]

(3) The secretary or designee [of the Education Cabinet]shall [consider the record, including the recommended order and any timely exceptions filed to the recommended order.]issue the final order in accordance with KRS 13B.120[(4) The Secretary of the Education Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions].

Section 8. Incorporation by Reference. (1) "Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual", June 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available at kcc.ky.gov/vocational-rehabilitation.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

Education and Workforce Development Cabinet
Department of Workforce Investment
Office of Vocational Rehabilitation
(As Amended at ARRS, June 14, 2022)

781 KAR 1:020. General provisions for operation of the Office of Vocational Rehabilitation.

RELATES TO: KRS 138.170, 151B.185, 151B.190, 151B.200, 34 C.F.R. 361.42, 361.49, 29 U.S.C. 722, 723

STATUTORY AUTHORITY: KRS 151B.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 authorizes the office[accepts and agrees to] comply with federal acts relating to vocational rehabilitation when these acts apply to joint state and federally funded vocational rehabilitation programs. KRS 151B.195(1) requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation establishes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that purpose.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

(2) "Eligible individual" means an individual with a disability who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(3) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

(4) "Office" means the Office of Vocational Rehabilitation and its staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(5) "Relative" means an individual related to another individual by lineage, marriage, or adoption and includes a:

- (a) Spouse;
- (b) Parent;
- (c) Grandparent;
- (d) Brother;
- (e) Sister;
- (f) Son;
- (g) Daughter;
- (h) Grandchild;
- (i) Aunt;
- (j) Uncle;
- (k) Niece;
- (l) Nephew; and
- (m) First cousin.

~~[(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment.]~~

Section 2. Employees' Request for Services. (1) An employee of the office who wishes to request rehabilitation services shall advise the Director of Field[Program] Services or a designee.

(2) The Director of Field[Program] Services or a designee and the employee shall select a counselor to take the request for services. If practicable, the counselor shall be located in an adjacent district to the district in which the employee resides.

Section 3. Employees' Relatives' Request for Services. (1) An employee of the office shall not take a request for services or provide vocational rehabilitation services to a relative.

(2) The relative shall be referred to the Director of Field[Program] Services or a designee.

(3) The Director of Field[Program] Services or a designee and the individual shall identify a staff member who is not a relative to take the request for services and to provide services as deemed

appropriate.

Section 4. Legal Fees. The office shall not be responsible for any fees incurred by an applicant or eligible individual for legal services.

Section 5. Payment Rates for Purchased Services. (1) A service vendor shall not charge or accept from the applicant, eligible individual, or a relative payment for services unless the amount of the charge or payment is first presented to the office.

(2) Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services shall be provided.

Section 6. Potentially Terminal Illness. Services shall not be provided to individuals with a potentially terminal illness unless:

- (1) There is a favorable medical prognosis for recovery; or
- (2) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(a) If surgery, chemotherapy, nuclear medical treatment, or similar ancillary medical service is expected to cure the condition, it may be provided as with another medical problem.

(b) If the attending physician feels the prognosis is guarded, the office shall request a letter indicating the individual's work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

Section 7. Second Opinions. (1) The office may seek a second opinion from a qualified practitioner before determining eligibility or before authorizing services if the office has reason to believe that a second opinion would provide more information necessary to determine eligibility.

(2) If the office determines that eligibility is not met or does not authorize services, an individual may utilize the appeals process established in 782 KAR 1:010.

Section 8. Self-employment Enterprises. The requirements established in this section shall be met prior to planning for self-employment for an eligible individual.

(1) An eligible individual shall undergo an assessment to determine work skills~~[potential, including mental and physical abilities, and]~~ interests, interpersonal skills, related functional capacities, [aptitudes, personality traits] and other pertinent characteristics [as prescribed by the office].

(2) An eligible individual shall participate in prevocational and small business training as established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010[prescribed by the office].

(3) An eligible individual shall obtain any required license, permit, certificate, or lease, and be in conformity with all federal and state laws and local ordinances to commence an enterprise.

(4) An eligible individual seeking to develop a self-employment[~~self-employment~~] enterprise requiring start up costs of more than \$1,000 shall:

- (a) Complete a feasibility study; and
- (b) Submit a business plan and have it approved by the office pursuant to the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010, prior to provision of services. The business plan shall consist of the following:

- 1. Executive summary;
 - 2. Description of product or service;
 - 3. Assessment of available consumers to be served;
 - 4. Competitors currently in operation in the industry;
 - 5. Marketing plan;
 - 6. Costs of production;
 - 7. Management details and structure; and
 - 8. Detailed financial analysis.
- (5) The office shall not be the sole source of capitalization for a self-employment enterprise with start up costs of \$5,000 or more.
- (a) In addition to requirements under subsection (4) of this section,

an eligible individual seeking financial assistance with start up costs of \$5000 to \$10,000 shall contribute fifty (50) percent of the cost in excess of \$5,000 either in capital or documented value of existing equipment used in the daily operation of the business~~[in-kind resources]~~ and ninety (95) percent of the cost in excess of \$10,000.

(b) An eligible individual shall provide documentation that the assets necessary for the required financial participation are in place prior to provision of services by the office.

(6) The total office expenditures toward the start up costs for a self-employment~~[self-employment]~~ enterprise shall not exceed \$10,000 unless:

(a) All provisions of subsections (1) through (5) of this section are met; and

(b) 1. The nature of the individual's vocational rehabilitation needs make it necessary that the service be provided;

2. The denial of the service will prohibit the individual from achieving the vocational goal; or

3. The provision of the service will result in a cost savings to the office.

Section 9. Gender Reassignment~~[Sex Change]~~. Office funds shall not be used to pay for gender reassignment~~[sex change]~~ surgery.

Section 10. Tools and Equipment. The eligible individual shall return tools, equipment, and supplies to the office if~~[when]~~ no longer used for the employment outcome.

Section 11. Training. Postsecondary training shall be provided for an eligible individual pursuant to this section.

(1) Except as provided in subsections (3) and (4) of this section, tuition and initial registration fees provided to the training facility of the eligible individual's choice shall not exceed those of the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation. If there is no similar program in the state, the amount of support shall be~~is~~ determined by the current fee for service memo.

(2) The Director of Field~~[Program]~~ Services or a designee shall~~[may]~~ make exceptions to the limitations provided by subsection (1) if it is clearly demonstrated that exceptions are necessary to achieve the employment outcome as established~~[defined]~~ in 34 C.F.R. 361.5(b)(16).

(3) The office shall provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services including:

- (a) Interpreting services;
- (b) Note-taking services; and
- (c) Tutoring services.

(4) Other postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services shall be used if the total cost of attendance does not exceed the total cost of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility in Kentucky that offers similar vocational preparation.

(5) Training shall be purchased only from training facilities that are accredited or licensed by accrediting or licensing bodies and that~~[which]~~ comply with all applicable state and federal requirements.

(6) ~~[Training shall be provided only to attain entry level of the employment outcome.]~~

(7) An eligible individual planning to attend a postsecondary training facility shall apply for all financial assistance available through the training facility.

(7) An eligible post-secondary student shall:

(a) Maintain full-time status as defined by the institution;

(b) Maintain less than full-time status if full-time status is inconsistent with the consumer's unique strengths, abilities, and capabilities; or

(c) Maintain less than full-time status for one (1) semester if those hours are needed to graduate in the current year;

(d) All coursework shall facilitate the achievement of positive outcomes.

(e) By the end of the second term or semester and throughout each subsequent term or semester, the student shall achieve the higher offer.

1. An overall "C" grade average; or

2. Standing required for admission, licensure, or certification.

(f) An exception to a requirement established in subsection (1) or (4) of this section shall:

1. Be granted if the student:

a. Has a need or circumstance that renders him unable to meet the requirement; and

b. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.

2. Not be granted for the requirements established in subsection (5) of this section for a period beyond one (1) semester.

(8) The student shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

(9) If the student does not maintain the standards of this section, the counselor shall:

(a) Terminate service~~[serviced]~~ at the institution of higher education; and

(b) Simultaneously notify the student of the appeal procedure established in KRS 138.170.

(10) A service terminated under subsection (12) of this section shall be reinstituted if the student:

(a) Successfully appeals the counselors decision, in accordance with KRS 138.170; or

(b) Subsequently meets the standard under which the service was terminated.

Section 12. Computer Hardware and Software Purchases. (1) Except as provided in subsection (2) of this section or in Section 13 of this administrative regulation, the office shall not purchase a computer, microcomputer, or other hardware or software for the personal use of an applicant or eligible individual.

(2) The office shall consider the provision or upgrade or replacement of computer hardware and software if the equipment is:

(a) 1. ~~[The equipment is]~~ Essential to compensate for the limitations caused by the disability; or

2. ~~[The equipment is]~~ Required for the eligible individual to achieve or maintain a vocational objective of competitive integrated employment; and

(b) One (1) of the following criteria are met:

- 1. The equipment is required for vocational preparation;
- 2. The equipment is required to perform the job and no provision is made by the employer to supply the equipment; or
- 3. The equipment enables an eligible individual to become competitive in an integrated setting with nondisabled employees performing the same duties.

Section 13. ~~[Second Time Upgrades or Replacements.]~~ Except as provided in subsection (2) of this section, the office shall not provide more than one (1) computer upgrade or replacement per individual.

(2) The office shall approve a second time upgrade or replacement if:

(a) The eligible individual has demonstrated a two (2) year continuous work history; and

(b) The eligible individual's employer attests that the upgrade or replacement is needed to maintain employment.

Section 14. ~~[Medical Treatment]~~ Medical Treatment~~[Transplants or Implants]~~. A medical treatment or ~~[transplant or implant]~~ procedure that~~[which]~~ is experimental or that~~[which]~~ does not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the office.

Section 14. ~~[Section 15.]~~ Vehicle Purchase. The office shall not purchase a vehicle unless the occupation of the eligible individual requires a vehicle as occupational equipment.

~~[Section 16. Visual Impairments. An eligible individual with a~~

~~secondary disability of visual impairment shall be served if another impairment, other than visual, results in a more substantial impediment to employment.]~~

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

**Education and Workforce Development Cabinet
Department of Workforce Investment
Office of Vocational Rehabilitation
(As Amended at ARRS, June 14, 2022)**

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 C.F.R. 361.36, 361.53, 361.54, 29 U.S.C. 721(a)(5), (15), (21)(A)

STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 29 U.S.C. 709(c), 34 C.F.R. 361.36, 361.54

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195(1) requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. 34 C.F.R. 361.36(c) requires the office to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 C.F.R. 361.36(d) requires[establishes] federal guidelines for the imposition of an order of selection. 34 C.F.R. 361.54(b) authorizes the office to consider an individual's financial need for vocational rehabilitation services. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions. (1) "Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services.

(2) "Executive director" means Executive Director of the Office of Vocational Rehabilitation.

(3) "Individual with a most significant disability" means an individual who has a [significant] disability that limits two (2) or more areas of functional capacity[and who:

~~(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or~~

~~(b) Has serious limitations in four (4) or more functional capacities in terms of an employment outcome].~~

(4) "Functional capacity" means the capacity to perform tasks required in employment including:

- (a) Mobility;
- (b) Communication;
- (c) Self-care;
- (d) Self-direction;
- (e) Interpersonal skills;
- (f) Work tolerance; or
- (g) Work skills.

(5) "Office" means the Office of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(6) "Non-significant disability" means a disability that does not limit a functional capacity.

Section 2. Economic Need. (1) Economic need shall be considered in determining whether to grant vocational rehabilitation services.

(2) The executive director shall exempt services from the economic needs test if the office is able to provide services to all eligible individuals with significant disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 34 C.F.R. 361.53.

(3) An economic needs test as established in subsection (5) of this section shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Tuition and registration fees for vocational or college training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) Occupational licenses, tools, equipment, or initial stock (including livestock) or supplies;

(g) Postemployment services except as provided in subsection (4)(a)-(m) of this section;

(h) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of employment outcomes;

(i) Initial vehicle and property modifications in excess of \$10,000;

(j) Second or subsequent vehicle modifications regardless of cost;

(k) Vehicle modification repair or upgrades; or

(l) Hearing aid in excess of \$1,000.

(4) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance;

(c) Placement;

(d) Services provided by staff at state-owned and operated rehabilitation facilities;

(e) Rehabilitation technology except as specifically provided in subsection (3) of this section;

(f) Communication assistance in the individual's native language;

(g) Books, supplies, tools, or equipment for vocational or other training;

(h) Supported employment;

(i) Interpreter services for the deaf;

(j) Reader services for the blind;

(k) Personal assistance services;

(l) Tutors, note takers, or assistive technology education aids; or

(m) Other training, including driver training, on-the-job training, job coaching, job development, or job training.

(5) The office's economic needs test shall be based on the most current Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce. If the individual has a monthly income that exceeds 100 percent of the most current median gross income, the individual shall apply the excess income to rehabilitation services necessary to achieve the employment goal except as provided for in 34 C.F.R. 361.54.

Section 3. Order of Selection. If the executive director determines that the office shall be unable to provide services to all eligible applicants, the office shall implement the order of selection on a state-wide basis. (1) An eligible individual previously declared eligible for and receiving vocational rehabilitation services under an individualized plan for employment shall not be affected if the office implements an order of selection.

(2) The order of selection shall not regulate the provision of information or referral services.

(3) On implementation of the order of selection, the office shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) An applicant shall be declared eligible or ineligible as appropriate.

(6)(a) An eligible individual entering accepted status after implementation of the order of selection shall be assigned to a priority category.

(b) If the priority category is open, the individual shall be served.

(c) If the priority category is closed, the individual's case shall be held on a waitlist in accepted status until the priority category assigned is opened or the order of selection is lifted.

(7) The order of selection shall permit immediate reclassification into a higher priority category if circumstances justify the reclassification.

(8) If the office is unable to provide services to all eligible individuals with significant disabilities, the office shall serve eligible individuals with a most significant disability first and then serve eligible individuals with a significant disability on a first-applied, first-served basis, as established by the date of application within a category. If funds become available, the executive director and Statewide Council for Vocational Rehabilitation shall adjust the priority categories to be served as appropriate to provide services to as many consumers as funds allow.

(9) The order of selection ~~established~~~~[described]~~ in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection shall have ~~[five—(5)]~~ priority categories as follows:

(a) Priority Category I - eligible individuals with a most significant disability ~~that limits three (3) or more functional capacities;~~

(b) Priority Category II - eligible individuals with a ~~most significant disability that limits two (2) functional capacities~~~~[who have serious limitations in three (3) functional capacities];~~

(c) Priority Category III - eligible individuals with a ~~[most]~~~~significant disability that limits (1) one functional capacity~~~~[who have serious limitations in two (2) functional capacities];~~

(d) Priority Category IV - Eligible individuals with a ~~non-significant~~~~[significant]~~ disability~~[who have serious limitations in one (1) functional capacity]; or~~

(e) ~~Priority Category V — eligible individuals with a nonsignificant disability].~~

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(As Amended at ARRS, June 14, 2022)

781 KAR 1:040. Assistive~~[Rehabilitation]~~ technology services.

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723, 34 C.F.R. 361.5~~(c)(9)(b)(11))~~, 361.42, 361.45, 361.46

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation ~~establishes~~~~[prescribes]~~ the requirements for the provision of ~~assistive~~~~[rehabilitation]~~ technology services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions.

(1) **"Assistive technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists**

in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.

(2) "Certified driver rehabilitation specialist" means a driver rehabilitation specialist who has obtained certification to provide services from the Association for Driver Rehabilitation Specialists.

(3)~~[(2)]~~ "Driver evaluation" means a clinical and behind-the-wheel evaluation by a certified driver rehabilitation specialist to identify an eligible individual's driver rehabilitation needs to allow that person to drive independently.

(4)~~[(3)]~~ "Driver rehabilitation specialist" means an individual who plans, develops, coordinates, and implements driver rehabilitation services for individuals with disabilities.

(5)~~[(4)]~~ "Driver training" means behind-the-wheel instruction required to teach an individual with a disability to drive with or without vehicle modifications.

(6)~~[(5)]~~ "Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational ~~assistive~~~~[rehabilitation]~~ services as defined in 34 C.F.R. 361.42.

(7)~~[(6)]~~ "Extended driver evaluation" means additional evaluation necessary in those cases ~~in which~~~~[where]~~ an individual's ability to drive cannot be determined after a driver evaluation.

(8)~~[(7)]~~ "Family" means spouse, children, parents, grandparents, or siblings.

(9)~~[(8)]~~ "Individualized plan for employment" means a written plan for a specific employment outcome as required by 34 C.F.R. 361.46.

(10)~~[(9)]~~ "Office" means the Office of Vocational Rehabilitation and its staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

~~[(10)]~~ **"Rehabilitation technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.**

(11) "Structural addition" means any improvement to real property that would increase the square footage or footprint of the property.

Section 2. Driver Rehabilitation Technology Services.

(1) Driver rehabilitation technology services may be provided if:

(a) Personal transportation is required to meet the job goals specified on the individualized plan for employment;

~~[(b)] Other modes of transportation that would enable the eligible individual to effectively meet the vocational goal as stated in the individualized plan of employment, such as public transportation, are not available;~~

~~[(b)]~~~~[(c)]~~ The individual meets the economic need qualifications established in 781 KAR 1:030; and

~~[(c)]~~~~[(d)]~~ The individual is within a category that is presently being served in the Order of Selection as established in 781 KAR 1:030.

(2) Driver training and extended driver evaluation may be provided if:

(a) The services are recommended by a certified driver rehabilitation specialist;

(b) If vehicle modification is required, the applicant or eligible individual meets the criteria for vehicle modification, as established in Section 3 of this administrative regulation; ~~and~~

(c) The applicant or eligible individual agrees to obtain additional practice as recommended by a certified driver rehabilitation specialist; ~~and~~~~[(c)]~~

(d) The applicant or eligible individual **owns or has access to an appropriate vehicle both during and**~~[(must currently own or have access to an appropriate vehicle)]~~ upon completion of driver's training.

(3) Driver rehabilitation technology services may be provided to an applicant or eligible individual who does not meet the requirements of subsection (2) of this section if the Director of ~~Field Services~~~~[Program Services]~~ or designee determines:

- (a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or
- (b) The provision of the service would result in a substantial cost savings to the office.

Section 3. Vehicle Modification Services.

(1) Modification of a private vehicle shall be authorized if the eligible individual:

- (a) Completes a driver evaluation and vehicle modification assessment by a rehabilitation technology specialist; and
- (b) Obtains a vehicle modification prescription from a certified driver rehabilitation specialist.

(2) Modification of a private vehicle shall be provided on the most cost-effective vehicle necessary for the individual's personal transportation for employment, using the most cost-effective means of modification.

(3) Recoverable, nonpermanent modifications shall be provided for private vehicles if available and cost-effective.

(4) A vehicle modification shall not be performed on a vehicle other than that recommended by a certified driver rehabilitation specialist, unless:

- (a) The vehicle can be modified to meet the individual's needs; and
- (b) The individual assumes all costs associated with the modification of the vehicle in excess of the cost of modification of the recommended vehicle.

(5) Before a non-recoverable, permanent vehicle modification will be approved, an eligible individual shall obtain a valid Kentucky operator's license ~~[before a vehicle modification to allow the individual to drive the vehicle will be approved]~~.

(6) A non-recoverable, permanent vehicle modification costing in excess of \$5,000 shall not be delivered to the eligible individual unless the eligible individual provides proof of insurance for the replacement cost of the vehicle and vehicle modifications.

(7) A vehicle modification costing in excess of \$10,000 shall not be provided unless the eligible individual:

- (a) Has a vocational objective of competitive integrated employment;
- (b) Is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months; and
- (c) The Director of Field Services~~[Program Services]~~ or designee determines that the modification has a direct relationship to the employment objective and that failure to provide the modification would prevent the successful achievement of the employment objective.

(8) Vehicle modifications in excess of \$10,000 shall not be provided on a used vehicle unless:

- (a) The vehicle is no more than two (2) years old;
- (b) The odometer on the vehicle reads no more than 50,000 miles; and

(c) An assistive[A-rehabilitation] technology specialist inspects the vehicle and determines that it is appropriate for the required modification.

(9) Vehicle modifications shall not be performed on a leased vehicle unless:

(a) An assistive[A-rehabilitation] technology specialist inspects the vehicle and determines that it is appropriate for the required modification;

(b) Written permission for the specific modification is obtained from the leasing company; and

(c) Recoverable, nonpermanent equipment is used.

(10) The eligible individual shall be solely responsible for providing maintenance, repair, and upkeep to the modifications as established/specified in any relevant warranties.

(11) The eligible individual shall pay for any maintenance, service, and repairs for modifications not under warranty except as provided in Section 4(2) of this administrative regulation.

Section 4. Upgrade and Repair of Vehicle Modifications.

(1) An upgrade to a vehicle modification shall not be provided unless:

- (a) The upgrade is required due to a medically documented

change in status or function that necessitates a change in driving equipment or vehicle chassis;~~[-and]~~

(b) The eligible individual is employed in a competitive integrated employment setting; and

(c) The eligible individual completes a driver evaluation or non-recoverable, permanent vehicle modification assessment as established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010.

(2) If the vehicle upgrade involves the purchase of a driving system, the vehicle shall be inspected by an assistive[a rehabilitation] technology specialist and found:

- (a) To be appropriate for the proposed modification; and
- (b) To meet all manufacture requirements for the proposed driving system.

(3) A repair to a vehicle modification shall be provided if:

(a) The eligible individual is currently competitively employed in an integrated setting, as defined in 34 C.F.R. 361.5 (c)(9)(b)(11);

(b) The repair is not required as a result of the eligible individual's negligence, misuse, abuse of the equipment, or failure to provide proper maintenance of the equipment;

(c) The eligible individual provides the office with maintenance records for the vehicle and vehicle modifications; ~~[-and]~~

(d) An assistive[A-rehabilitation] technology specialist:

- 1. Inspects the maintenance records of the vehicle and vehicle modifications;
- 2. Determines that the maintenance has met manufacturer requirements;
- 3. Inspects the vehicle and modifications; and
- 4. Determines that is reasonable to repair the modification; and

(e) The eligible individual completes a driver evaluation by a certified driver rehabilitation specialist and obtains a non-recoverable, permanent vehicle modification prescription from the specialist, if requested by the office as established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual, incorporated by reference in 781 KAR 1:010.

(4) An upgrade or repair to a vehicle modification costing in excess of \$10,000 shall not be provided unless the Director of Field Services~~[Program Services]~~ or designee determines that failure to provide the update or repair would prevent the successful maintenance of competitive integrated employment or would result in a significant cost savings to the office.

(5) An upgrade or repair may be provided to an eligible individual who does not meet the requirements of this section if the Director of Field Services~~[Program Services]~~ or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 5. Repeat Vehicle Modifications.

(1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.

(2) The office shall provide a repeat vehicle modification if:

(a) The eligible individual is currently working in a competitive[an] ~~integrated[-competitive]~~ employment ~~setting[competitively-employed]~~, as defined in 34 C.F.R. 361.5 (c)(9)(b)(11);

(b) The eligible individual has a five (5) year work history since the last modification and has been working consistently for a minimum of two (2) years;

(c) The previously modified vehicle has at least 105,000 additional miles on it since the last modification;

(d) An assistive[A-rehabilitation] technology specialist inspects the vehicle and modifications and recommends replacement of the vehicle or modifications;

(e) The eligible individual provides the office with a maintenance record for the vehicle and modifications that demonstrates that the maintenance has been provided according

to manufacturer requirements;

(f) The eligible individual completes a driver evaluation by a certified[rehabilitation] technology specialist and obtains a vehicle modification prescription from the specialist; and

(g) The Director of Field [–Program] Services or designee determines that failure to provide the repeat modification will prevent successful maintenance of competitive integrated employment or would result in a significant cost savings for the office.

Section 6. Property Modification.

(1) Permanent, nonrecoverable modification to a private home, business, or property may be provided if:

(a) A qualified rehabilitation counselor determines it is essential to achieve the employment objective of the eligible individual;

(b) The eligible individual meets economic needs qualifications established in 781 KAR 1:030;

(c) A qualified rehabilitation counselor determines that failure to provide the modification will preclude the successful achievement of the employment goal;

(d) A property modification assessment is completed by an assistive[a rehabilitation] technology specialist;

(e) The eligible individual or family member owns the property to be modified and is current on any mortgage payments;

(f) The eligible individual has not received permanent, nonrecoverable modifications to a home from the office in the past; and

(g) The eligible individual is within a category that is presently being served in the order of selection as established in 781 KAR 1:030.

(2) Property modifications in excess of \$30,000 or twenty (20) percent of the Property Value Administrator (PVA) assessment value of the home or property, whichever is less, shall not be provided.

(3) Property modifications shall be limited to the most cost effective means of safely addressing the disability needs of the eligible individual as required for employment and shall:

(a) Be recoverable, nonpermanent modifications, if possible;

(b) Be cost effective;

(c) Provide access to one (1) entrance to and exit from the home, business, or property;

(d) Provide access to entrance to and exit from one (1) bathroom area and use of the facilities in that bathroom;

(e) Provide access to entrance to and exit from one (1) bedroom area; and

(f) Allow access to corridors necessary to access the bathroom and entrance and exit area of the property.

(4) Property modifications shall not be provided to homes or properties purchased within the last two (2) years unless there is medical documentation to support a finding that there has been a significant change in status or function of the eligible individual that has occurred since the initial purchase of the property, and that finding could not have been anticipated when the home or property was purchased.

(5) Property modifications shall not include structural additions to existing properties or the purchase of new property.

(6) The office shall not restore modified property to its original condition or upgrade areas of the property not affected by the modification into compliance with current local building codes.

(7)(a) A request from the individual to make changes or additions to the recommendation of the assistive technology specialist shall be approved in writing by the specialist prior to being implemented in order to ensure that the modification does not affect the accessibility of the project[All changes or additions to the recommendations of the rehabilitation technology specialist shall be approved, in writing by the rehabilitation technology specialist]; and

(b) The cost of all changes or additions shall be assumed by the eligible individual.

(8) The eligible individual shall provide maintenance, repair, and upkeep to the modifications as required for relevant warranties.

(9) The eligible individual shall be solely responsible for

maintenance, service, and repairs for modifications not under warranty.

(10) Property modifications shall be provided to an eligible individual that does not meet all the requirements of this section if the Director of Field[Program] Services or designee determines that failure to provide the modification would prevent the successful achievement of the vocational objective or would result in a significant cost savings to the office.

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Education and Workforce Development Cabinet Department of Workforce Investment Office of Vocational Rehabilitation (As Amended at ARRS, June 14, 2022)

781 KAR 1:050. Carl D. Perkins Vocational Training Center[Carl D. Perkins Comprehensive Rehabilitation Center].

RELATES TO: KRS 151B.190, Chapter 387, 34 C.F.R. 361.42, 29 U.S.C. §701 et seq.[706(8)(A)]

STATUTORY AUTHORITY: KRS 151B.185, 151B.195
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 authorizes[directs] the Executive Director, Office of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Office of Vocational Rehabilitation. This administrative regulation establishes the criteria for admission to and discharge from the Carl D. Perkins Vocational Training Center [Carl D. Perkins Comprehensive Rehabilitation Center].

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(2) "Director" means Division Director of the Carl D. Perkins Vocational Training Center (CDPVC)[Carl D. Perkins Comprehensive Rehabilitation Center].

(3) "Discharge" means an individual [shall]:

(a) Does not have a further CDPVC[CDPCRC] service provided; and

(b) Will be transported to the home area.

(4) "Eligible individual" means an individual who has been determined by an appropriate office staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. Part 361.

Section 2. Admissions Policy. (1) An individual admitted to CDPVC[CDPCRC] shall be an:

(a) [Be an] Applicant of the Office of Vocational Rehabilitation for whom an assessment is needed prior to making an eligibility or ineligibility decision;

(b) [Be an] Eligible individual of the Office of Vocational Rehabilitation who requires services of the type provided by CDPVC[CDPCRC], in order to benefit in terms of a[an] competitive integrated employment outcome [-or]

(c) Have made arrangements to reimburse CDPCRC for the cost of services provided [-]

(2) A prospect for admission shall provide [the following]:

(a) A consent for CDPVC[CDPCRC] to provide emergency medical care signed by:

1. The individual; or

2. If the individual is a minor or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the individual's parent or guardian, as appropriate, subject to the limitations of KRS Chapter 387;

(b) An agreement assuming responsibility for living

arrangements upon the individual's discharge from CDPVTC[CDPCRC] by:

1. The individual; or
2. If the individual is a minor or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the individual's parent or guardian, as appropriate, subject to the limitations of KRS Chapter 387; and

(c) A description of each limitation that the individual has in performing an activity of daily living.

(3) An individual shall not be admitted to a CDPVTC[CDPCRC] program if there is evidence that a medical or behavioral condition represents a direct threat to the health or safety of self or others. The determination of whether a condition exists shall be made by a written opinion from a CDPVTC [CDPCRC] professional with expertise concerning the identified condition, based upon documentation submitted at referral, and other information the professional shall gather as needed.

(4) If[When] it is determined that the documentation submitted indicates the possibility that the individual's medical or behavioral condition represents a direct threat to self or others, the CDPVTC[CDPCRC] admissions counselor shall select a CDPVTC[CDPCRC] professional with expertise concerning the identified condition, and shall submit the documentation to that professional for an opinion.

(5) If[When] the admissions counselor has requested an opinion from a CDPVTC[CDPCRC] professional, the decision of the professional shall determine whether the individual shall be admitted to CDPVTC[CDPCRC] during that referral. If the individual is referred at a later time, a new opinion shall be submitted.

(6) The admissions counselor or the admissions committee, as appropriate, shall, at the time that the individual is accepted for CDPVTC[CDPCRC] services for evaluation or treatment and training, establish a list of recommended services for the individual and make a referral to the appropriate service area.

(7) If[When] a decision is made to accept an individual for admission, the individual shall be notified in writing of the decision, and the date of admission, and a copy of that notification shall be sent to the referral sources, as appropriate.

(8) The individual shall agree to and abide by the terms of the signed Individualized Plan for Employment and the Individualized Behavior Management Plan, as appropriate.

(9) If[When] a decision is made not to admit an applicant or eligible individual to CDPVTC-[CDPCRC] the referral source shall be notified in writing of the decision with justification for that decision. The applicant or eligible individual shall be notified in writing of the decision with justification and informed of the availability of the Client Assistance Program and the right to appeal.

(10) An applicant or eligible individual may appeal the admissions decision. An appeal shall be pursuant to 781 KAR 1:010.

Section 3. Retention Policy. The decision to provide further services after an individual has completed a CDPVTC[CDPCRC] program shall be based upon [the following]:

(1)(a) A further program shall be requested by the referral source; or

(b) A CDPVTC[CDPCRC] professional shall believe that the individual requires an additional service; and

(2) The availability of the program requested for the individual [shall be available]; and

(3) If applicable, the individual shall have made arrangements to reimburse CDPCRC for the cost of services provided].

Section 4. Discharge Policy. (1) An individual shall be voluntarily discharged from the CDPVTC[CDPCRC] if:

(a) The individual has completed a program of services, and is not qualified for another CDPVTC[CDPCRC] program;

(b) The individual does not desire further services from CDPVTC[CDPCRC];

(c) The individual's medical condition requires treatment away from the CDPVTC [CDPCRC] for an extended period of time; or

(d) The individual wishes to leave CDPVTC[CDPCRC] [and cannot be convinced to stay].

(2) An individual shall be involuntarily discharged from CDPVTC[CDPCRC] if:

(a) The individual fails to make progress in the program of services and efforts to resolve the problem have been unsuccessful;

(b) The individual is no longer qualified for the program and no other needed program is available; or

(c) The individual's behavioral condition deteriorates to the point of direct threat to the safety of others.];

(3)[(d)] An individual shall be discharged from CDPVTC[CDPCRC] without prior notice if necessary to prevent harm to a person or property, or to prevent serious disruption of a CDPVTC [CDPCRC] program.

Section 5. Due Process. (1) The individual, or the parent or guardian if under eighteen (18) years of age or a person for whom the court has determined some form of guardianship or conservatorship is necessary, the referring counselor, or representative if applicable, shall be notified in writing or other appropriate format of the intent to discharge involuntarily with justification.];

(2) The individual shall be given an opportunity to present facts and views in rebuttal to the director or a designee.];

(3) The director or designee shall notify the individual, in writing or other appropriate format, with justification, of the involuntary discharge decision or of intent to rescind the intent to discharge.

(4) At the time an applicant or eligible individual is informed of the involuntary discharge decision, the individual shall be also informed of the availability of the Client Assistance Program and the right to appeal.

(5) An applicant or eligible individual may appeal the discharge decision. An appeal shall be pursuant to 781 KAR 1:010.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(As Amended at ARRS, June 14, 2022)

782 KAR 1:010. Kentucky Business Enterprises.

RELATES TO: KRS 13B, 61.800, 61.870-61.884, 163.470(11), 438.310, 34 C.F.R. Part 361.38, 395, 20 U.S.C. 107-107f

STATUTORY AUTHORITY: KRS 163.470(5), 34 C.F.R. 395.4, 20 U.S.C. 107b(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the office to establish and implement policies and procedures for administering the program of services for the blind and visually impaired. 20 U.S.C. 107(b)(5) requires the office to promulgate administrative regulations for the operation of the vending facility program on federal properties in Kentucky. This administrative regulation establishes the operational requirements for the business enterprises program created by KRS 163.470(9)[for the federal Randolph-Sheppard Vending Facility Program].

Section 1. Definitions. (1) "Active participation" means an ongoing process that[which]:

(a) Is between the office and the State Committee of Blind Vendors for joint planning and input on program policies, standards, and procedures; and

(b) Does not supersede the office's final authority to administer the program.

(2) "Administrative Hearing" is[means a full evidentiary hearing as] defined by[in] KRS 13B.010 Section 2.

(3)[(2)] "Agreement" means a written contract entered into

between the office and property management authorizing the establishment of a vending facility and establishing[setting forth] the service obligations.

(4)[(3)] "Applicant" means an eligible individual who has been referred by a counselor to be screened for participation in the Kentucky Business Enterprises (KBE) Vendor Training Program.

(5) "Blind person" is defined by 20 U.S.C. 107e(1).

(6) "Committee" means the Kentucky Blind Vendor Committee.

(7)[(4)] "Counselor" means a vocational rehabilitation counselor in the office[Office for the Blind].

(8)[(5)] "Director" means the Division Director of Kentucky Business Enterprises.

(9)[(6)] "Eligible individual" means a consumer as defined by[as] 782 KAR 1:020, Section1(4).

(10)[(7)] "Executive director" means the Executive director of the Kentucky Office of Vocational Rehabilitation[Kentucky Office for the Blind].

(11)[(8)] "Kentucky Business Enterprises" or "KBE" means the[a] division of the office established by KRS 163.470(11) to administer the blind vendor program in Kentucky.

(12)[(9)] "Licensee" means an eligible individual who:

(a) Has successfully completed the KBE Vendor Training Program;

(b) Has been licensed to operate a KBE vending facility; and

(c) Is not operating a vending facility.

(13)[(10)] "Mediation" means a voluntary process through which a vendor seeks[may] an informal option which allows a vendor to[seek] resolution of a dispute with an office action that[which].

(a) Arises from the operation or administration of the vending facility program; and

(b) Adversely affects the vendor.

(14)[(11)] "Office" means the Office of Vocational Rehabilitation[Office for the Blind] which is the state licensing agency established by KRS.163.470 to comply with 20 U.S.C. 107a(5) for the blind vendor program[Randolph-Sheppard Vending Facility Program] in Kentucky.

(15)[(12)] "Seniority" means the accumulated period of time during which a vendor has operated KBE vending facilities.

(16)[(13)] "Trainee" means an eligible individual who has been selected for, and is actively participating in, the KBE vendor training program[leading to licensure].

(17)[(14)] "Vending facility" means a food sales operation within the meaning of 34 C.F.R. 395.1(x) operated on state, federal, or private property under the auspices of KBE[by a vendor].

(18)[(15)] "Vendor" means a licensee who is[responsible for] operating a vending facility under terms of a[an] vendor agreement, agreement, permit, or other contract that governs the operation of [relating to] the vending facility.

(19)[(16)] "Vendor Agreement[agreement]" means the[a] written contract[entered into] between the office and a [KBE] vendor that[which]. [authorizing the vendor to operate a vending facility at a specific location and setting forth the responsibilities of the parties with respect to the vending facility]

(a) Authorizes the vendor to operate a vending facility at a specific location; and

(b) Establishes[Sets forth] the terms of the operation of the vending facility.

(20) "Vendor training program" means KBE's mandatory training program for eligible blind individuals seeking a vending license.

Section 2. Training and Licensure. (1) Eligibility Criteria.

(a) An applicant shall be screened to enter the KBE vendor training program upon submission of documentation by the counselor and the eligible individual which establishes that the criteria in paragraph (b) of this subsection have been met.

(b) The applicant shall:

1. Be a[Meet a visual diagnosis of] blind person[as defined in the federal Randolph-Sheppard Act at 20 U.S.C. 107e(1) and the definition of blind person established in 34 C.F.R. 395.1(c)];

2. Be a citizen of the United States;

3. Have met[Be certified that the consumer meets] the general criteria of eligibility for vocational rehabilitation services from the office;

4. Have received a high school diploma or GED certification;

5. Have math skills at an eighth-grade level or above;

6. Have financial, verbal communication and public relations skills sufficient to operate[for—operating] a vending facility[business];

7. Have verbal and communication skills;

8. Have public relations skills;

7.[9.] Maintain personal hygiene to meet all health codes applicable to the vending facility and adhere to a dress code appropriate for the vending facility location[Have personal hygiene and appearance appropriate for meeting the public];

8.[10.] Be independent in performing the activities of daily living[daily living activities] with accommodation;

9.[11.] Have mobility skills sufficient to safely navigate the vending facility; and

10.[12.] Have reached the age of eighteen (18)[majority].

(2) KBE screening process for training program.

(a) The screening committee shall be composed of:

1. The [KBE division] director or designee;

2. The chair of the Committee[State Committee of Blind Vendors] or designee;

3. A KBE vendor appointed by the chair of the committee[State Committee of Blind Vendors];

4. The Director of the Division of Blind[Consumer] Services or a designee; and

5. The KBE assistant division director or designee.

(b) A designee shall not be the counselor of the applicant.

(3) KBE Vendor Training Program.

(a) The KBE vendor training program shall provide on-the-job work experience and classroom instruction[leading to licensure as a KBE vendor].

(b) The curriculum and training manual for the KBE training program shall be developed with the active participation of the Committee[State Committee of Blind Vendors] to ensure that a trainee, upon completion of the program, demonstrates proficiency in all aspects of KBE vending facility operation.

(c) [Upon successful completion of the training program,][t]he office shall award a vendor license to a[the] trainee who successfully completes the vendor training program.

Section 3. KBE Vendor License. (1) License conditions.

(a) A license to operate a KBE vending facility shall be issued for an indefinite period of time.

(b) The office shall provide management services and training to assist the vendor in operating a vending facility[fulfilling the terms of the agreement].

(c) KBE shall conduct periodic management reviews, vending facility surveys, and financial audits of vending facilities and records. If KBE determines[information is obtained that] the vendor is not meeting the operational standards established in Section 9 of this administrative regulation, remedial steps shall be identified and reviewed by KBE staff with the vendor. Specific training, if appropriate, shall be made available to remedy a deficiency. The office may require the vendor to participate in training provided by, or arranged by, KBE if operational standards established in Section 9 of this administrative regulation are not being met.

(d) The office shall terminate the license of a vendor if, after affording the vendor the opportunity for an[a] administrative[full evidentiary] hearing, the office finds that:

1. The vending facility is not being operated in accordance with this administrative regulation, the permit or agreement, or the vendor agreement, such as the filing of false set aside reports, the violation of any state or federal law regarding payment of taxes and labor requirements, or[and] the failure to maintain insurance as required by Section 9(20) of this administrative regulation; or

2. The vendor's vision has improved so that the vendor no longer meets the definition of blind person[established in 34 C.F.R. 395.1(c) of the federal implementing regulations to the Randolph-Sheppard Act, 20 U.S.C. 107 through 107f]. In order to ensure compliance, vendors may be required to undergo an

ophthalmologic examination. The office shall select and approve the exam provider and shall be responsible for the costs of the examination.

(2) Leave of absence.

(a) The office shall/may grant a vendor a leave of absence from a vending facility of up to one (1) year for:

1. A serious health condition that leaves the vendor unable to perform the functions necessary to manage the vending operation;

2. Care for a spouse, son, daughter, parent, or immediate family member with a serious health condition;

3. Pregnancy and the birth of a child;

4. The placement of a child for adoption or foster care if taken within one (1) year of placement; or

5. Another exigent circumstance that is in the best interest of the vendor or the vending operation[reasons-of health, pregnancy, or personal reasons after a written request with justification is approved by the director].

(b) The vendor shall retain accrued seniority, but shall not accrue any seniority during the leave of absence.

(c) If the vendor is unable to return to the vending facility at the expiration of the approved leave of absence, the vendor shall:

1. Resign from that vending facility; or

2. Be subject to termination of the vendor agreement to operate the vending facility.

(3) Resignation.

(a) Resignation from a vending facility shall result in a vendor returning to licensee status with the right to bid on vending facility vacancies and retention of accrued seniority.

(b) Resignation from KBE shall result in loss of the vendor's license with retention of all accrued seniority.

(c) Reentry into KBE and eligibility to bid on a vending facility by an individual that resigned from KBE shall be allowed only upon completion of training, if the individual that resigned did so for one (1) calendar year or more prior to their attempt to reenter KBE.

Section 4. Vendor Vacancy. (1) The office shall determine that a vendor vacancy exists if:

(a) A new vending facility is established; or

(b) An existing vending facility position is vacated.

(2) If a location becomes available that might support more than one (1) vending facility, the number and types of facilities shall be determined by the director with the active participation of the State Committee of Blind Vendors to prevent unfair competition.

Section 5. Vendor Appointment. (1) Announcement of vacancy.

(a) If a vending facility vacancy is identified, the director shall notify all licensees and vendors of the available position.

(b) Announcements of a vacancy shall be made in alternative format and shall include the closing date and time by which bids shall be received by the director.

(c) Information on the vending facility's operation requirements, previous vending facility gross sales, and arrangements for visitation of the vending facility shall be included in the announcement.

(2) Bids. Any vendor or licensee may make an application for a vacancy by submitting a completed Application for Vending Facility Vacancy Form to the director by the bid closing date. All bids shall be considered without regard to race, color, national origin, gender, religion, age, political affiliation, and disability.

(3) Selection.

(a) The director shall appoint a vendor or licensee to manage each vending facility, in accordance with this subsection.

(b) Except in cases of emergency appointment pursuant to subsection (5) of this section, the director shall solicit the active participation of three (3) representatives of the State Committee of Blind Vendors, who shall be appointed by the committee chair, on each vending facility manager appointment.

(c) The selection process shall begin with compilation of the seniority of each bidder based on currently existing KBE records. Beginning with the bidder with the most KBE seniority, the director and committee representatives shall review that bidder's business practices as documented in the KBE vending facility files in areas

such as:

1. Customer relations;

2. Cooperation with property management;

3. Cooperation with KBE staff;

4. Complaints and commendations;

5. Timely and accurate submission of monthly financial reports and set-aside payments;

6. Financial management;

7. Recordkeeping;

8. Audit reports; and

9. Nonnegotiable payments to KBE or suppliers.

(d) The committee representatives shall advise the director of their first and second choice recommendations. The director shall balance the most senior bidder's documented business practices with the requirements of the specific vending facility vacancy. If the bidder's business practices are reasonably satisfactory as they relate to the specific vending facility requirements, in the judgment of the director, the bidder with the highest KBE seniority shall be offered the appointment to the vending facility vacancy.

(e) If the bidder with the most KBE seniority is not offered the appointment under the criteria of this subsection or declines the appointment, the director shall apply the criteria of this subsection to the next bidder with the highest KBE seniority until a bidder is selected and appointed by the director.

(f) If two (2) or more bidders have equal KBE seniority, each bidder's business practices as they relate to meeting the vending facility requirements shall be balanced by the director. The most qualified bidder for the specific vending facility vacancy, in the judgment of the director, shall be selected and offered the appointment by the director.

(g) Consideration of KBE licensees with no KBE seniority shall be based on the following equally weighted criteria:

1. KBE final training test score;

2. On-the-job training reports;

3. Formal education; and

4. Prior work history.

(4) Appointment.

(a) The successful bidder shall be notified of appointment to the vacancy in alternative format as necessary. All appointment letters shall be mailed by certified mail. The appointee shall respond to the director in writing, postmarked within five (5) working days after receipt of the appointment letter, to accept or reject appointment. In the absence of a written response, the offer of appointment shall be rescinded, and the director shall select a new appointee.

(b) If a vendor resigns or abandons a vending facility within six (6) months of appointment to the facility for any reason other than properly documented medical reasons, the vendor shall be ineligible to bid on another vending facility for six (6) months.

(5) Emergency appointment.

(a) The office shall make an emergency appointment of a vendor, licensee, or a nonlicensed individual to a vending facility vacancy if time does not permit adherence to the vendor appointment process. An emergency appointment may occur for a leave of absence, appointment of a vendor or licensee to another vacancy, death, abandonment, health emergency, or other similar occurrence.

(b) A licensee placed by emergency appointment shall accrue seniority for the duration of the emergency appointment period. The State Committee of Blind Vendors shall be notified in writing of an emergency appointment.

(c) An emergency appointment shall not be more than six (6) months in duration from the time the appointment is made.

Section 6. Saleable Stock Inventory Acquisition. (1)(a) If a licensee is placed in a vending facility, a saleable stock inventory shall be provided by the licensee's counselor on a one (1) time basis that is equal to three (3) weeks of the facility's gross sales as determined by the facility's historical data, or if a new facility, the gross sales of a similar facility[not to exceed \$5,000]. This amount shall be used to reimburse:

1. The stock wholesalers;

2. The vendor exiting the vending facility; or

3. Both.

(b) The amount and type of stock necessary for the successful operation of a vending facility shall be determined by the director or designee, based on the amount and type of stock used previously at the same or similar vending facilities.

(c) Payment for additional stock[~~above the \$5,000,~~] needed for the vending facility shall be the responsibility of the licensee. If the licensee seeks financing for the additional stock, KBE may purchase the stock on the licensee's behalf after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The licensee shall make monthly payments to KBE up to the value of the stock purchases as set forth in a repayment schedule negotiated and signed by both the licensee and the office's representative.

(2)(a) If a vendor transfers, through the KBE bid process, from one (1) vending facility to another at which KBE owns an initial saleable stock inventory, the entering vendor shall purchase from KBE the initial inventory valued at wholesale costs.

(b) Except as established/provided] in paragraph (c) of this subsection, inventory above the initial value at the vending facility shall be bought by the entering vendor from the exiting vendor at wholesale costs through an arrangement between vendors. KBE shall not be a party to that arrangement. KBE staff shall advise what type and amount of stock is needed at the vending facility, whether as the beginning inventory or additional inventory.

(c) The exiting vendor, at his discretion, may choose to dispose of the stock inventory at the vending facility which is above the KBE-owned type and amount of product considered initial stock. The entering vendor shall be responsible for additional stock purchases above the KBE-owned amount. KBE may make stock purchases on behalf of the entering vendor after KBE has been provided proof that other funding is not available from financial institutions including the Small Business Administration or banks. The vendor shall make monthly payments to KBE up to the value of the stock purchases.

(3)(a) If an emergency appointment of a vendor is made to an existing vending facility at which the initial saleable stock inventory is owned by KBE, ownership shall be retained by KBE. KBE shall purchase needed inventory above the initial amount at the vending facility, at wholesale cost from:

1. The exiting vendor; or
2. Wholesalers.

(b) The emergency appointee shall be responsible for maintaining a stock inventory value equivalent to the KBE-owned inventory at the vending facility.

(c) If a permanent vendor appointment is made, the appointed vendor shall make arrangements to purchase the entire stock inventory from the exiting vendor or KBE.

(4) If an emergency appointment is made to a new vending facility where there is no existing stock inventory, KBE shall purchase the initial inventory.

(5) If an emergency appointment is made to a vending facility where the exiting vendor has been granted a leave-of-absence, the emergency appointee shall:

- (a) Accept responsibility for total inventory of the vending facility; and
- (b) Maintain an inventory of equal value, in either saleable stock or cash equivalent during the entire emergency assignment.

Section 7. Mediation and Administrative Hearing[Vendor Administrative Remedies and] Procedures. (1) Mediation.

(a) A vendor who is dissatisfied with an office action arising from the operation or administration of the vending facility program, which adversely affects the vendor, has the right to request mediation and an administrative hearing. A request shall:

1. Be submitted to the director in writing;

2.] within thirty (30) calendar days from the occurrence of an office action arising from the operation or administration of the vending facility program ~~that~~[which] adversely affects the vendor, a mediation; and

- 2.[3.] Establish/Set forth] the details of the complaint.

(b) The office shall maintain a list of qualified and impartial

mediators and ~~if/when~~ a request for mediation is received, the office shall:

1. Choose a mediator, with the agreement of the vendor, from the list and schedule a mediation to be held within forty-five (45) calendar days of the receipt of the request for mediation;

2. Schedule the mediation at a field office convenient to the aggrieved vendor during regular state working hours;

3. Provide reasonable accommodations upon request;

4. Allow the Appellant to be represented by an attorney or advocate at appellant's own expense;

5.[6.] Send a representative to the mediation who is authorized to bind the office to an agreement; and

6.[7.] Not use the mediation process to deny or delay the vendor's right to pursue resolution of the dispute through an administrative hearing.

(c) If the vendor and office mutually agree to a resolution at the mediation, that agreement shall be documented in writing and signed by both parties before the mediation is concluded.

(d) Discussions arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(e) If a mutually agreeable resolution is not obtained, the vendor may submit a request for an administrative hearing.

(2) Administrative hearing.

(a) If the vendor does not request mediation[,] or mediation does not resolve the dispute, the vendor may request an administrative hearing, which shall be in accordance with the terms established/set forth] in subsection (1) of this section.

(b) Upon receipt of a request for an administrative hearing, the office shall conduct an administrative hearing in accordance with KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final agency decision may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13.

(a) Participation in the mediation process shall be voluntary on the part of the vendor. The mediation process shall not be used to deny or delay the vendor's right to pursue resolution of the dispute through an evidentiary hearing.

(b)1. Within thirty (30) calendar days from the occurrence of an office action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation may be requested in writing to the director.

2. The office shall maintain a list of qualified mediators. The director, with the agreement of the vendor, shall choose a mediator from the list and schedule a mediation meeting to be concluded within forty-five (45) calendar days of the receipt of the request.

3. The mediation shall be held at a field office convenient to the aggrieved vendor during regular state working hours.

4. Reasonable accommodations shall be provided upon request.

(c) A representative of the office who is authorized to bind the office to an agreement shall attend the mediation. The aggrieved vendor shall attend and may be represented by an advocate or counsel. If the vendor and office mutually agree to a resolution, the mediation agreement shall be signed before the mediation is concluded. Discussion or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(d) If a mutually agreeable resolution is not obtained, the vendor may submit a request for an evidentiary hearing within thirty (30) calendar days of the unresolved mediation.

(2) Evidentiary hearing.

(a) If desired, a vendor shall request an evidentiary hearing in writing to the director within thirty (30) calendar days:

1. Of an unresolved mediation; or

2. From an office action arising from the operation or administration of the vending facility program which adversely affects the vendor.

(b) The office shall conduct an evidentiary hearing requested by the vendor pursuant to KRS Chapter 13B.

(c) A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may request a federal arbitration by filing a complaint with the Secretary of the United States Department of Education pursuant to 34 C.F.R. 395.13.]

Section 8. Kentucky[State] Committee of Blind Vendors. The Kentucky Committee of Blind Vendors[State Committee of Blind Vendors] shall be established to actively participate with the office in the major administrative and policy decisions affecting the overall administration of the blind vendor program in Kentucky[Randolph-Sheppard Vending Facility Program] and to perform other functions consistent with 34 C.F.R. 395.14.

(1) Election procedures. The office shall provide for the biennial election of the Committee[State Committee of Blind Vendors] consistent with the bylaws drafted by the Committee[procedures established by the general assembly of all blind vendors in accordance with 34 C.F.R. 395.14].

(2) Meetings of the committee.

[(a)] The Committee[State Committee of Blind Vendors] shall:

[(a)1.] Conduct all meetings in accordance with the Committee bylaws and the Kentucky Open Meetings Act as established/set forth in KRS 61.800 et. seq.;

[(b)2.] Meet at least quarterly with the director or his designee in attendance.

[(3)(a)] The office shall send t[he] announcement of the meeting, and[with] the agenda as drafted by the committee chairperson and the director or designee, [shall be sent]mailed]to the committee members, [and all]vendors, and licensees[by KBE] via electronic mail or U.S. Mail. [Mailings]The documents shall be provided[prepared] in alternative format as necessary.

(b) Office[The KBE] staff shall record the official minutes of meetings and prepare and send [mail]a copy of the minutes to all vendors and licensees after approval by the committee chair via electronic mail or U.S. Mail. The minutes may be provided[mailed] in alternative format as necessary.

(c)1. The office[KBE] shall make committee meeting space available to the chairperson as necessary to conduct the[for] business of the Committee[State Committee of Blind Vendors].

2. The director and committee chair shall develop an annual committee budget.

3. Expenses incurred by the committee members in conducting the four (4) quarterly meetings shall be reimbursed from the committee's annual budget consistent with 200 KAR 2:006.

4. Additional meetings shall be eligible for reimbursement with the approval of the KBE director or office executive director, based on availability of funds and the purpose of the meeting.

(d) The Committee[State Committee of Blind Vendors] shall adopt bylaws, which shall be approved by the office if the bylaws comply with state and federal law.

Section 9. Vendor's Rights and Responsibilities. A vendor shall:

(1) Execute a Vendor Agreement[Enter into an agreement] with the office for the operation of a [Randolph-Sheppard] vending facility[under the auspices of KBE] prior to beginning operation of a vending facility and thereafter if required to ensure its terms remain compliant with KBE's agreement;

(2) Operate the vending facility in accordance with accepted-business practices and in compliance with all federal, state, and local laws, administrative regulations, and ordinances applicable to the operation of the vending facility;

(3) Assure proper daily operation of the vending facility to meet the requirements of the permit or agreement and vendor agreement in a business-like manner;

(4) Maintain high-quality fresh merchandise in a quantity sufficient to satisfy customer needs;

(5) Maintain personal hygiene and vending facility sanitation sufficient to meet all health codes applicable to the vending facility,

and adhere to a dress code appropriate for the vending facility location;[Maintain presentable personal hygiene, appearance, and vending facility sanitation to assure pleasant accommodations for all customers;]

(6) Provide adequate pest control and janitorial services unless otherwise specified in the vendor agreement;

(7) Post in a conspicuous place a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18) pursuant to KRS 438.310 in any vending facility where tobacco products are sold;

(8) Require proof of age from a prospective buyer or recipient of tobacco products who may be under the age of eighteen (18);

(9) Clean, fill, and service machines and equipment as often as necessary to ensure adequate stock to meet the needs of the customers at the vending facility[daily to assure proper functioning and report promptly to KBE any needed repair of equipment];

[(10)] Assure proper functioning of all machines and equipment and promptly report the need for equipment repairs;

[(11)][(40)] Obtain prior written approval from the director before purchasing equipment from a KBE vending facility from personal funds. If approved, the vendor shall arrange and pay for repair and maintenance and removal, if necessary, of the personally owned equipment;

[(12)][(44)] Employ and pay a substitute during times of vendor absence from a vending facility due to vacation or sickness unless the office has made an emergency appointment for an extended leave. Preference may be given to qualified blind or visually-impaired persons if selecting substitutes;

[(13)][(42)] Cooperate with vending facility audits that may be performed periodically at KBE expense;

[(14)][(43)] Pay the monthly seven (7) percent set-aside amount based on net profits of all vending facilities on schedule:

(a) The monthly set-aside payments shall be received by the office on or before the 20th of the following month by check or money order made payable to the Kentucky State Treasurer or through an electronic payment system established by the office;

(b) Late set-aside payments shall result in a twelve (12) percent annual interest charge plus a five (5) percent penalty for each thirty (30) day period or portion thereof for which the set-aside payment is in arrears, up to a maximum of twenty-five (25) percent;

(c) A twelve (12) percent annual interest charge shall be assessed for nonnegotiable checks received until the date a replacement certified check or money order is received;

(d) A ten (10) dollar service charge shall be due for a nonnegotiable check;

(e) If a nonnegotiable check is received from a vendor, all future payments made by the vendor shall be by certified check or money order;

(f) If a vendor is late in making the set aside payment to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one (1) year; and

(g) If a vendor is late in making the set aside payment to the office for ninety (90) or more calendar days, or is late in making the set aside payment to the office six (6) or more times in a calendar year, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation, the vendor shall be subject to removal from their vending facility;

[(15)][(44)] Pay resaleable stock suppliers promptly and retain all invoices and receipts for three (3) calendar years;

[(16)][(45)] Include rebates, commissions, or bonuses received by the vendor from suppliers as income of the vending facility and account for this income on the monthly vending facility financial report submitted to KBE on a completed Financial Report Form;

[(17)][(46)](a) Utilize office-established accounting practices and bookkeeping procedures including the establishment of a business bank account to ensure that personal and vending facility funds are not commingled; and

(b) Make available to the office upon request bank statements and other vending facility business records for audit purposes and to satisfy ongoing financial accountability standards;

~~(18)~~~~(47)~~(a) Submit a monthly vending facility financial report on a completed Financial Report Form to be received by the office on or before the 20th of the following month, with the expenses listed deducted as operating expenses on the report:

1. Expendable supplies used in the vending facility;
2. Substitutes for the vendor while the vendor is not present at the vending facility due to sick or annual leave;
3. Rental and commission fees paid to building management as stipulated in the vending facility agreement;
4. Telephone and utility expenses of the vending facility;
5. Pest control services;
6. Delivery charges paid on resaleable stock;
7. Janitorial services;
8. Liability insurance;
9. License and permits required by health departments;
10. Employee wages; and
11. Employee fringe benefits;

(b) If a vendor is late in making the monthly vending facility financial report to the office two (2) or more consecutive months, the vendor shall be prohibited from bidding on another vending facility for one (1) year;

(c) If a vendor is late in making the monthly vending facility financial report to the office for ninety (90) or more calendar days, or is late in making the monthly vending facility financial report to the office six (6) or more times in a calendar year, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation, the vendor shall be subject to removal from their vending facility;

~~(19)~~~~(48)~~ Reimburse at wholesale cost the vending facility for merchandise taken from the vending facility for any personal use or charitable donation;

~~(20)~~~~(49)~~ Be responsible for payment of any taxes levied or assessed on the operation of the vending facility including local, state, and federal taxes;

~~(21)~~~~(20)~~(a) Obtain, maintain in effect, and pay all premiums of the following insurance coverage:

1. Comprehensive general liability insurance including personal injury, bodily injury, and product liability to meet minimum policy limits set by KBE in compliance with the terms of the vending facility permit. The policies shall insure against any liability which may occur from the operation by the vendor of the vending facility or in connection with the premises; and

2. Pay workers' compensation, Social Security, unemployment compensation, disability insurance, and other insurance coverage required by law for both the vendor and vendor's employees;

(b) Submit proof of insurance as required by this subsection to KBE annually. All policies shall provide for notice to KBE of any cancellation, termination, or nonrenewal of coverage; and

(c) Vendors that fail to annually submit proof of insurance as required by this subsection shall be subject to termination or suspension of the vendor's license, after first affording the vendor an administrative remedy in accordance with Section 7 of this administrative regulation;

~~(22)~~~~(24)~~ Not bind or obligate the office or represent to an entity that the vendor is a legal representative, agency, or employee of the office;

~~(23)~~~~(22)~~ Not remove or move any KBE-owned equipment located at any vending facility without approval from the director;

~~(24)~~~~(23)~~ Maintain a separate business bank account for deposit of all lottery sales and proceeds in a vending facility participating in lottery games for which the manager personally has applied and been approved for the sale of lottery tickets by the Kentucky Lottery Corporation;

~~(25)~~~~(24)~~ Adhere to the initial stock inventory requirements established in Section 6 of this administrative regulation;

~~(26)~~~~(25)~~ Cooperate with KBE staff in the ongoing supervision and monitoring of the vending facility to maximize efficiency, productivity, customer satisfaction, and market potential;

~~(27)~~~~(26)~~ Participate in training arranged and paid for by the office as required by KBE to correct identified deficiencies and to improve business skills. Vendors may request approval from office for vending facility management training;

~~(28)~~~~(27)~~ Request access in writing, if desired, to all program

and financial data of KBE as provided for by the Kentucky Open Records Law, KRS 61.870 through 61.884, and the federal Randolph-Sheppard Act, 20 U.S.C. 107 through 107f. The data may be made available in alternative format. At a vendor's request, the office shall arrange a convenient time for a staff member to assist in the interpretation of the data;

~~(29)~~~~(28)~~ Have the opportunity to read and respond to each complaint or commendation placed in a KBE file. A copy of the complaint or commendation shall be delivered to the named vendor by registered or certified mail. A response received from the vendor named in the complaint or commendation shall be filed with the complaint or commendation in the KBE file; ~~and~~

~~(30)~~~~(29)~~(a) Be prohibited from bidding on a vending facility for one (1) calendar year dating from the date of the second late payment if the vendor fails to make two (2) consecutive monthly payments in any repayment schedule established pursuant to Section 6 of this administrative regulation;

(b) Be subject to removal from a~~the~~ vending facility, after first affording the vendor an opportunity to request a mediation and administrative hearing~~remedy~~ in accordance with Section 7 of this administrative regulation, if the vendor:

1. Fails to make a payment in any repayment schedule established pursuant to Section 6 of this administrative regulation for ninety (90) or more calendar days; or

2. Is late in making the payment to the office six (6) or more times in a calendar year; ~~and~~

(31) Not continue vending if KBE's right to vend at a property is terminated.

Section 10. Office's Rights and Responsibilities. The office shall:

(1) Enter permits or agreements with property management administrators on suitable federal, state, and other property to establish vending facilities;

(2) Assist in stocking vending facilities with initial resaleable products in accordance with Section 6 of this administrative regulation;

(3) Provide new and existing vending facilities with sufficient equipment to meet the terms of the permit or agreement for operation of each vending facility. The office shall:

(a) Retain ownership of all equipment provided and paid for by KBE in each vending facility;

(b) Repair, or cause to be repaired, replace, or maintain all vending facility equipment owned by KBE;

(c) Approve or deny vendor requests for replacement equipment if justified;

(d) Purchase additional equipment for vending facilities if sufficiently justified in terms of the vending facility potential and permit or agreement obligations. The office shall review vendor requests for additional equipment with accompanying justification for the investment. KBE shall make the final decision and notify the vendor; and

(e) Approve requests, if justified, for vendor-purchased equipment.

(4) Develop financial controls to ensure financial accountability of each vending facility;

(5) Establish a seven (7) percent set-aside amount to be paid by each vending facility manager assessed on the monthly net proceeds of the vending facility;

(6) Establish reasonable charges for delinquent monthly set-aside payments and nonnegotiable checks as established in Section 9(13) of this administrative regulation, and take disciplinary action for persistent delinquency or dishonored checks~~or nonnegotiable checks~~, including suspension or termination of a vendor's license, after first affording the vendor the opportunity to request mediation and an administrative hearing~~an administrative remedy~~;

(7)(a) Periodically conduct or provide for accountability reviews of vending facility financial documentation relating to the vending facility operation; or

(b) Provide, or provide for, temporary assistance or training to a vendor determined to be remiss in recordkeeping or reporting. If the temporary assistance or training does not correct the

deficiency, the office may require the vendor to utilize qualified bookkeeping services;

(8) Contract for periodic audits of each vending facility at office expense;

(9) Inventory and establish the wholesale value of the on-hand saleable stock inventory if a vendor leaves a vending facility;

(10) If a vendor appointment is made, take or contract for the taking of an inventory of all on-hand resaleable stock, valued and calculated at wholesale cost;

(11) Determine the product types and quantities necessary for successful operation of a vending facility if appointing a vendor to a vending facility;

(12) Provide each licensee with a copy of this administrative regulation in alternative format as necessary;

(13) Provide each vendor with a copy of all relevant materials pertaining to the operation of the vendor's assigned vending facility in alternative format if/as necessary;

(14) Provide ongoing monitoring and supervision of each vending facility to ensure compliance with operating agreements, permits, laws, administrative regulations, vending facility service obligations, and generally-accepted business practices; and

(15) Provide, or provide for, ongoing training as identified by KBE staff or requested by a vendor and approved by the director, based on availability of funding and whether the director reasonably believes the requested training is warranted under the circumstances.

Section 11. Confidentiality. (1) All identifiable personal information concerning applicant, licensee, and vendors shall be confidential consistent with 34 C.F.R. 361.38. Identifiable personal information shall include documentation from an individual's vocational rehabilitation consumer file. Access to, or release of, the confidential personal information shall be governed by the provisions of 34 C.F.R. 361.38. If the personal information is released in response to a judicial order, the applicant, licensee, or vendor shall be notified by KBE within three (3) working days from receipt of the judicial order.

(2) All KBE documents and files pertaining to the operation of KBE vending facilities shall be public records pursuant to KRS Chapter 61. The KBE files shall include business records concerning the operation of vending facilities and shall be maintained by the office consistent with its public purpose. Any information from KBE files pertaining to the operation of KBE vending facilities may be included in bids issued for vendor vacancies and may be shared with members of the State Committee of Blind Vendors to assist their active participation during vendor selection.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Vending Facility Vacancy", February 2001; and

(b) "Financial Report, Kentucky Business Enterprises", August 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office ~~offfor~~ Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort, Kentucky 40601, [Office for the Blind, 275 East Main Street, Mail Stop 2-EJ, Frankfort Kentucky 40624], Monday through Friday, 8 a.m. to 4:30 p.m. For additional information, please visit kcc.ky.gov/vocational-rehabilitation.

CONTACT PERSON: Susie Edwards, Kentucky Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor NE, Frankfort, Kentucky 40601, phone 502-564-4440, email SusieM.Edwards@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(As Amended at ARRS, June 14, 2022)

782 KAR 1:070. Certified driver training program.

RELATES TO: KRS 186.480(1)(b), 186.576, 186.577(4), 186.578, 186.579, 189A.010

STATUTORY AUTHORITY: KRS 186.578(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.578(7) requires the Office of Vocational Rehabilitation[~~Office for the Blind~~] to promulgate administrative regulations setting the standards for a certified driver training program to serve persons with a visual impairment. This administrative regulation establishes standards and procedures for the certified driver training program.

Section 1. Definitions. (1) "Applicant" is defined by KRS 186.576(1).

(2) "Biotopic telescopic device" is defined by KRS 186.576(3).

(3) "Certified driver rehabilitation specialist" means a person who has met basic professional criteria, passed a written test, and maintained continuing education requirements to be certified by the Association for Driver Rehabilitation Specialists, ADED, for the purpose of evaluating, educating, and training persons with disabilities to operate or drive motor vehicles and to prepare for a driving skills test.

(4) "Office" means the Office of Vocational Rehabilitation[~~is defined by KRS 186.576(8)~~].

Section 2. Certified Driver Training Program Requirements. (1) Any person or entity may apply to the office to become a certified driver training program that satisfies the following requirements:

(a) At least one (1) instructor is a certified driver rehabilitation specialist or is supervised by a certified driver rehabilitation specialist;

(b) All instructors meet the requirements of subsection (4) of this section;

(c) Any vehicle utilized:

1. Has a valid registration;

2. Is in sound mechanical order;

3. Has one (1) operable instructor brake;

4. Has signage indicating student driver on two (2) sides and rear of vehicle; and

5. Has adaptive equipment suitable for functional limitations of students;

(d) Maintains liability coverage that meets the minimum Kentucky insurance limits; and

(e) Uses a curriculum which meets the requirements of subsection (3) of this section.

(2) The following shall be submitted to the office:

(a) Business name, address, telephone number, and office hours;

(b) Copy of the certifications and resumes of each proposed instructor;

(c) Description of the equipment, vehicles with adaptive devices, and facilities to be used in the certified driver training program;

(d) Copy of the valid vehicle registration;

(e) Copy of the liability insurance policy that includes a mandatory ten (10) day written cancellation notice by the insurer to the office;

(f) A detailed copy of the curriculum used; and

(g) The fees charged per hour, per lesson, or per course.

(3) The curriculum to be used shall consist of the following sections:

(a) A theoretical course of instruction that shall include:

1. Subject matter contained in the Kentucky Drivers Manual;

2. Safe driving practices and traffic laws;

3. The "SCAN, Identify, Predict, Decide, Execute" (SIPDE) approach to perceptive driving;

4. Signs, signals, highway markings, and highway design features required for the safe operation of a motor vehicle;

5. Driving emergencies such as brake or tire failure, skidding, stuck accelerator, and running off the roadway;

6. Potential crash locations and situations such as intersections, hydroplaning, railroad crossings, multiple vehicle types in the traffic mix, and pedestrian traffic;

7. Seatbelt usage;

8. Speeding as a major contributing factor in vehicle crashes; and

9. Driver responsibility and accident reporting.

(b) A practical course instruction that shall include:

1. Demonstration, instruction, and practice in the use of the bioptic telescopic device; and

2. Behind the wheel demonstration, instruction, and practice:

a. For a minimum of thirty (30) hours for applicants who have never had an operator's license and fifteen (15) hours for applicants who have had an operator's license; and

b. Consisting of:

(i) Stopping;

(ii) Starting;

(iii) Shifting;

(iv) Turning;

(v) Backing;

(vi) Parallel parking;

(vii) Steering; and

(viii) Driving in residential, medium city, and highway traffic.

(4) Any instructor in an approved certified driver training program shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a four (4) year college degree. Experience as a professional driver education instructor shall substitute year-for-year for the college education if the individual is a high school graduate or equivalent;

~~(c) Be of good moral character;~~

~~(c)(d)~~ Never have been convicted of a felony;

~~(d)(e)~~ Never have been convicted of a violation of KRS 189A.010 or its equivalent from another jurisdiction;

~~(e)(f)~~ Never have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in the system;

~~(f)(g)~~ Possess a valid driver's license and have fewer than six (6) points assigned pursuant to 601 KAR 13:025 on his driving history record;

~~(g)(h)~~ Not have had a suspended or terminated ~~his~~ driving privilege ~~withdrawn~~ for any reason in the past five (5) years;

~~(h)(i)~~ ~~Enroll in and~~ Successfully ~~successfully~~ complete the bioptic driving instructor training course offered by the office; and

~~(i)(j)~~ Obtain at least five (5) hours ~~annually~~ of continuing education in low vision rehabilitation each year.

(5) The certified driver training program shall review the driving history record and continuing education requirements of its instructors annually.

Section 3. Certification. (1) The office shall issue a certificate to an approved certified driver training program as established in Section 5 of this administrative regulation.

(2) Each certificate shall be valid for three (3) years from the date of issue. Certificates shall not be ~~are not~~ transferable. If there is a change of ownership, a new application shall be submitted.

Section 4. Performance Inspections. (1) The office may conduct a random or routine performance inspection of a certified driver training program.

(2) The certified driver training program shall be notified in writing of any deficiency discovered in the performance inspection.

(3) The deficiency shall be corrected prior to the next scheduled student or the certified driver training program's approval shall be withdrawn by the office.

Section 5. Acceptance Into a Certified Driver Training Program.

(1) An eligible applicant shall:

(a) Meet the minimum visual requirements of KRS 186.578(1);

(b) Obtain the bioptic telescopic device; and

(c) Successfully complete a functional visual assessment by the office.

(2) An eligible applicant shall ~~may~~ be accepted into a certified driver training program.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

LABOR CABINET

(As Amended at ARRS, June 14, 2022)

803 KAR 5:005. Employee access to or use of federal tax information; required criminal background check.

RELATES TO: KRS 18A.095, 336.015, 336.040, 336.125

STATUTORY AUTHORITY: KRS 336.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 336.040 requires the Labor Cabinet to exercise all administrative functions of the state concerned with the employer-employee relationship. KRS 336.125 requires the Labor Cabinet to promulgate administrative regulations to establish requirements concerning criminal background checks for prospective and current employees, including contract staff, with access to or use of federal tax information (FTI). This administrative regulation establishes the guidelines to implement the requirements set forth in KRS 336.125 and IRS Publication 1075.

Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with the Labor Cabinet or its offices, or a contractor working on behalf of the Cabinet or its offices, who has, or will likely have, access to or use of FTI in their regular course of business.

(2) "Contract staff" means an individual employed by the Labor Cabinet or its offices, or a contractor working on behalf of the Cabinet or its offices, who ~~that~~ does not meet the definition of employee ~~FTI~~ in this section.

(3) "Criminal background check" means a national and state fingerprint-supported criminal history background investigation performed in accordance with KRS 336.125.

(4) "Employee" means either a classified ~~unclassified~~ employee ~~FTI~~ as defined by KRS 18A.005(7), an unclassified ~~classified~~ employee ~~FTI~~ pursuant to KRS 18A.115, or a federally funded ~~employee~~ ~~FTI~~ as defined by KRS 18A.005(15).

(5) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor, or offense the nature of which indicates that the applicant, employee, or contract staff constitutes an unreasonable and immediate risk to the security of FTI (including ~~e.g.,~~ crimes of theft or dishonesty), unless the Labor Cabinet or its offices determine there are mitigating circumstances that sufficiently remediate the existing risk.

(6) "Federal tax information" or "FTI" means federal tax returns and return information received directly from the IRS or obtained through an authorized secondary source, such as the Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of Fiscal Service (BFS), Centers for Medicare and Medicaid Services (CM~~FTI~~) or any entity acting on behalf of the IRS pursuant to an IRC 6103 Agreement.

(7) "Office" means any agency, office, department, or commission within the Labor Cabinet.

(8) "Responsible agency" means an office within the Labor Cabinet, or contractor working on behalf of an office, that employs or offers a job to an individual in a position for which the job duties include access to or use of FTI.

Section 2. Requirements for Criminal Background Checks.

(1) The Labor Cabinet shall require prospective and current employees of the Cabinet or its offices, including contract staff, whose job duties include access to or use of FTI to submit to a

fingerprint-based national and state criminal background check as a condition of initial or continued employment. The criminal background check shall occur:

(a) After the applicant is offered a job but before he or she begins working; and

(b) At least once every five (5) years for current employees or contract staff.

(2) The Labor Cabinet, its offices, or responsible agency that requests a fingerprint-based national and state criminal background check for an applicant, current employee, or contract staff shall incur all fees associated with the cost of each criminal background check requested.

(3) For contract staff employed by an entity under contract with the Labor Cabinet or its offices, it shall be sufficient for the purposes of this administrative regulation for the entity under contract to provide a national and state criminal background check for contract staff anticipated to have access to or use of FTI in their work for the Labor Cabinet or its offices. The national and state criminal background check provided by the entity under contract shall/must have been completed within two (2) years of the start date for contract staff.

(4) The Labor Cabinet, its offices, or responsible agency shall not employ any person in a position for which the job duties include access to or use of FTI if the individual refuses to consent to a fingerprint-based national and state criminal background check.

(5) The Labor Cabinet, its offices, or responsible agency shall notify each applicant, current employee, or contract staff determined to have a disqualifying offense.

Section 3. Disqualification. The Labor Cabinet, its offices, or responsible agency shall not employ or contract with an individual with a disqualifying offense as defined in Section 1(5) of this administrative regulation or whose background check reveals any information that bears upon the fitness of the individual to work in a position with access to or use of FTI. The Labor Cabinet, its offices, or responsible agency shall have the sole discretion to determine if an applicant, current employee, or contract staff is suitable to work in a position with access to or use of FTI and ensure its protection and security in accordance with KRS 336.125, IRS Publication 1075, and any other relevant policy or procedure concerning the confidentiality of FTI.

Section 4. Individuals Ineligible to be Hired. The Labor Cabinet, its offices, or responsible agency may refuse to hire, contract with, or permit to work any applicant that submits to a criminal background check if one (1) or more of the following conditions apply:

(1) The applicant refuses to provide photo identification and Social Security Number;

(2) The applicant fails to submit their fingerprints at an authorized collection site within five (5) business days of receiving notice to submit fingerprints;

(3) Upon completion of the criminal background check, the Labor Cabinet, its offices, or responsible agency receives notice that the applicant is found to have a disqualifying offense; or

(4) Final and acceptable disposition of a criminal charge related to a disqualifying offense is not provided to the Labor Cabinet, its offices, or responsible agency within sixty (60) days of fingerprint submission.

Section 5. Notice of a Disqualifying Offense – Applicants.

(1) Upon completion of the criminal background check, the Labor Cabinet, its offices, or responsible agency shall notify applicants determined to have a disqualifying offense.

(2) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the Labor Cabinet, its offices, or responsible agency shall refer the applicant to the appropriate state or federal law enforcement agency.

Section 6. Notice of Disqualifying Offense, Reconsideration, and Appeal – Current Employees.

(1) Upon completion of a criminal background check, the Labor

Cabinet, its offices, or responsible agency shall notify current employees determined to have a disqualifying offense. A current employee found to have a disqualifying offense shall immediately be removed from duties with access to or use of FTI.

(2) Upon receipt of notice of a disqualifying offense, a current employee removed from responsibilities requiring FTI access or use may submit a written request for reconsideration to the Labor Cabinet's Division of Human Resources no later than fourteen (14) calendar days from the date the notice is issued.

(3) The current employee's request for reconsideration shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense;

4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and

5. Any other relevant and mitigating circumstances regarding the disqualifying offense;

(b) Official documentation showing that all fines, including court-imposed fines, costs or restitution, have been paid, or documentation demonstrating adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to competently perform the employment responsibilities.

(4) A current employee who requests reconsideration may be retained on staff during the review process subject to the following factors:

(a) The nature and severity of the disqualifying offense;

(b) The disposition of the disqualifying offense;

(c) The time elapsed since the disqualifying offense;

(d) The employee's personnel history; and

(e) Whether the employee may be assigned other duties that do not require access to or use of FTI.

(5) After review, the Labor Cabinet, its offices, or responsible agency may:

(a) Transfer the employee to another open position at the same pay grade or lower within the Labor Cabinet, its offices, or responsible agency for which the employee is qualified and for which access to or use of FTI is not part of the job responsibilities;

(b) Dismiss the employee if it is determined that the nature of the disqualifying offense presents an immediate, serious and irreparable risk to FTI if the employee's job duties require access to or use of FTI;

(c) Redefine the employee's job responsibilities to exclude those functions that require access to or use of FTI; or

(d) Any other action permitted by law.

(6) The appointing authority as defined in KRS 18A.005(1), or his or her designee, shall issue a final written determination regarding the reconsideration request. The appointing authority or his or her designee shall notify the employee of the final determination no later than thirty (30) calendar days from receipt of the written request for reconsideration, and the notice shall include any personnel action to be taken by the Labor Cabinet, its offices, or responsible agency as a result of the final determination.

(7) The current employee may have the right to appeal an action taken by the Labor Cabinet, its offices, or responsible agency pursuant to the applicable sections of KRS Chapter 18A and the Kentucky Administrative Regulations.

Section 7. Notice of Disqualifying Offense – Contract Staff.

(1) Upon completion of the criminal background check, any contract staff found to have a disqualifying offense shall immediately be subject to one (1) or more of the following actions at the sole discretion of the Labor Cabinet, its offices, or responsible agency:

- (a) Termination;
 - (b) If permitted by the contract, removed from all duties requiring access to or use of FTI and assigned other duties that do not require access to or use of FTI; or
 - (c) Any other action permitted by law.
- (2) The Labor Cabinet, its offices, or responsible agency shall notify the contract staff of the action or actions taken within seven (7) days of discovery of the disqualifying offense.
- (3) If the contract staff wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the Labor Cabinet, its offices, or responsible agency shall refer the applicant to the appropriate state or federal law enforcement agency.

Section 8. Challenges to Criminal Background Check Information. An individual subject to a criminal background check required by KRS 336.125 and this administrative regulation shall have the right to request and review the results of his or her national and state criminal background check and to request correction of any inaccurate information. All corrections ~~shall~~**must** be addressed with the Federal Bureau of Investigation or the Department of Kentucky State Police; the Labor Cabinet cannot assist with this process or correct any inaccurate information.

Section 9. Pardons, Diversions, and Expungements. An applicant, employee, or contract staff who has received a pardon for a disqualifying offense, has had a disqualifying offense dismissed after successful completion of a diversion program, or has had the disqualifying offense expunged shall not be barred from employment with the Labor Cabinet, its offices, or responsible agency in a position with job duties that include access to or use of FTI for reasons related to the underlying disqualifying offense(s).

CONTACT PERSON: Rebecca Rodgers, Executive Staff Advisor, 500 Mero Street, 3rd Floor, Mayo Underwood Bldg, phone 502-782-1350, email rebecca.rodgers@ky.gov.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 14, 2022)**

810 KAR 3:020. Licensing of racing participants.

RELATES TO: KRS 12.357, 230.215, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.330

STATUTORY AUTHORITY: KRS 12.357, 230.215(2), 230.240(2), 230.260(4), 230.290(2), 230.310(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) ~~authorizes~~**grants** the Kentucky Horse Racing Commission ~~the authority~~ to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.310(1) ~~requires~~**authorizes** the commission to establish licensing requirements for participation in horse racing. This administrative regulation establishes licensing procedures and requirements for participation in horse racing.

Section 1. Definitions.

(1) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business, trust, estate, company, corporation, limited liability company, association, club, committee, organization, lessor, lessee, racing stable, farm name, or other group of persons acting in concert.

(2) "Restricted area" means a portion of association grounds to which access is limited to licensees whose occupation or participation requires access, and to those individuals accompanying a licensee as permitted by the association.

Section 2. Persons Required to Be Licensed.

(1) A person shall not participate in pari-mutuel racing under the jurisdiction of the commission without a valid license issued by the commission.

(2) License categories shall include:

- (a) Association employee;
- (b) Assistant trainer;
- (c) Claiming;
- (d) Commission member;
- (e) Commission employee;
- (f) Dental technician;
- (g) Driver;
- 1. Qualifying-fair (QF) license;
- 2. Provisional (P) license; and
- 3. Full (A) license;
- (h) Driver/trainer;
- (i) Equine therapist;
- (j) Exercise rider;
- (k) Farm manager or agent;
- (l) Farrier;
- (m) Farrier apprentice;
- (n) Jockey;
- (o) Jockey agent;
- (p) Jockey apprentice;
- (q) Matinee driver;
- (r) Mutuel employee;
- (s) Owner;
- (t) Owner (Temporary);
- (u) Owner/assistant trainer;
- (v) Owner/trainer;
- (w) Owner/trainer/driver;
- (x) Owner/driver;
- (y) ~~Racing department employee;~~
- ~~(z)~~**(aa)** Racing official;
- ~~(aa)~~**(bb)** Special event employee;
- ~~(bb)~~**(cc)** Stable agent;
- ~~(cc)~~**(dd)** Stable employee;
- ~~(dd)~~**(ee)** Steeplechase jockey;
- ~~(ee)~~**(ff)** Trainer;
- ~~(ff)~~**(gg)** Vendor;
- ~~(gg)~~**(hh)** Vendor employee;
- ~~(hh)~~**(ii)** Veterinarian;
- ~~(ii)~~**(jj)** Veterinary assistant; and
- ~~(jj)~~**(kk)** Veterinary technologist or technician.

(3) A person working at a licensed racing association in the Commonwealth shall obtain a valid license issued by the commission. The executive director, chief racing steward, the presiding judge, or their designee may refuse entry or scratch any horse involving any person who, after being requested to obtain a valid license, fails or is unable to obtain a license.

(4)

(a) A person required to be licensed shall submit:

1. A completed written application on the form Licensing Application, 3-020-1, or a multi-jurisdictional license form pursuant to Section 8 of this administrative regulation; and

2. The fee required by Section 6 of this administrative regulation.

(b) A temporary license may be obtained by an authorized representative of an owner in accordance with Section 18 of this administrative regulation.

(c) A conditional license may be issued by the commission or its designee.

Section 3. General License Application Requirements for All Applicants.

(1) Any person required to be licensed by Section 2 of this administrative regulation and desiring to participate in horse racing in the Commonwealth may apply to the commission for a license.

(2)

(a) An application may be submitted on or after November 1 of the calendar year preceding the calendar year in which the license is to be in force.

(b) An application shall be submitted no later than twenty-four (24) hours after an applicant has arrived on association grounds,

unless a temporary license is obtained in accordance with Section 18 of this administrative regulation.

(c) The license application shall be reviewed and the license issued by commission personnel.

(3) Information provided on or with a license application shall be complete and correct. Material misrepresentation by a license applicant or his or her agent shall result in an immediate license suspension, revocation, refusal, or denial, or imposition of a fine by the commission or the chief racing steward or presiding judge.

(4)

(a) An applicant for licensing shall be a minimum of sixteen (16) years of age except as provided by paragraph (b) of this subsection. An applicant may be required to submit a certified copy of his or her birth certificate or work permit.

(b) The commission may grant an owner's license to a person less than sixteen (16) years of age if the person's parent or legal guardian is licensed by the commission. An application under this subsection shall be signed by the applicant's parent or legal guardian in the presence of one (1) or more of the stewards or judges.

(5) An application from a person or other entity consisting of more than one (1) individual person desiring to race horses in the Commonwealth shall, upon request, in addition to designating the person or persons representing the entire ownership of the horses, be accompanied by documents which fully disclose the identity, degree, and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.

(6) The commission shall notify an applicant that the license has been issued or denied. If all requirements for licensure are met, a license shall be issued to the license applicant.

Section 4. Additional Licensing Requirements for Standardbred Driver's License.

(1) A person desiring to drive a harness horse at a race meeting licensed by the commission shall obtain a license from:

(a) The commission; and

(b) The United States Trotting Association, Standardbred Canada, or appropriate international harness racing governing agency.

(2) Commission licenses. A driver's license from the commission shall be issued in one the following categories:

(a) A qualifying-fair (QF) license, which shall be valid for fairs, matinees, qualifying races, and if approved by the presiding judge, nonwagering races at extended pari-mutuel meetings;

(b) A provisional (P) license, which shall be valid at fairs, matinees, qualifying races, and extended pari-mutuel meetings; or

(c) A full (A) license, which shall be valid at all race meetings.

(3) License advancement. An applicant shall initially obtain a qualifying-fair license. Advancement to a provisional license and a full license shall be determined by Rule 17, Sections 1 through 10, of the United States Trotting Association, 2009/2010.

(4) General qualifications. An applicant for a driver's license shall:

(a)

1. Be at least sixteen (16) years of age for a (QF) license;

2. Be at least eighteen (18) years of age for a (P) or (A) license; and

3. Not be denied a driver's license solely on the basis of age if the applicant has previously held any type of license; and

(b) Submit satisfactory evidence of an eye examination indicating:

1. 20/40 corrected vision in both eyes; or

2. If one (1) eye is blind, at least 20/30 corrected vision in the other eye.

Section 5. Additional Licensing Requirements for Specific Licenses.

(1) Veterinary personnel.

(a) An application from a person desiring to treat, prescribe for, or attend to any horse on association grounds as a practicing veterinarian shall be accompanied by evidence that the person is

currently licensed as a veterinarian by the Commonwealth of Kentucky.

(b) An application from a person desiring to work on association grounds as a veterinary technologist or veterinary technician shall be accompanied by:

1. Evidence that the person is currently registered as a veterinary technologist or veterinary technician by the Commonwealth of Kentucky; and

2. A Veterinarian Approval Form, KHRC 3-020-4, signed by a licensed veterinarian certifying that the applicant is working for the veterinarian as required by KRS 321.443.

(c) An application from a veterinary assistant shall be accompanied by a Veterinarian Approval Form, KHRC 3-020-4, signed by a licensed veterinarian certifying that the applicant works for him or her as required by KRS 321.443.

(d) Equine therapist. An application from an equine therapist not defined by KRS Chapter 321 shall be accompanied by a Veterinarian Approval Form, KHRC 3-020-4, signed by a licensed veterinarian and the chief state veterinarian attesting to the skill and integrity of the applicant.

(2) Farriers. An application from a person not previously licensed in the capacity of farrier shall submit a diploma or other document signifying successful completion of a farrier course or examination recognized by the American Farrier's Association, or submit a letter of recommendation from a licensed farrier.

(3) Standardbred Licensees.

(a) A standardbred owner, trainer, owner/trainer, driver, driver/trainer, owner/trainer/driver, or owner/driver shall have a valid license issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in order to participate in pari-mutuel racing in Kentucky.

(b) Any standardbred horse under lease shall race in the name of the lessee and a copy of the lease shall be filed with the clerk of the course. A standardbred horse shall not race under lease without an eligibility certificate issued by the United States Trotting Association, Standardbred Canada, or other appropriate international harness racing governing agency in the name of the lessee. Both the lessee and lessor shall be licensed by the commission prior to post.

(c) If any licensed standardbred trainer is absent from a racing meet for more than six (6) days, the trainer shall appoint and have properly licensed a new trainer of record.

(4) Special event licenses.

(a) A special event license shall be:

1. Issued to employees who are employed by an association only for the duration of a special event; and

2. Valid for the days of the event only.

(b) The duration of the license shall not exceed three (3) calendar days.

Section 6. Licensing Fees.

(1) **Except as provided by subsection (2) of this section,** the following annual fees shall accompany the application and shall not be refundable:

(a) Association employee:

1. For thoroughbreds: \$25;

2. For standardbreds: \$25; or

3. For other horses: \$10;

(b) Assistant trainer:

1. For thoroughbreds: \$150; or

2. For other horses: \$35;

(c) Claiming: \$150;

(d) Dental technician: \$100;

(e) Driver: \$125;

(f) Driver/trainer: \$125;

(g) Equine therapist:

1. For thoroughbreds: \$50;

2. For standardbreds: \$50; or

3. For other horses: \$25;

(h) Exercise rider: \$10;

(i) Farm manager or agent:

1. For thoroughbreds: \$50;

2. For standardbreds: \$50; or
3. For other horses: \$25;
- (j) Farrier:
 1. For thoroughbreds: \$100;
 2. For standardbreds: \$100; or
 3. For other horses: \$35;
- (k) Farrier apprentice:
 1. For thoroughbreds: \$50;
 2. For standardbreds: \$50; or
 3. For other horses: \$25;
- (l) Jockey:
 1. For thoroughbreds: \$150; or
 2. For other horses: \$35;
- (m) Jockey agent:
 1. For thoroughbreds: \$150; or
 2. For other horses: \$35;
- (n) Jockey apprentice:
 1. For thoroughbreds: \$100; or
 2. For other horses: \$35;
- (o) Matinee driver: \$125;
- (p) Mutuel employee:
 1. For thoroughbreds: \$50;
 2. For standardbreds: \$50; or
 3. For other horses: \$20;
- (q) Owner:
 1. For thoroughbreds: \$150;
 2. For standardbreds: \$125; or
 3. For other horses: \$35;
- (r) Owner (temporary):
 1. For thoroughbreds: \$150;
 2. For standardbreds: \$125; or
 3. For other horses: \$35;
- (s) Owner/assistant trainer:
 1. For thoroughbreds: \$150; or
 2. For other horses: \$35;
- (t) Owner/trainer:
 1. For thoroughbreds: \$150;
 2. For standardbreds: \$125; or
 3. For other horses: \$35;
- (u) Owner/trainer/driver: \$125;
- (v) Owner/driver: \$125;
- (w) ~~[Racing department employee: \$100;~~
- ~~(x)]~~ Racing official:
 1. For thoroughbreds: \$100;
 2. For standardbreds: \$100; or
 3. For other horses: \$35;
- ~~(x)](y)]~~ Special event employee: \$10;
- ~~(y)](z)]~~ Stable agent: \$50;
- ~~(z)](aa)]~~ Stable employee:
 1. For thoroughbreds: \$10;
 2. For standardbreds: \$5; or
 3. For other horses: \$5;
- ~~(aa)](bb)](aa)]~~ Steeplechase jockey: \$150;
- ~~(bb)](cc)](bb)]~~ Trainer:
 1. For thoroughbreds: \$150;
 2. For standardbreds: \$125; or
 3. For other horses: \$35;
- ~~(cc)](dd)](cc)]~~ Vendor:
 1. For thoroughbreds: \$50;
 2. For standardbreds: \$50; or
 3. For other horses: \$25;
- ~~(dd)](ee)](dd)]~~ Vendor employee: \$25;
- ~~(ee)](ff)](ee)]~~ Veterinarian:
 1. For thoroughbreds: \$150;
 2. For standardbreds: \$125; or
 3. For other horses: \$35;
- ~~(ff)](gg)](ff)]~~ Veterinary assistant:
 1. For thoroughbreds: \$50;
 2. For standardbreds: \$50; or
 3. For other horses: \$25; or
- ~~(gg)](hh)](gg)]~~ Veterinary technologist or technician:
 1. For thoroughbreds: \$50;
 2. For standardbreds: \$50; or

3. For other horses: \$25.

(2) **A military spouse meeting the requirements of KRS 12.357(1) shall not be required to pay the licensure fee if:**

(a) The fee waiver is requested on the Licensing Application form, 3-020-1; and

(b) The documentation required by KRS 12.357(2) is submitted with the application.

(3) A replacement fee for a duplicate license shall be ten (10) dollars, except that this fee shall be waived for the first duplicate license issued during any calendar year.

Section 7. Fingerprinting.

(1) If requested by the commission, a license applicant shall furnish to the commission a set of fingerprints or submit to fingerprinting prior to issuance of a license.

(2) If the license applicant has been fingerprinted in the Commonwealth or another racing jurisdiction within the five (5) years preceding the date of the license application, then the commission may accept the previous fingerprints or require new fingerprints.

(3) The cost of fingerprinting and fingerprint analysis shall be paid by the license applicant.

Section 8. Multi-state/National Licenses.

(1) In lieu of the commission license application form, an applicant may submit an ARCI Multi-Jurisdiction Racing License Owner's Application or the National Racing License Application or Renewal Application.

(2) The commission shall accept a multi-state or national license if it complies with licensing requirements in this administrative regulation and KRS Chapter 230.

Section 9. Consent to Investigate by License Applicants and Licensees. After an applicant files a license application, the commission may:

(1) Investigate the criminal background, employment history, and racing history record of the applicant;

(2) Engage in research and interviews to determine the applicant's character and qualifications; and

(3) Verify information provided by the applicant.

Section 10. Search and Seizure.

(1) The commission or designee may search any location described in KRS 230.260(7).

(2) The commission or designee may seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of KRS Chapter 230 or KAR Title 810.

(3) A licensee shall:

(a) Cooperate with the commission or designee during an investigation; and

(b) Respond correctly to the best of the licensee's knowledge if questioned by the commission or designee about a racing matter.

(4) A licensee shall consent to out-of-competition testing in accordance with 810 KAR 8:040.

Section 11. Employer Responsibility.

(1)

(a) An employer shall not employ an unlicensed person for a position that requires a license under KRS 230.300 or 230.310 or this administrative regulation.

(b) If an employer violates subsection (a) **of this subsection**, the employer may be subjected to license suspension, denial, or revocation under KRS Chapter 230 or KAR Title 810.

(2) Every employer shall report in writing to the commission or its designee, within twenty-four (24) hours, the discharge of any licensed employee, including the employee's name, occupation, and reason for the discharge.

(3) Every employer shall be responsible for ensuring compliance with all applicable employment laws.

(4) The license application of an employee shall be signed by the employer.

(5) A licensed employer shall carry workers' compensation insurance covering his or her employees as required by KRS Chapter 342.

Section 12. Financial Responsibility.

(1) A licensee shall maintain financial responsibility during the period for which the license is issued.

(2) A licensee's failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of any occupation for which a license is required by this administrative regulation shall constitute a failure to meet the financial responsibility requirements of KRS 230.310.

(3) If the licensee fails to show just cause for his or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment.

(4) An applicant for a license may be required to submit evidence of financial responsibility to the commission if a judgment has been rendered against him or her.

Section 13. Voluntary Withdrawal of License Application.

(1) A license applicant may with the approval of the license review committee voluntarily withdraw his or her license application from the license review process.

(2) If the applicant chooses to voluntarily withdraw his or her application, then the withdrawal shall not constitute a denial or suspension of a license and shall be without prejudice.

(3) The stewards or judges shall issue a ruling noting a withdrawal, and the ruling shall be communicated to the Association of Racing Commissioners International.

Section 14. License Review Committee.

(1) The executive director, chief racing steward, presiding judge, or director of licensing may refer a license application to the license review committee in lieu of denying the application.

(2) The license review committee shall be composed of the executive director or designee, the director of licensing or designee, the chief state steward or presiding judge or their designee, and at least one (1) other commission member or commission staff member as designated by the executive director. At least three (3) members of the committee shall participate in any license review committee meeting.

(3) If a referral to the committee is made, then a license shall not be issued until the committee makes a favorable ruling on the license application. The applicant may be required by the committee to appear personally. If the committee is unable to make a favorable ruling on the license application, then the committee may give the license applicant the opportunity to voluntarily withdraw his or her license application in accordance with Section 13 of this administrative regulation. If the license applicant does not wish to voluntarily withdraw his or her application, then the committee shall deny the application.

(4) The denial of the application may be appealed in accordance with KRS Chapter 13B.

(5) In the alternative, the commission, the license review committee, or the executive director may refer the case directly to the commission without denial or approval of the application.

Section 15. License Denial, Revocation, or Suspension.

(1) The commission, executive director, chief racing steward or presiding judge, or director of licensing may deny a license application, and the commission or chief state steward or presiding judge may suspend or revoke a license, or otherwise penalize in accordance with KRS 230.320(1) a licensee, or other person participating in horse racing, for any of the following reasons:

(a) The public interest, for the purpose of maintaining proper control over horse racing meetings or pari-mutuel wagering, may be adversely affected if the license is issued;

(b) The licensee or applicant has any felony or misdemeanor criminal conviction from any jurisdiction, including having entered into any form of diversionary program, within fifteen (15) years

preceding the date of submission of a license application, **provided all requirements of KRS 335B.010 et seq. are satisfied;**

(c) The licensee or applicant has pending criminal charges or is criminally charged during the license period in any jurisdiction;

(d) The licensee or applicant has had a license issued by the legally constituted racing or gaming commission of a state, province, or country denied, suspended, or revoked;

(e) The licensee or applicant has had a license issued by the Commonwealth revoked, suspended, or denied;

(f) The licensee or applicant has applied for and received a license at less than sixteen (16) years of age, except as permitted in Section 3 of this administrative regulation;

(g) The licensee or applicant has made a material misrepresentation, falsification, or omission of information in an application for a license;

(h) The licensee or applicant has been ejected, ruled off, or excluded from racing association grounds in the Commonwealth of Kentucky or a racetrack in any jurisdiction;

(i) The licensee or applicant has violated or attempted to violate a statute, administrative regulation, or similar rule respecting horse racing in any jurisdiction;

(j) The licensee or applicant has perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of a horse or pari-mutuel wagering;

(k) The licensee or applicant has caused, attempted to cause, or participated in any way in an attempt to cause the pre-arrangement of a race result, or has failed to report knowledge of this kind of activity immediately to the stewards or judges;

(l) The licensee or applicant has demonstrated financial irresponsibility as described by Section 12 of this administrative regulation;

(m) The licensee or applicant has knowingly failed to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced;

(n) The licensee or applicant has misrepresented or attempted to misrepresent facts in connection with the sale of a horse or other matter pertaining to racing or registration of a thoroughbred;

(o) The licensee or applicant has offered, promised, given, accepted, or solicited a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failed to report conduct of this nature immediately to the stewards or judges;

(p) The licensee or applicant has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse;

(q) The licensee or applicant has engaged in conduct that is against the best interest of horse racing, or compromises the integrity of operations at a track, training facility, or satellite facility;

(r) The licensee or applicant has knowingly entered, or aided and abetted the entry, of a horse ineligible or unqualified for the race entered;

(s) The licensee or applicant has possessed on association grounds, without written permission from the commission or the chief state steward or presiding judge, any appliance or device, other than an ordinary whip, which could be used to alter the speed of a horse in a race or workout;

(t) The licensee or applicant has violated any of the alcohol or substance abuse provisions in KRS Chapter 230 or 810 KAR 2:030;

(u) The licensee or applicant has failed to comply with a written order or ruling of the commission, the stewards, or the judges pertaining to a racing matter or investigation;

(v) The licensee or applicant has failed to answer truthfully questions asked by the commission or its representatives pertaining to a racing matter;

(w) The licensee or applicant has failed to return to an association any purse money, trophies, or awards paid in error or ordered redistributed by the commission;

(x) The licensee or applicant has participated in or engaged in any conduct of a disorderly nature on association grounds, **including[which includes, but is not limited to]:**

1. Failure to obey the stewards' or judges' or other official's orders that are expressly authorized by **KAR Title 810**~~the administrative regulations of the commission~~;

2. Failure to race when programmed unless excused by the stewards or judges;

3. Fighting;

4. Assaults;

5. Offensive and profane language;

6. Smoking on the track in colors during actual racing hours;

7. Warming up a horse prior to racing without colors; and

8. Disturbing the peace;

(y) The licensee or applicant has used profane, abusive, or insulting language to or interfered with a commission member, employee or agent, or racing official, while these persons are in the course of discharging their duties;

(z) The licensee or applicant is unqualified to perform the duties for which the license is issued;

(aa) The licensee or applicant has discontinued or is ineligible for the activity for which the license is to be issued, or for which a previous or existing license was issued;

(bb) The licensee or applicant has made a material misrepresentation in the process of registering, nominating, entering, or racing a horse as Kentucky owned, Kentucky bred, or Kentucky sired;

(cc) The licensee or applicant has failed to pay a required fee or fine, or has otherwise failed to comply with KRS Chapter 230 or KAR Title 810;

(dd) The licensee or applicant has failed to comply with a written directive or ruling of the commission or the chief state racing steward or presiding judge;

(ee) The licensee or applicant has failed to advise the commission of changes in the application information as required by Section 17 of this administrative regulation;

(ff) The licensee or applicant has failed to comply with the temporary license requirements of Section 18 of this administrative regulation;

(gg) The licensee or applicant has violated the photo identification badge requirements of Section 21 of this administrative regulation;

(hh) The licensee or applicant has knowingly aided or abetted any person in violation of **KRS Chapter 230, KAR Title 810, or any other** statute or administrative regulation pertaining to horse racing;

(ii) The licensee or applicant has hired an unlicensed person required by KRS 230.300, 230.310, or this administrative regulation to be licensed;

(jj) The licensee or applicant, being a person other than a licensed veterinarian, has possessed on association grounds:

1. A hypodermic needle, hypodermic syringe, or other device **that/which** could be used to administer any substance to a horse, except as permitted by 810 KAR 8:010, Section 3(5); or

2. A medication, stimulant, sedative, depressant, local anesthetic, or any other foreign substance prohibited by KRS Chapter 230 or KAR Title 810; or

(kk) The licensee or applicant has manufactured, attempted to manufacture, or possessed a false license photo identification badge.

(2) A license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward or presiding judge, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial.

(3) A licensee or applicant may appeal the suspension, revocation, or denial in accordance with KRS 230.320 and Chapter 13B.

Section 16. Reciprocity.

(1) If a person's license has been denied, suspended, or revoked in another jurisdiction, the commission may require reinstatement of the license in that jurisdiction before a license is granted by the commission.

(2) If a person has been ruled off, excluded, or ejected from a racetrack in Kentucky or in another jurisdiction, the commission

may require reinstatement of the person at that track before a license is granted by the commission.

Section 17. Changes in Application Information.

(1) The licensee or applicant shall report changes in any information required for licensing in writing to the commission.

(2) Any change in information required for licensing shall be submitted in writing upon the "Change in Application Information Form", KHRC 3-020-3, signed by the licensee, and filed at the commission central office, within thirty (30) days of the change, unless it is information listed in subsection (3) of this section.

(3) The licensee shall report changes in information in writing within 72 hours of the occurrence for these items:

(a) Criminal charges;

(b) Criminal convictions;

(c) License denials and license suspensions of ten (10) days or more;

(d) License revocations or fines of \$500 or more in other jurisdictions;

(e) Racing related disciplinary charges pending in other jurisdictions; and

(f) Withdrawal, with or without prejudice, of a license application by the licensee in any jurisdiction.

Section 18. Temporary Licenses.

(1)

(a) Only an owner is eligible for a temporary license.

(b) A horse in a trainer's care shall not start in a race unless the owner has a current license or has an application for a temporary license, "Temporary Owner's License Application", KHRC 3-020-2, on file with the commission.

(c) A licensed trainer may apply for a temporary license on behalf of an owner for whom the licensed trainer trains.

(d) The commission may refuse the license if the applicant fails to supply a name, Social Security number, and mailing address for a temporary license.

(e) A temporary license shall be valid for no more than thirty (30) days from the date of issuance and shall automatically lapse after the 30th day pending completion of all licensing procedures.

(f) Upon expiration of the thirty (30) day temporary license, the owner's license shall be suspended or the owner's horses shall be ineligible to race in Kentucky pending completion of all licensing procedures.

(g) Completion of all owner licensing procedures shall extend the owner's license to the end of the calendar year.

(h) If a temporary license expires prior to the completion of all owner licensing procedures, the applicant shall pay an additional licensing fee.

(2) An owner shall not be eligible to be issued more than one (1) temporary license in any calendar year.

(3) A temporary license shall not be valid for claiming.

Section 19. Eligibility for Multiple Licenses. More than one (1) license to participate in horse racing may be granted to a person except if prohibited by **Section 20 of** this administrative regulation due to a potential conflict of interest.

Section 20. Conflict of Interest.

(1) The license review committee and the chief state steward or presiding judge or their designees shall deny or refuse to process the license of a person, and the commission or the chief state steward or presiding judge shall revoke or suspend the license of a licensee, who is determined to have a conflict of interest. A conflict of interest may exist if a spouse, immediate family member, or other person in a similar relationship to the licensee or applicant holds a license **that/which** the license review committee or chief state steward or presiding judge finds to be a conflict of interest with the licensee's or applicant's license. A finding of a conflict of interest may be appealed to the commission pursuant to KRS 230.320 and KRS Chapter 13B.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official during that race.

(3) A person who is licensed as an owner or trainer, or who has any financial interest in a horse entered in a race, shall not participate in that race as any of the following:

- (a) Racing official;
- (b) Assistant starter;
- (c) Practicing veterinarian for any horse other than the owner's;
- (d) Veterinary technician, veterinary technologist, veterinary assistant, or equine therapist for any horse other than the owner's;
- (e) Officer or managing employee;
- (f) Track maintenance supervisor or employee;
- (g) Outrider;
- (h) Race track security employee;
- (i) Farrier;
- (j) Photo finish operator;
- (k) Horsemen's bookkeeper;
- (l) Racing chemist;
- (m) Testing laboratory employee;
- (n) Jockey;
- (o) Apprentice jockey; or
- (p) Jockey agent.

Section 21. License Photo Identification Badges.

(1)

(a) If a licensee desires access to restricted areas of a racing association grounds, then the licensee shall carry on his or her person at all times within the restricted area his or her assigned commission license (photo identification badge).

(b) A photo identification badge is available to a licensee upon presentation of appropriate, valid photo identification by the licensee to commission personnel at commission licensing offices.

(2) A person shall present an appropriate license to enter a restricted area.

(3) The stewards or judges or racing association may require visible display of a license in a restricted area.

(4) A license may only be used by the person to whom it is issued, and a licensee shall not allow another person to use his or her badge for any purpose.

(5) Licensee credentials (photo identification badges) are the property of the commission and shall be surrendered to the executive director, the stewards or judges, the commission director of enforcement, or director of licensing, or designee, upon request.

Section 22. Duties of Licensees.

(1) A licensee shall be knowledgeable of this administrative regulation and, by acceptance of the license, agrees to abide by this administrative regulation.

(2) A licensee shall report to track security or the stewards or judges any knowledge the licensee has that a violation of this administrative regulation has occurred or may occur.

(3) A licensee shall abide by all rulings and decisions of the stewards or judges and the commission, and all decisions by the stewards or judges and the commission shall remain in force unless reversed or modified by the commission or a court of competent jurisdiction upon proper appeal pursuant to KRS 230.330.

(4) Rulings and decisions of the stewards or judges may be appealed to the commission, except those made by the stewards or judges as to:

(a) Findings of fact as occurred during and incident to the running of a race; and

(b) A determination of the extent of disqualification of horses in a race for fouls committed during the race.

(5) A licensee shall cooperate fully with all investigations and inquiries made by commission representatives or association security, or both.

(6) A licensee shall obey instructions from commission representatives or association security, or both.

(7) All licensees shall immediately report to the commission any known or suspected irregularities, any violation of KRS Chapter 230 or KAR Title 810, or any wrongdoings by any person, and shall cooperate in any subsequent investigation.

Section 23. Common Law Rights of Associations. The validity of a license does not preclude or infringe on the common law rights of associations to eject or exclude persons, licensed or unlicensed, from association grounds.

Section 24. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Licensing Application", KHRC 3-020-1, 02/2022[4/2019];
- (b) "Temporary Owner's License Application", KHRC 3-020-2, 11/2018;
- (c) "Change in Application Information Form", KHRC 3-020-3, 4/2019;
- (d) "Veterinarian Approval Form", KHRC 3-020-4, 4/2019; and
- (e) "Rule 17, Sections 1 through 10", United States Trotting Association, 2009/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at <http://khrc.ky.gov>.

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, June 14, 2022)

902 KAR 20:018. Operation and services; End Stage Renal Disease (ESRD)~~end-stage-renal-disease~~ [dialysis] facilities.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.042, 216B.045, 216B.050, 216B.055, 216B.075, 216B.085, 216B.105-216B.125, 216B.990(1), (2), 310.021, 314.041, KRS Chapter 333, 335.100, 42 C.F.R. 494.1 – 494.180, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2 – 1320d-8[314.035, 314.137]

STATUTORY AUTHORITY: KRS 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensing standards and procedures to ensure safe, adequate, and efficient [of] health services and health facilities. This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by End Stage~~end-stage~~ [of] Renal Disease (ESRD)~~[dialysis]~~ facilities.

Section 1. Definitions. (1) "Administrator" means an individual[a person] who:

(a) Holds a baccalaureate degree or its equivalent;[and]

(b) Has at least one (1) year of experience working in an ESRD unit; and

(c) Is responsible for the management of the ESRD facility.

(2) ~~"Anti-HBs" means the antibody to the hepatitis B virus conferred either by vaccination or infection.~~

~~(3) "Dialysis technician" means a person credentialed by the Board of Nursing as a dialysis technician.~~

~~(3)[(4)] "End Stage~~~~End-~~~~[]~~ Stage Renal Disease" or "ESRD" means a medical condition in which a person's kidneys cease functioning on a permanent basis leading to the need for long-term dialysis or a kidney transplant to maintain life~~that stage of renal impairment which:~~

~~(a) Is irreversible and permanent; and~~

~~(b) Requires dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life.~~

~~(4)[(5)] "ESRD facility" means a facility or entity that provides outpatient maintenance dialysis services, home dialysis training and support, or both.~~

~~(5) [renal dialysis facility, as included in the definition of "health~~

facility" at KRS 246B.015(10).

(6) "HBsAg" means the hepatitis B antigen, present in the blood of persons who are infected by the hepatitis B virus.

(7) "HBV negative" means the absence of the hepatitis B virus, the hepatitis B antigen, and the antibody to the hepatitis B virus.

(8) "Medical director" means a Kentucky-licensed physician who:

(a) Is board-certified in internal medicine or pediatrics;

(b) Has completed a board-approved training program in nephrology; and

(c) 1. Has [is a board-eligible or certified nephrologist, internist, or pediatrician with] at least twelve (12) months of experience providing care to patients receiving dialysis; or

2. ~~[(d)] If the physician does not meet the requirements of paragraphs (a) through (c) of this subsection, has received approval in accordance with 42 C.F.R. 494.140(a)(2) to direct an ESRD facility [training in the treatment and management of ESRD patients].~~

(6) ~~[(9)] "Qualified dietician" means an individual who:~~

(a) Is ~~[a person]~~ licensed pursuant to KRS 310.021; and

(b) Has a minimum of one (1) year professional work experience in clinical nutrition as a registered dietitian.

(7) ~~[(10)] "Qualified medical record technician [practitioner]" means an individual who:~~

(a) ~~[a person who]~~ Has graduated from a program for medical record ~~[administrators or]~~ technicians that is accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; ~~;~~ and

(b) ~~[who]~~ Is certified as ~~[a registered records administrator or]~~ an accredited record technician by the American Medical Record Association.

(8) ~~[(11)] "Qualified registered nurse manager" means a nurse manager responsible for nursing services who:~~

(a) Is ~~[person]~~ licensed to practice as a registered nurse under ~~[to engage in registered nursing practice pursuant to]~~ KRS 314.041;

(b) Is a full-time employee of the ESRD facility; and

(c) Has ~~;~~ who has at least:

1. ~~[(a)]~~ Twelve (12) months of experience in clinical nursing; and

2. ~~[(b)]~~ Six (6) months of experience in providing nursing care to ~~[of ESRD] patients on maintenance dialysis;~~ or

(b) Eighteen (18) months experience in nursing care of ESRD patients].

(9) ~~[(12)] "Qualified social worker" means a clinical social worker licensed and practicing in accordance with KRS 335.100 [a social worker licensed to practice in Kentucky, who has completed a course of study with specialization in clinical practice at, and holds a masters degree from, a graduate school of social work accredited by the Council on Social Work Education].~~

(10) ~~[(13)] "Renal dialysis center" means a hospital unit approved to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of ESRD [dialysis] patients. Services include:~~

(a) Including ~~[inpatient dialysis furnished directly or under arrangement];~~ ~~[and do not include]~~

(b) Excluding ~~[renal transplants]~~ ~~[transportation];~~

~~[(11)]~~ (44) "Renal transplantation center" means a hospital unit approved to provide kidney transplants ~~[transplantation]~~ and other medical and surgical specialty services required for the care of the ESRD transplant patients, including inpatient dialysis ~~provided/furnished~~ directly or under arrangement ~~[A renal transplantation center may also be a renal dialysis center].~~

~~[(12)]~~ (15) "Self-care dialysis training" means a program to train an ESRD patient or ~~the patient's~~ helper, or both, to perform dialysis.

Section 2. Requirement for Service. An ESRD [A] facility shall not be licensed or relicensed as an ESRD [a renal dialysis] facility unless the facility meets the requirements ~~[it provides the services required in Section 4]~~ of this administrative regulation.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the ESRD facility and for compliance with federal, state, and local

laws and administrative regulations pertaining to the operation of the facility.

(b) The licensee shall develop and enforce written policies for the administration and operation of the ESRD facility. Policies shall include:

1. Personnel practices and procedures;
2. Job descriptions for each level of personnel, including authority and responsibilities for ~~[of]~~ each classification;
3. Qualifications for medical staff membership;
4. Medical care practices and procedures;
5. Prevention and control of hepatitis, peritonitis, and other infections, including appropriate procedures for:
 - a. Surveillance and reporting of infections;
 - b. Housekeeping;
 - c. Handling and disposal of waste and contaminants;
 - d. Sterilization and disinfection; and
 - e. Sterilization and maintenance of equipment; and
6. Procedures to be followed in an emergency, including fire, natural disaster, and equipment failure.

(2) Administrator. An ESRD [The] facility shall have an administrator responsible for the management of the facility, including enforcement of written policies and protection of patients' ~~[personal and property]~~ rights.

(3) An ESRD [The] facility shall:

(a) Demonstrate compliance with the requirements of 42 C.F.R. 494.1 ~~through;~~ 494.180, except for an ESRD facility that is state-licensed only ~~[Have a permanent site of operation];~~ and

(b) Maintain regularly scheduled hours during which dialysis services ~~shall be~~ available.

(4) Emergency coverage.

(a) An ESRD facility's governing body shall ensure that the facility shall provide each patient and facility staff member with written instructions for obtaining emergency medical care.

(b) An ESRD facility shall have available at the nursing station, a roster with:

1. The names of physicians who may be called for emergencies;

2. When the physicians may be called; and

3. How the physicians may be reached.

(c) An ESRD facility shall have an agreement with a hospital that can provide the following services twenty-four (24) hours per day, seven (7) days per week:

1. Inpatient care;

2. Routine and emergency dialysis;

3. Other hospital services; and

4. Emergency medical care.

(d) The agreement shall:

1. Ensure that hospital services shall be available to the ESRD facility's patients as needed; and

2. Include reasonable assurances that each patient from the ESRD facility shall be accepted and treated in an emergency [Affiliation agreements. An ESRD [A renal dialysis] facility shall have a written affiliation agreement or arrangement with a [agreements or arrangements, in writing, with] renal transplantation center and a renal dialysis center that establishes [centers and renal transplantation centers which provide] [the following:

(a) The agreement between an ESRD facility and a renal Transplantation center [centers agreement] [shall ensure the delivery of] [provide for] [medical and surgical specialty services required for the care of ESRD patients, including transplantation and inpatient dialysis furnished directly or under arrangement.

(b) The agreement between an ESRD facility and a renal Dialysis center [centers agreement] [shall ensure that] [provide for working relationships under which] [inpatient hospital care or other hospital services are available promptly to the ESRD] [dialysis] [facility's patients as] [when] [needed. The agreement shall delineate the following] [as follows]:

1. Timely transfer or referral of patients between the ESRD [renal dialysis] [facility and the renal dialysis center shall occur if] [be effected if it is] [determined to be medically appropriate by the physicians at both the facility and the center.

2.] [The following] [Information shall be provided to the recipient facility within one (1) working day of a patient's transfer or referral, including the:

- a. Patient care plan;**
- b. Medical information; and**
- c. Any other information necessary or useful in the care and treatment of the patient.**

(5) Personnel. An adequate number of personnel shall be present to meet the needs of patients at all times, including emergency situations, including medical and nonmedical emergencies].

(a) Medical staff. An ESRD [The] facility shall have an organized medical staff responsible for the:

1. Quality of all medical care provided to patients in the facility; and

2. Ethical and professional practices of the facility's [its] staff.

(b) 1. There shall be a medical director responsible for supervising the staff of the ESRD facility.

2. The medical director shall be a full- or part-time staff member.

3. In the medical director's absence, a physician meeting the qualifications of a medical director or a physician who has received approval in accordance with 42 C.F.R. 494.140(a)(2) to direct an ESRD facility [similarly qualified medical staff member] shall be [either] in the unit or immediately available [in the community] while [when] a patient is being dialyzed.

(c) 1. The ESRD facility shall employ at least one (1) full-time qualified registered nurse manager [to be] responsible for nursing services.

2. If a patient is undergoing dialysis, a qualified registered nurse manager shall be on duty to supervise [oversee] patient care.

(d) The ESRD facility shall employ [or have contracts for services with] the following ancillary personnel directly or by contract:

- 1. A qualified dietician;
 - 2. A qualified medical records technician [practitioner]; and
 - 3. A qualified social worker.
- (6) Incident and accident reports.

(a) An ESRD [A] facility shall submit an incident report to the cabinet no later than [Cabinet for Health Services, Office of the Inspector General, within] three (3) days after [of the occurrence of] a reportable event as established [described] by paragraph (c) of this subsection.

(b) An ESRD [A] facility shall retain a copy of the incident report for inspection by the cabinet.

(c) A reportable event shall [events] include:

- 1. An incident requiring emergency treatment or hospitalization;
- 2. A cleaning agent left in a machine that is subsequently used on a patient;
- 3. Contamination of the water supply;
- 4. Development of infection or communicable disease; or [and]
- 5. An accident or other event having a direct or immediate bearing on the health, safety, or security of a patient or staff member.

Section 4. Services. (1)(a) Except as established in paragraph (b) of this subsection, each patient shall be [is] admitted under [on] the medical authority [of,] and [is under the] supervision of [,] the medical director.

(b) In the absence of the medical director, a physician meeting the qualifications of a medical director or a physician who has received approval in accordance with 42 C.F.R. 494.140(a)(2) to direct an ESRD facility shall [When absent from the facility the medical director shall designate a qualified physician to] be responsible for patient admissions [admission] and supervision [of patients].

(2) Laboratory services.

(a) An ESRD [A renal dialysis] facility shall have access to laboratory facilities and services (except tissue pathology and histocompatibility) to meet the needs of each ESRD patient [with the exception of tissue pathology and histocompatibility testing].

(b) The laboratory that provides services shall be [performed by]:

1. Located

[a] A laboratory in a licensed hospital; or

2. [b] A laboratory Licensed in accordance with [by the Department for Health Services pursuant to] KRS Chapter 333.

(3) Medical records.

(a) An ESRD facility shall maintain complete, accurate, and accessible records for [on] [A current and complete medical record shall be maintained for] each patient, including home patients who elect to receive dialysis supplies and equipment from a supplier that is not a provider of ESRD services and all other home dialysis patients whose care is under the supervision of the facility.

(b) Organization. The supervisor of medical records shall be responsible for the proper documentation, completion, and preservation of the [all the facility's medical] records.

(c) Indexing. Medical records shall be properly indexed and systematically filed.

(d) Ownership.

1. Medical records shall be the property of the ESRD facility.

2. The original medical record shall not be removed from the facility, except by court order or subpoena.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established by paragraph (e) of this subsection.

(e) Confidentiality and security; [f] use and disclosure.

1. The ESRD facility shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through [to] 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The facility may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through [to] 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation. [A patient's record shall not be removed from the facility's custody except in compliance with a court order or subpoena.

(e) Confidentiality. A patient's record shall be available for inspection only to members of the professional staff, the patient, or an authorized individual acting in behalf of the patient. Patient records may be used for research or statistical investigation, if each patient's anonymity is protected.]

(f) Content. A complete medical record shall be prepared for each patient admitted to the ESRD facility and [to] include [at least] the [following information]:

- 1. Name and address of the person or agency responsible for the patient, if applicable [and guardian or committee, if any];
- 2. Patient identification information, including the patient's [identity data]:
 - a. Name;
 - b. Address;
 - c. Date of birth;
 - d. Gender; and
 - e. Marital status;
- 3. Date of admission;
- 4. Date of transfer to renal transplantation center, if applicable;
- 5. Referring and attending physicians' names;
- 6. History and physical examination record prior to the initial treatment;
- 7. Treatment plans;
- 8. Records of special examinations, consultations, and clinical, laboratory, and x-ray services;
- 9. Doctors' orders, dated and signed;
- 10. Nurses' notes;
- 11. Dialysis chart including pulse, respiration, and blood pressure;
- 12. Social evaluation and plan developed by the social worker; and
- 13. Orders for medication and treatment written in ink and signed by the prescribing practitioner acting within the scope of practice; and
- 14. A record of each medication administered, including [to include]:
 - a. Date and time of administration;
 - b. Type of medication administered;

- c. Amount of medication administered;
- d. Method of administration;
- e. Name of the prescribing practitioner[prescribing medication];

and

- f. Name of the person who administered the medication.

(g) Retention of records. Medical records shall be retained for at least six (6) years from the date of the patient's discharge, transfer, or death.

~~[1. After the death or discharge of an adult patient, the completed medical record shall be placed in an inactive file and retained for five (5) years;~~

~~2. After the death or discharge of a minor patient, the record shall be placed in an inactive file and retained for five (5) years from the date of the event, or three (3) years after the patient reaches the age of majority, whichever is longer.]~~

- (4) Pharmaceutical services.

(a) An ESRD[~~The~~] facility shall have provisions for promptly obtaining prescribed drugs and biologicals from a licensed pharmacy [pharmacies].

(b) The ESRD facility shall provide appropriate methods and procedures for storage, control, and administering of drugs and biologicals.

(c) A medication shall be administered by one (1) of the following practitioners[professionals,] acting within the individual's professional[relevant statutory] scope of practice:

- 1. A physician;
- 2. A physician's assistant;
- 3. An advanced nurse registered practitioner;
- 4. A registered nurse;
- 5. A licensed practical nurse; or
- 6. A dialysis technician.

(5) Social services. The ESRD facility shall have a qualified social worker ~~[shall be]~~ responsible for:

(a) Evaluation of each patient's psychosocial needs [social evaluation and treatment];

(b) Participating in the ESRD facility's interdisciplinary team review of patient progress and recommending any changes, if needed, in treatment based on the patient's current psychosocial [social] needs;

(c) Providing casework, counseling services, and referrals for other social services to assist the patient in achieving and sustaining an appropriate psychosocial status as measured by a standardized mental and physical assessment tool chosen by the social worker[and group work services to patients and their families];

(d) Financial advice;

(e) Referrals for vocational rehabilitation services; and

(f) Identifying community social agencies and other resources and assisting patients and their families to utilize those resources[them].

- (6) Dietetic services.

(a) The nutritional needs of each patient shall be evaluated by the:

- 1. Attending physician; and
- 2. [the] Qualified dietician.

(b) The dietician, in consultation with the attending physician, shall be responsible for:

1. ~~[(a)]~~ Assessing the nutritional status [and dietetic needs] of each patient;

2. ~~[(b)]~~ Recommending therapeutic diets;

3. ~~[(c)]~~ Counseling patients and their families on prescribed diets;

and

4. ~~[(d)]~~ Monitoring adherence and response to diets.

- (7) Self-care dialysis support services.

(a) An ESRD facility that offers [A renal dialysis facility offering] self-care dialysis training shall make the following services available, [either] directly, or through an[under] agreement, or [by] arrangement with another ESRD facility, upon completion of patient training:

1. Monitoring the patient's home adaptation, including visits to the patient's home by ESRD facility personnel in accordance with the patient's plan of care [provisions for visits to the home or the facility];

2. Patient consultation as needed[for the patient] with a member of the ESRD facility's interdisciplinary team (f.e.g., a qualified social

worker or[and a] qualified dietician);

3. A recordkeeping system to assure[which assures] continuity of care;

4. Installation and maintenance of dialysis equipment;

5. Testing and appropriate treatment of the dialysis water;

6. Ordering of supplies as needed; and

7. Infection control, including hepatitis and peritonitis.];

(b) A self-care and home dialysis training nurse shall:

1. Be a registered nurse licensed in accordance with KRS 314.041; and

2. Have at least twelve (12) months of experience in clinical nursing care and [responsible for self-care dialysis training shall have] at least three (3) months of experience in the specific modality for which the nurse will provide self-care training[patients for self-care dialysis].

(8) Dialysis services in a Medicare-certified nursing facility. A Medicare-certified ESRD facility or entity may provide dialysis services to a long-term care resident within a designated area of a Medicare-certified nursing facility as established in paragraphs (a) through (d) of this subsection.[follows:]

(a)1. Prior to providing dialysis in the nursing facility, the ESRD facility or entity shall submit a Form CMS-3427 to the cabinet, completing Section 22 and all other applicable fields.

2. Form CMS-3427 is available for download from the Centers for Medicare and Medicaid Services (CMS) Web site[website] at: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS-3427>.

(b)1. The ESRD facility or entity shall comply with the guidance established in the CMS State Operations Manual (SOM), chapter 2, section 2271A Dialysis in Nursing Homes.

2. The SOM, Chapter 2, section 2271A is available for download from the CMS Web site[website] at: <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/som107c02.pdf>.

(c)1. The ESRD facility shall enter into a written agreement with each Medicare-certified nursing facility for which the ESRD facility will provide dialysis services.

2. The written agreement shall state[delineate] the responsibilities of the ESRD facility and the nursing facility regarding the care of the resident before, during, and after dialysis treatments.

(d) The ESRD facility shall be responsible for the safe delivery of dialysis to the nursing facility resident, including:

1. Review of ESRD staff qualifications, training, and competency evaluation; and

2. Monitoring of all ESRD personnel who:

a. Administer dialysis treatments in the nursing facility; and

b. Provide on-site supervision of dialysis treatments.

Section 5. Physical Environment. (1) Building and equipment.

(a)1. An ESRD facility shall implement and maintain a program to ensure that all equipment shall be[is] maintained and operated in accordance with the manufacturer's recommendations [used in the facility shall be maintained free of a condition posing a potential hazard to patients or personnel].

2. There shall be a program of preventive maintenance of equipment used in dialysis and related procedures in the ESRD facility.

(b)1. Water used for dialysis purposes shall be analyzed periodically and treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques.

2. Records of test results and equipment maintenance shall be maintained at the ESRD facility.

(2) [Routine disease testing and] Infection control.

(a) The licensee shall provide and monitor a sanitary environment to minimize the transmission of infectious agents within and between the ESRD unit and any adjacent hospital or other public areas pursuant to 42 C.F.R. 494.30[establish and enforce routine disease testing and infection control policies that] [which] are consistent with the most recent guidelines established by the Centers for Disease Control and Prevention for preventing the transmission of infection among chronic hemodialysis

patients].

(b) An ESRD [A] facility using a central-batch delivery system shall provide, on the premises or through affiliation agreements, sufficient individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(3) Contamination prevention.

(a) An ESRD [A] facility shall use [employ] appropriate techniques to prevent cross contamination between the unit and adjacent hospital or public areas including:

1. Food service areas;

2. Laundry;

3. Disposal of solid waste and blood-contaminated equipment; and

4. Disposal of contaminants into sewage systems.

(b) An ESRD facility shall maintain procedures [Waste storage and disposal shall be carried out] in accordance with applicable law and accepted [acceptable] public health procedures for the:

1. Handling, storage, and disposal of potential infectious waste;

and
2. Cleaning and disinfection of contaminated surfaces, medical devices, and equipment [standards].

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

(a) "End Stage Renal Disease Application and Survey and Certification Report", Form CMS-3427, February 2022; and

(b) "CMS State Operations Manual (SOM), Chapter 2, Section 2271A, Dialysis in Nursing Homes", September 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, June 14, 2022)**

922 KAR 1:530. Post-adoption placement stabilization services.

RELATES TO: KRS 199.011, 200.575, 600.020, 605.100, 605.130, 620.170, 45 C.F.R. 1355.34(b), (c), 1356.22, 42 U.S.C. 673

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires[authorizes] the cabinet to promulgate, administer, and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To maintain eligibility for full funding under Title IV-E and IV-B of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency, to include post-legal adoption services. KRS 199.472 requires[mandates-that] the cabinet to establish criteria for the adoption of children by administrative regulation. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7), which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. This administrative regulation establishes post-adoption placement stabilization services for children who were adopted from the custody of the cabinet, to the extent funds are available.

Section 1. Definitions. (1) "Aftercare plan" means a plan of

care for a child upon the discontinuance of post-adoption placement stabilization services, which:

(a) Recommends services for the continued care of the child;

(b) Identifies community resources that have been arranged for the child or parent; and

(c) Includes actions that the parent agrees to take.

(2) "Child-caring facility" is defined by KRS 199.011(5).

(3) "Commitment" is defined by KRS 600.020(13).

(4) "Family team meeting" means a meeting convened to develop services to avoid the dissolution of an adoption in accordance with Section 2(2)(b)4. of this administrative regulation.

(5) "Post-adoption placement stabilization services" or "PAPSS" means coordination, payment, and provision of care and treatment of an adopted child by the cabinet to prevent dissolution of the adoption.

Section 2. Eligibility Requirements for Services. (1) The cabinet shall consider a request for PAPSS made on behalf of an adopted child if:

(a) The adoptive parent receives adoption assistance for the child in accordance with 922 KAR 1:050 or 922 KAR 1:060; and

(b) Cabinet staff determines that after the provision of other prevention services, such as services provided in subparagraph (2)(b)2. of this section, the adoption of the child remains in jeopardy of dissolution.

(2) If the threshold criteria of subsection (1) of this section are met, the cabinet shall consider a child eligible for PAPSS if:

(a) Upon a child's placement with a child-caring facility or a decision to extend PAPSS, the child is assessed:

1. Prior to July 1, 2022, a level of care by the cabinet or its agent and determined to meet criteria for:

a. [1.] Level IV [as established in 922 KAR 1:360, Section 4(4)];

or

b. [2.] Level V [as established in 922 KAR 1:360, Section 4(5)];

or

2. On or after July 1, 2022, as a Level III as established in 922 KAR 1:360, Section 4(3); and

(b) The adoptive parent:

1. Receives adoption assistance for the child in accordance with 922 KAR 1:050 or 922 KAR 1:060;

2. Has cooperated with other services to prevent the adoption's dissolution, such as:

a. Targeted Case Management and other behavioral health services through Community Mental Health Centers and other Kentucky Medicaid Program behavioral health services providers;

b. Family Preservation Services in accordance with KRS 200.575; or

c. Crisis stabilization through the Kentucky Medicaid Program;

3. Authorizes the cabinet to:

a. Coordinate PAPSS for the child;

b. Make a referral on behalf of the child to a child-caring facility for the child's placement; and

c. Access confidential medical and treatment information about the child; and

4. Agrees to:

a. Participate in a family team meeting:

(i) To include designated regional cabinet staff, family members, staff of the child-caring facility providing services to the child, or other individuals requested by the family or cabinet staff;

(ii) Within the first thirty (30) days of a child's receipt of PAPSS; and

(iii) As established in Section 4(4) of this administrative regulation;

b. Cooperate with an assessment of the child to determine the child's needs and eligibility for PAPSS as required by paragraph (a) of this subsection;

c. Place the child with:

(i) A child-caring facility operating in accordance with 922 KAR 1:360, for which the commissioner or designee shall approve the placement of a child age ten (10) or younger; or

(ii) An out-of-state, licensed child care institution upon authorization by the cabinet for payment to the child care institution in accordance with Section 3(1) of this administrative regulation;

d. Participate in the child's treatment to support reunification with the child; and

e. A renegotiation of the child's adoption assistance to one (1) dollar, provided in accordance with 922 KAR 1:050 or 922 KAR 1:060, during the period of time the child receives PAPSS.

Section 3. Payment. (1) To the extent funds are available, the cabinet shall pay a reimbursement rate for PAPSS consistent with the child's assessed level of care or as established in Section 2(2)(a) of this administrative regulation unless:

(a) The child's child care institution does not have an agreement with the cabinet in accordance with 922 KAR 1:360; and

(b) Approval for a different rate is obtained from the commissioner or designee.

(2) During the time period in which a child receives PAPSS, the cabinet shall temporarily reimburse for the renegotiated adoption assistance in accordance with:

(a) Section 2(2)(b)4.e. of this administrative regulation; and

(b) 922 KAR 1:050 or 922 KAR 1:060.

Section 4. Timeframes for PAPSS. (1) The cabinet shall discontinue payment for PAPSS after the child has received PAPSS for sixty (60) calendar days, unless an additional time period of PAPSS has been approved in accordance with subsections (2) and (3) of this section.

(2) After the child has received PAPSS for sixty (60) calendar days, to the extent funds are available, the:

(a) Commissioner or designee may approve the child for an additional thirty (30) calendar days, for a total of ninety (90) calendar days of PAPSS, if the:

1. Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation; and

2. Adoptive parent continues to meet the requirements specified in Section 2(2)(b) of this administrative regulation; or

(b) Cabinet may continue PAPSS to a child if the:

1. Child continues to meet the ~~criteria established~~requirements specified in Section 2(2)(a) of this administrative regulation;

2. Child's assessed needs require PAPSS beyond an additional thirty (30) calendar days; and

3. Adoptive parent:

a. Voluntarily commits the child to the cabinet in accordance with KRS 620.170 and 45 C.F.R. 1356.22; and

b. Continues to meet the ~~criteria established~~requirements specified in Section 2(2)(b) of this administrative regulation.

(3) To the extent funds are available, the cabinet may provide PAPSS to a child beyond ninety (90) calendar days in a twelve (12) month period, if the:

(a) Child continues to meet the ~~criteria established~~requirements specified in Section 2(2)(a) of this administrative regulation; and

(b) Adoptive parent meets the requirements of subsection (2)(b)3. of this section.

(4) If a child receives PAPSS, the cabinet shall call at least one (1) family team meeting for the child. The meeting may be called:

(a) At thirty (30) calendar day intervals; or

(b) More frequently than one (1) time in a thirty (30) day period with the consent of the adoptive parent.

Section 5. Continuation of PAPSS Through Voluntary Commitment. (1) If an adoptive parent voluntarily commits a child to the cabinet for the child's continued benefit of PAPSS and continues to meet criteria established in Section 2(2)(b) of this administrative regulation, the cabinet shall seek no child support from the adoptive parent.

(2) Any extension to the voluntary commitment of the child to the cabinet shall be in accordance with KRS 620.170 and 45 C.F.R. 1356.22.

Section 6. Discontinuation and Aftercare. The cabinet may develop an aftercare plan for the adoptive parent and child, if the:

(1) Cabinet discontinues PAPSS; and

(2) Adoptive parent assists in the aftercare plan's development.

Section 7. Appeals. (1) An adoptive parent shall be granted an administrative hearing in accordance with 922 KAR 1:320 if the cabinet fails to:

(a) Use reasonable promptness in its:

1. Response to a request for PAPSS; or

2. Referral of an eligible child to a child-caring facility for approved PAPSS; or

(b) Call a family team meeting for a child during the:

1. Sixty (60) calendar days a child receives PAPSS; or

2. Period of time a child receives an extension to PAPSS in accordance with Section 4(2) and (3) of this administrative regulation.

(2) Private child-caring facilities shall have appeal rights in accordance with 922 KAR 1:360, Sections 16 and 17~~14 and 15~~.

(3) An adoptive parent may request a review by the commissioner if criteria of 922 KAR 1:320, Section 4(5) or 10(2) are met.

Section 8. Out-of-State Request for PAPSS. The cabinet shall consider out-of-state requests for a child adopted from the custody of the cabinet on a case-by-case basis, to include considerations regarding the:

(1) Needs of the child;

(2) Consent of the parent; and

(3) Extent of funds available.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General
Division of Certificate of Need
(Amended After Comments)

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", June 2022 [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: June 10, 2022

FILED WITH LRC: June 14, 2022 at 1:30 p.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; 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: This amended after comments regulation makes the following changes to the State Health Plan (SHP):

Updates the edition date of the SHP on page i of the Plan;

Updates the language of page 3 of the SHP as it relates to using the most recent quality indicators as one of the review criteria for hospitals that wish to transfer existing acute care beds to a new facility under common ownership located in the same county, including state university teaching hospitals;

Adds clarifying language on page 15 of the SHP as it relates to an application to establish new Level III special care neonatal beds by conversion of Level II special care neonatal beds to Level III special care neonatal beds; and

Adds language to Review Criteria 3 on page 52 of the SHP to align with the recent passage of HB 777.

(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

(1) What 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? The certificate of need application filing fee is established in a separate administrative regulation, 900 KAR 6:020.

(d) How much will it cost the regulated entities for subsequent years? Same response as provided in (4)(c) above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not

have a major economic impact on regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amended After Comments)

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

RELATES TO: KRS 216B.010, 216B.015, **216B.020**, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990, **311A.025(4)**

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 to establish an industrial ambulance service;

(e) Prior to July 1, 2026, the proposal involves an application by:

1. An ambulance service that is owned by a city or county government seeking to provide ambulance transport services pursuant to KRS 216B.020(9)(a)1. or 2.; or

2. A licensed hospital seeking [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 from a location that is not a health care facility pursuant to KRS 216B.020(9)(a)3. and (b);

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

3.a. If the existing hospital is a state university teaching hospital, the existing hospital exceeded, by at least one (1), the minimum number of quality measures required to receive supplemental university directed payments from Kentucky Medicaid for the state fiscal year preceding the date the application was filed; or

b. If the existing hospital is not a state university teaching hospital, the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher on the two (2) most recent updates to the overall star ratings [for three (3) out of the last four (4) reported quarters] preceding the date the application was filed; or

(g)1. The proposal involves an application from a Program of All-Inclusive Care for the Elderly (PACE) program that:

a. Has met the requirements of the State Readiness Review (SRR) according to a report submitted by the Department for Medicaid Services (DMS) to the Centers for Medicare and Medicaid Services (CMS);

b. Seeks to provide, directly to its members, a health service that is not exempt from certificate of need (CON) under KRS 216B.020(1); and

c. Ensures that all services authorized under the PACE agreement are provided exclusively to its members who reside within the service area. The service area shall be:

(i) Located within the Commonwealth of Kentucky; and

(ii) Approved by both CMS and DMS.

2. Only an approved PACE program operating within the applicant's service area shall qualify as an affected person for the purpose of opposing a PACE program application.

3. A PACE program shall not be required to obtain certificate of need (CON) approval if the program:

a. Provides direct patient health services that are exempt from CON under KRS 216B.020(1) and provides other services subject to CON approval through contracts with licensed providers; or

b. Has already obtained CON approval within the approved PACE service area to provide a health service that is not exempt from CON; 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)(g)(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.

Section 3. Exemption from Certificate of Need. (1) A city or county government-owned ambulance service that meets the criteria established by KRS 216B.020(8) shall not be required to obtain a certificate of need to provide emergency ambulance transport services.

(2) A hospital-owned ambulance service shall not be required to obtain a certificate of need to provide non-emergency or emergency transport that originates from its hospital pursuant to KRS 216B.020(7).

(3)(a) If a hospital-owned ambulance service has certificate of need approval prior to the most recent effective date of this administrative regulation to provide transport services from another health facility to its hospital, the service shall not be required to obtain authorization in accordance with paragraph (b) of this subsection.

(b) A hospital-owned ambulance service that is exempt from certificate of need under KRS 216B.020(7) may provide transport services from another health facility to its hospital if authorized as set out in KRS 311A.025(4).

(c)1. As used in paragraph (b) of this subsection, a hospital is authorized to provide inter-facility transport of a patient if:

a. The hospital contacts by phone at least one (1) ground ambulance provider with jurisdiction in the territory in which the other health facility is located, using contact information from the most recent edition of the agency directory maintained by the Kentucky Board of Emergency Medical Services at the following link (<https://kbems.kctcs.edu/legal/EMS%20Directory.aspx>); and

b. The ground ambulance provider:

(i) Declines the hospital's request for patient transport; or

(ii) Is not able to initiate the patient's transport within four (4) hours of receiving the hospital's request.

2. For purposes of this paragraph, a provider initiates transport when it arrives at the hospital to transport the patient.

3. The hospital shall document the ambulance service contacted and the reason for authorization to provide transport from another health facility to its hospital.

(4)(a) In accordance with KRS 216B.020(12)(a), the provisions of this section and Section 2(3)(e) of this administrative regulation shall expire on July 1, 2026.

(b) In accordance with KRS 216B.020(12)(b), a certificate of need exemption granted to an ambulance service under this section of this administrative regulation shall remain in effect on and after July 1, 2026.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 10, 2022

FILED WITH LRC: June 14, 2022 at 1:30 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes; Krista Quarles

(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.020(9), 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: In accordance with KRS 216B.095(3)(e), this amended after comments regulation adds industrial ambulance services to the list of categories subject to nonsubstantive review. This amended after comments regulation aligns the language of Section 2(3)(d) [renumbered as (e)] with the language of HB 777, Section 9(9) [KRS 216B.020(9)].

Additionally, this amended after comments regulation updates the language of Section 2(3)(e) [renumbered as (f)] as it relates to using the most recent quality indicators on CMS Hospital Compare as one of the criteria for granting 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 located in the same county. In lieu of meeting the overall star ratings in the case of state university teaching hospitals, the cabinet clarified that such hospitals shall exceed the minimum number of quality measures required to receive supplemental university directed payments from Kentucky Medicaid for the state fiscal year preceding the date the application was filed.

This amended after comments regulation also permits a Program of All-Inclusive Care for the Elderly (PACE) applicant that has not already obtained certificate of need (CON) approval to provide services such as home health, adult day care, or another service subject to CON to seek approval via nonsubstantive review in Section 2(3)(g).

This amended after comments regulation adds a new Section 3 entitled, "Exemption from certificate of need", to make conforming changes that align this regulation with KRS 216B.020(7), (8), (12) and KRS 311A.025(4). Section 3 also clarifies that authorization will not be required for any hospital-owned ambulance service that has certificate of need approval prior to the most recent effective date of the administrative regulation to provide transport services from another health facility to its hospital. However, for any hospital-owned ambulance service that is exempt from certificate of need under KRS 216B.020(7), the hospital will be authorized to provide inter-facility transport of a

patient if the hospital contacts at least one (1) ground ambulance provider with jurisdiction in the territory in which the other health facility is located, and the local ground ambulance provider declines the hospital's request for patient transport or is not able to initiate the patient's transport within four (4) hours of receiving the hospital's request.

(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. This amended after comments regulation is being proposed to align 900 KAR 6:075, Section 2(3) with the recent passage of HB 777, and permit a PACE applicant that has not already obtained certificate of need (CON) approval to provide services such as home health, adult day care, or another service subject to CON to seek approval via nonsubstantive review in Section 2(3)(g).

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments regulation 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 amended after comments regulation 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 amended after comments regulation will permit nonsubstantive review of certificate of need applications for ground ambulance services pursuant to KRS 216B.020(9). This amendment will 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)(f) of this administrative regulation. This amended after comments regulation will permit PACE programs that have not already obtained approval to provide services such as home health, adult day care, or another service subject to CON to seek approval via nonsubstantive review in Section 2(3)(g). This amended after comments regulation clarifies the process for obtaining "authorization" in accordance with KRS 311A.025(4).

(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 and enhance patient care in an effort to address ongoing delays in nonemergency ambulance transportation. The amended after comments regulation will help enable older adults to live in the community as long as medically and socially feasible by adding a new category to allow PACE programs that have not already obtained approval to provide services such as home health, adult day care, or another service subject to CON to seek approval

under nonsubstantive review.

(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 three (3) new categories.

FISCAL NOTE

(1) What 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.020(9), KRS 216B.040(2)(a)1., 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost

savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years? This amendment will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? 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.

(d) How much will it cost the regulated entities for subsequent years? Same response as provided in (4)(c) above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not have a major economic impact on regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Amended After Comments)

900 KAR 14:010. Essential personal care visitor programs; visitation guidelines.

RELATES TO: KRS 194A.700(4), 216.510(1)

STATUTORY AUTHORITY: **KRS 216.505[2022 Ky Acts ch. 10, sec. 1]**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 216.505[2022 Ky Acts ch. 10, sec. 1]** requires the cabinet to promulgate administrative regulations, subject to applicable federal requirements, to establish guidelines for any individual designated as an essential personal care visitor to have in-person visitation with a resident of an assisted-living community, long-term care facility, or state-owned or operated mental or psychiatric hospital during a period when general visitation is limited or prohibited. **This administrative regulation establishes guidelines for implementation of essential personal care visitor programs.**

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

- (a) Is eighteen (18) years of age or older;
- (b) May have provided regular care and support to a resident prior to any restrictions on visitation;
- (c) Is designated as being important to the mental, physical, or social well-being of the resident; and
- (d) Meets an essential need of the resident, including companionship, assisting with personal care, or positively influencing the behavior of the resident.

(2) "Facility" means:

- (a) An assisted-living community as defined by KRS 194A.700(4);
- (b) A long-term care facility as defined by KRS 216.510(1); or
- (c) A mental hospital as defined by **KRS 216.505(1)(c)[2022 Ky Acts ch. 10, sec. 1]**.

(3) ~~["Facility-onset" means a COVID-19 or other communicable disease case that originates in a facility.~~

(4) ~~"Outbreak" means one (1) new COVID-19 or other communicable disease case among facility staff or one (1) new facility-onset case among residents.~~

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

(4)(6) "Resident" means an individual who:

- (a) Resides in an assisted-living community or long-term care

facility; or

(b) Is a patient of a mental hospital as defined by **KRS 216.505(1)(c)[2022 Ky Acts ch. 10, sec. 1]**.

Section 2. Essential personal care visitation. (1) A facility shall:

(a) Allow essential personal care visitation as an exception from any prohibition against general visitation;

(b) Establish policies and procedures for the designation of at least one (1) essential personal care visitor, including a process for changing the designated essential personal care visitor; and

(c) In accordance with **KRS 216.505(3)(h)[2022 Ky Acts ch. 10, sec. 1]**, not be required to permit an in-person visitor at all times.

(2) Designation of an essential personal care visitor shall be made in consultation with, and upon agreement by the:

- (a) Resident; and
- (b) Resident's representative, if applicable.

(3) A facility may require a written agreement with an essential personal care visitor.

(4) A facility may limit the total number of visitors permitted in the facility at any one (1) time.

(5) A facility may limit visitation by an essential personal care visitor to the resident or residents he or she is approved to visit.

(6) ~~[A facility may temporarily suspend essential personal care visitation based on a clinical or safety factor, including:~~

- ~~(a) An outbreak in the facility;~~
- ~~(b) The resident's communicable disease status; or~~
- ~~(c) Noncompliance by the essential personal care visitor~~

~~with:~~

~~1. Safety protocols or other requirements established by this emergency administrative regulation; or~~

~~2. Any policies and procedures the facility deems necessary to keep staff and residents safe.~~

(7) An essential personal care visitor who enters a facility during a period when general visitation is limited or prohibited shall:

- (a) Assume the risk of contracting a communicable disease;
- (b) Limit visitation to the resident's room or a facility-designated room within the building;
- (c) Limit his or her movement within the facility;
- (d) Follow the facility's safety protocols; and
- (e) Inform the facility if he or she develops symptoms of a communicable disease within fourteen (14) days of the visit.

~~(7)(8)~~ If the resident has a roommate, an essential personal care visitor shall:

- (a) Not enter the resident's room if the roommate is there unless the roommate agrees in advance; and
- (b) Be prohibited from staying in the room for more than fifteen (15) minutes unless otherwise approved by the roommate or roommate's representative.

~~(8)(9)~~ An essential personal care visitor shall follow the same safety protocols required for facility staff, which may include one (1) or more of the following:

- (a) Testing for a communicable disease, which may be the responsibility of the essential personal care visitor. If testing is provided by the facility, essential personal care visitors shall be tested on the same schedule as staff;
- (b) Health screens, including screening for signs and symptoms of a communicable disease and denial of entry of any individual with signs and symptoms;
- (c) Using appropriate personal protective equipment (PPE);
- (d) Washing or sanitizing hands regularly;
- (e) Maintaining a distance of six (6) feet from staff and other residents at all times. Social distancing from the resident receiving an essential personal care visit may be relaxed for a short period of time under certain circumstances, e.g., providing assistance with a personal care activity; and
- (f) Adhering to any other requirement the facility deems appropriate in accordance with guidance from the Centers for Disease Control and Prevention (CDC).

~~(9)(10)~~ During a period when general visitation is limited or prohibited, a facility shall:

- (a) Be responsible for verifying and tracking the testing status of each essential personal care visitor if the facility requires testing

as a safety protocol;

(b) Schedule essential personal care visits in advance or in accordance with a written agreement;

(c) Consider the number of other essential visitors who will be in the building at the same time when developing a visitation schedule;

(d) Establish limitations on the visitation frequency and length of the visits to keep staff and residents safe;

(e) Sanitize the area's high-frequency touched surfaces after the visit; and

(f) Continue to provide all required services and activities to a resident while an essential personal care visitor is with the resident.

Section 3. Training. (1) **If required by the facility's written policies and procedures**, each essential personal care visitor shall complete facility-designated training that includes basic information on infection prevention and control[, **including:**

(a) Proper hand hygiene;

(b) Use of PPE, if applicable;

(c) Proper respiratory hygiene; and

(d) Any other infection control measure the facility may require].

(2) A facility may post signage throughout the facility that demonstrate key instructions to reinforce safe practices.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 14, 2022 at 1:30 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kara Daniel; Stephanie Brammer-Barnes; Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with KRS 216.505 (Senate Bill 100).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 216.505 by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation assists in the effective administration of the statutes by establishing guidelines for implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

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

(a) How the amendment will change this existing administrative regulation: This amended after comments administrative regulation deletes Section 2(6) and also deletes paragraphs (a) – (d) of Section 3(1) to align with the agency amendment on 900 KAR 14:010E, adopted on March 7, 2022, following a request from legislators. This amended after comments administrative regulation also makes conforming changes to Section 1(3) and (4) by deleting the definitions of “facility-onset” and “outbreak”.

(b) The necessity of the amendment to this administrative regulation: This amended after comments administrative regulation is necessary to conform to the content of KRS 216.505 by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

(c) How the amendment conforms to the content of the authorizing statutes: This amended after comments administrative regulation conforms to the content of KRS 216.505 by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

(d) How the amendment will assist in the effective administration of the statutes: This amended after comments administrative regulation assists in the effective administration of the statutes by establishing guidelines for implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation affects assisted-living communities, state-owned or operated psychiatric hospitals, and long-term care facilities. There are 133 assisted-living communities and three (3) state-owned or operated psychiatric hospitals. The number of long-term care facilities by licensure category is as follows: one (1) Alzheimer's nursing home; nine (9) intermediate care facilities; sixteen (16) intermediate care facilities for individuals with intellectual disabilities; twelve (12) licensed nursing facilities; twenty-seven (27) licensed nursing homes; 169 personal care homes; and 281 certified nursing facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with the requirements of KRS 216.505 and this administrative regulation, individuals designated as essential personal care visitors shall be exempt from any general prohibitions on visiting a resident of an assisted-living community, long-term care facility, or state-owned or operated mental or psychiatric hospital.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be significant costs to facilities to implement essential personal care visitor programs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Essential personal care visitor programs are intended to help enhance the well-being and quality of life of Kentuckians in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

(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 Cabinet for Health and Family Services for implementation of this new administrative regulation.

(b) On a continuing basis: There are no additional costs to the Cabinet for Health and Family Services for implementation of this new administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

FISCAL NOTE

(1) What 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 assisted-living communities, long-term care facilities, state-owned or operated psychiatric hospitals, and the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.505

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

(a) How much 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 for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? Same response as provided in (4)(c) above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not have a major economic impact on the regulated entities.

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](#).

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:090. Means by which migratory game birds may be taken.

RELATES TO: KRS 150.010, 150.025(1), 150.305(3), (4), 150.330, 150.360(2)

STATUTORY AUTHORITY: 150.025(1), 150.305(3), (4), 150.360(2), 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.305(3) and (4) authorize the department to regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities. KRS 150.360(2) authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered, and such area shall remain a baited area for ten (10) days following complete removal of all such corn, wheat or other grain, salt, or other feed.

(2) "Baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on or over any areas where hunters are attempting to take them.

Section 2. Prohibited Hunting Methods. (1) Migratory birds on which open seasons are prescribed may be taken by any method except those prohibited in this section.

(2) Migratory game birds and migratory waterfowl shall not be taken:

(a) With a trap, snare, net, ~~crossbow~~, rifle, pistol, swivel gun, shotgun larger than ten (10) gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells, except that this restriction does not apply during the light geese conservation order season;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off or the sails furled, and its progress therefrom has ceased, except that a craft under power may be used to retrieve dead or crippled birds but crippled birds shall not be shot from such craft under power;

(f) By the use or aid of live birds as decoys;

(g) On an area where tame or captive live ducks or geese are present, unless such birds are and have been for a period of ten (10) consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls

and totally conceals such birds from the sight of wild migratory waterfowl;

(h) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds, except that this restriction does not apply during the light geese conservation order season;

(i) By the means or aid of any motor-driven land, water, or air conveyance or any sailboat used for the purpose of or resulting in the concentration, driving, rallying, or stirring up of any migratory bird; or

(j) By the aid of baiting, or on or over any baited area, except that nothing in this paragraph shall prohibit:

1. The taking of all migratory game birds, including waterfowl, on or over standing crops, flooded standing crops, including aquatics, flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and

2. The taking of all migratory game birds, except waterfowl, on or over any lands where baiting has occurred as the result of:

a. Bona fide agricultural operations or procedures; or

b. Manipulation of a crop or other feed on the land where grown for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the distribution or scattering of grain or other feed once it has been removed from or stored on the field where grown.

Section 3. Transporting, Importing and Exporting. (1) Migratory game birds lawfully killed and possessed in accordance with the hunting laws and regulations of any foreign country or any state in the United States or subdivision thereof, must be imported, exported, or transported in accordance with the provisions specified in Title 50, Chapter 1, Subchapter B, Part 20 of the Code of Federal Regulations.

(2) No person shall transport within the United States any migratory game birds, except doves, unless the head or one (1) fully feathered wing remains attached to each such bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

Section 4. Tagging and Recordkeeping Requirements. (1) No person shall put or leave any migratory game birds at any place, other than at his personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage, including temporary storage, or for the purpose of having taxidermy services performed, unless such birds have a tag attached, signed by the hunter, stating his:

(a) Address;

(b) The total number and species of birds; and

(c) The date such birds were killed.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

(3) No person shall receive, or have in custody, any migratory game birds belonging to another person unless such birds are tagged as required under subsection (1) of this section.

(4) No person shall transport migratory game birds belonging to another person unless such birds are tagged as required under subsection (1) of this section.

Section 5. Commercial Preservation Facilities. (1) No commercial preservation facility shall receive or have in custody any migratory game birds unless such birds are tagged as required in Section 4(1) of this administrative regulation.

(2) No commercial preservation facilities shall:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing:

1. The number of each species;
2. The date such birds were received;
3. The name and address of the person from whom such birds were received;
4. The date such birds were disposed of; and
5. The name and address of the person to whom such birds were delivered.

(b) Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record.

(c) Prevent any person authorized to enforce this administrative regulation from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried on.

Section 6. Wanton Waste Law. No person shall kill or cripple any migratory game bird pursuant to this administrative regulation without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 15, 2022

FILED WITH LRC: June 15, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2022, at 10:00 am, at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Jenny Gilbert, Legislative Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes means by which migratory game birds may be taken. These means are consistent with federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the possession, transportation, importation, exportation, tagging and commercial handling of legally taken migratory game birds. It prohibits the wanton waste of harvested migratory game birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the means by which migratory birds may be harvested in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360(2) authorizes the department to restrict methods for the taking of wildlife. KRS 150.305(3) and (4) authorize the department to regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(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 means by which migratory bird harvest may occur and how harvested birds are handled consistent with state, national, and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the restrictions on the use of crossbows while hunting migratory birds.

(b) The necessity of the amendment to this administrative regulation: This amendment increases opportunity for hunters by increasing allowable weapon types. People suffering damage caused by urban geese could also benefit from being able to use a weapon in areas where it is illegal to discharge a firearm. Federal law was changed to allow the use of crossbows and Kentucky is following that lead.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters in Kentucky who are impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Migratory bird hunters will now have the opportunity to hunt with a crossbow.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will have the opportunity to harvest migratory birds with a crossbow, which potentially increases opportunity. It also makes it easier to harvest problem geese.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE

(1) What 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's Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

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

regulation. KRS 150.025(1), 150.360(2), 150.305(3) and (4), 150.600, and 50 C.F.R. Parts 20 and 21.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated during subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings for the regulated entities in the first full year of this administrative regulation is in effect.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for the regulated entities in subsequent years this administrative regulation is in effect.

(c) How much will it cost the regulated entities for the first year? There will be no cost for the regulated entities in the first full year of this administrative regulation is in effect.

(d) How much will it cost the regulated entities for subsequent years? There will be no cost for the regulated entities in subsequent years this administrative regulation is in effect.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact [as defined in KRS 13A.010(13)].

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

(2) State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons and methods by which migratory birds may be harvested within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the

earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag, possession limits and means by which migratory birds may be legally harvested. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during, and after periods open for hunting and allows for the harvest and means of harvest of light geese under a conservation order season.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:095. Importation, possession, and transportation of wildlife meat, [cervid] carcasses, and parts.

RELATES TO: KRS 150.180, 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.720(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations governing the buying, selling, or transporting of wildlife. KRS 150.720(2) authorizes the department and the Department of Agriculture to hold a person responsible for all costs incurred in the investigation, response, and eradication of a disease if the person imports a diseased animal into the Commonwealth. This administrative regulation establishes procedures for the importation, possession, and transportation [and possession] of specified wildlife [cervid] carcasses or carcass parts [part].

Section 1. Definitions.

(1) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof [a member of the family Cervidae].

(2) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.

(3) "CWD Surveillance Zone" means an area designated as being subject to special cervid regulations due to a CWD positive cervid detection.

[(2)] "Clean" means having no meat matter or tissue attached to the carcass part.

(4) [(3)] "Import" means to [transport a cervid carcass or carcass part into Kentucky] bring goods into the state of Kentucky from another state but does not include transportation of goods through Kentucky from outside the state.

(5) "Lagomorph" means wild rabbits, hares, and pikas, and related species and hybrids thereof, including all wild members of the Order Lagomorpha and hybrids thereof.

Section 2. Importation and Transportation of Cervid Meat, Carcasses, and Parts.

(1) [A person shall not import a cervid carcass or carcass part that has any part of the spinal column or head;

(2) A person importing a [legally taken] cervid carcass or carcass parts shall only [part may] possess the items of a legally harvested cervid listed in paragraphs (a) through (g) [(f)] of this subsection.

(a) Deboned meat, excluding brain matter;

(b) Antlers;

(c) [(b)] Antlers that are attached to a [clean] skull [plate] cap having no meat matter or tissue attached;

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~~(d)[(e)] A [clean–]skull having no meat matter or tissue attached;~~

~~(e)[(d)–Clean] Upper canine teeth having no meat matter or tissue attached;~~

~~(f)[(e)] A finished taxidermy product; or~~

~~(g)[(f)] The hide; or~~

~~(g) Quartered or deboned meat.]~~

~~(2) A person shall not transport a cervid carcass or carcass part through Kentucky from outside the state except those parts permissible for import, unless the carcass or carcass parts that are non-permissible for import are transported in a leak and spill-proof container and no contents thereof are permitted to be deposited or disposed of within the state.~~

~~(3) Transportation of cervid carcasses or parts out of a CWD Surveillance Zone. All persons in possession of or transporting a cervid carcass or carcass parts originating from a CWD Surveillance Zone shall only transport the following parts out of the CWD Surveillance Zone:~~

~~(a) Deboned meat, excluding brain matter;~~

~~(b) Antlers;~~

~~(c) Antlers that are attached to a skull cap having no meat matter or tissue attached;~~

~~(d) A skull having no meat matter or tissue attached;~~

~~(e) Upper canine teeth having no meat matter or tissue attached;~~

~~(f) A finished taxidermy product; or~~

~~(g) The hide.~~

~~(4)[(3)] [A licensed taxidermist or deer processor]An individual who engages in the act of taxidermy or processing of cervid meat who accepts [a cervid head with an intact skull, spinal column, or spinal column part originating from another state or country]an imported cervid carcass or carcass part prohibited by subsection (1) or subsection (3) of this section shall:~~

~~(a) Contact the law enforcement division of the department within forty-eight (48) hours after [receiving]accepting the cervid carcass or carcass part[head, spinal column, or spinal column part];~~

~~(b) Provide to the department the hunter's:~~

~~1. Name; and~~

~~2. Address; and~~

~~(c) Transfer all nonpermitted cervid carcass and carcass parts[spinal column parts and the skull with the intact brain] to the department[once the skull plate has been removed].~~

Section 3. Importation of Wild Lagomorph Meat, Carcasses, and Parts.

(1) A person shall only import a completely skinned and fully eviscerated carcass, quarters, or deboned meat of a legally harvested wild Lagomorph.

(2) A person shall not transport wild Lagomorph meat, carcasses, or parts through Kentucky from outside the state except those parts permissible for import, unless the carcass or carcass parts that are non-permissible for import are transported in a leak and spill-proof container and no contents thereof are permitted to be deposited or disposed of within the state.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 15, 2022

FILED WITH LRC: June 15, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2022, at 12:00 p.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: CONTACT PERSON: Jenny Gilbert, Legislative Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures for the importation and possession of cervid and wild lagomorph carcasses or carcass parts from other states or countries.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent the importation of cervid parts most likely to be contaminated with the agent that causes Chronic Wasting Disease (CWD) and lagomorph carcasses potentially infected with rabbit hemorrhagic disease (RHDV2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish the requirements for the transportation of wildlife. KRS 150.720(2) authorizes the department to hold individuals responsible for violating administrative regulations regarding the importation of diseased animals into the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by helping to protect the state's deer, elk and lagomorph populations from CWD and RHDV2.

(2) If 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 prohibits the importation of cervid and wild lagomorph carcasses and high-risk carcass parts from all states and countries.

(b) The necessity of the amendment to this administrative regulation: CWD may persist in the environment for years before clinical symptoms develop in cervids or the disease is discovered. RHDV2 can persist in the environment for months and survives freezing. By prohibiting the importation of high-risk wildlife carcasses and carcass parts, the likelihood that infectious materials enter the state is greatly reduced.

(c) How the amendment conforms to the content of the authorizing statutes: See 1 (c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1 (d) above

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All cervid hunters from Kentucky who transport legally taken wild or captive cervids from other states or countries will be affected. The number of affected hunters is unknown. Currently deer processors are unlicensed by the department and the number of processors in Kentucky is also unknown. There are approximately 350 licensed taxidermists within Kentucky. There are approximately 80,000 licensed rabbit hunters in the Kentucky and a segment of that population travels out of state to hunt wild rabbits.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Hunters who hunt in other states or countries will only be allowed to import low risk portions of a cervid carcass. A processor or taxidermist who accepts a whole carcass or a high risk carcass part from another state or country must report this to the department within 48 hours, provide the department with the name and address of the hunter, and transfer possession of high-risk cervid parts to the department. Any hunter that travels through or back to Kentucky could only transport the

fully skinned and dressed carcass of a legally harvested wild lagomorph.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits to the entities identified in question (3), only the secondary benefit of protecting the deer and wild lagomorph populations in Kentucky.

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

(a) Initially: There will be no initial cost to the agency to implement this regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals, taxidermists, and deer processors are treated equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.720(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated 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? No revenue will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year?

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not result in cost savings or additional expenditures.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This

amendment will not result in cost savings or additional expenditures.

(c) How much will it cost the regulated entities for the first year? This amendment will not result in any additional costs.

(d) How much will it cost the regulated entities for subsequent years? This amendment will not result in any additional costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. Compliance with this amendment does not require any additional costs and therefore should not have a major economic impact.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:142. Spring wild turkey hunting.

RELATES TO: KRS 150.175(7), (8), (15), (17), (18), 150.305, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.390(1) prohibits a person from taking, pursuing, or molesting a wild turkey in any manner contrary to the provisions of Chapter 150 or its administrative regulations. This administrative regulation establishes season dates, shooting hours, and other requirements for spring turkey hunting.

Section 1. Definitions. (1) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(2) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

(3) "Legal wild turkey" means a wild turkey that is a male or has a visible beard.

Section 2. Youth Turkey Season. There shall be a statewide youth-only turkey hunting season for two (2) consecutive days beginning on the first Saturday in April.

Section 3. Statewide Turkey Season. There shall be a statewide turkey hunting season for twenty-three (23) consecutive days beginning on the Saturday closest to April 15.

Section 4. Spring Turkey Hunting Requirements. (1) A person shall:~~not take more than:~~

(a) Only take legal turkeys:[One (1) male turkey per day;]

(b) Take no more than one (1) legal turkey per day statewide:[One (1) turkey with a visible beard per day;]

(c) Take no more than one (1) legal turkey per WMA[Two (2) male turkeys] per season; and[or]

(d) Take no more than two (2) legal turkeys per season statewide, except on certain military installations or as otherwise provided by law.[Two (2) turkeys with visible beards per season.]

(2) A person shall not take a turkey using any device except the following equipment authorized by 301 KAR 2:140:

(a) A firearm;

- (b) Archery equipment; or
- (c) A crossbow.

(3) A person shall only hunt turkeys from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(4) A person who is assisting or calling a turkey for a legal hunter shall not be required to possess a hunting license or turkey permit.

Section 5. Wildlife Management Area Requirements. (1) Unless ~~[otherwise]~~ specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to Wildlife Management Areas.

(2) Barren River WMA. On the Peninsula Unit, including Narrows, Goose Island, and Grass Island, a person shall not use a breech-loading firearm to take a turkey.

(3) Higginson-Henry WMA. A person shall not use a firearm to take a turkey.

(4) Livingston County WMA. Statewide spring turkey season is open to youth only.

(5) Pioneer Weapons WMA. A person shall not use the following to take a turkey:

- (a) A breech-loading firearm; or
- (b) A scope or optical enhancement.

(6) Robinson Forest WMA. A person shall not hunt turkeys on the main block of the WMA.

(7) West Kentucky WMA. Tracts marked with the letter "A" shall be closed for the statewide turkey season established in Section 3 of this administrative regulation.

Section 6. Special Area Requirements. (1) Unless ~~[otherwise]~~ specified in this section, all the requirements of this administrative regulation shall apply.

(2) A person shall comply with all federal requirements when hunting on the following federal areas:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell;
- (c) Fort Knox;
- (d) Land Between the Lakes; and
- (e) Reelfoot National Wildlife Refuge.

(3) A spring turkey season, not to exceed twenty-three (23) days, shall be allowed between the last Saturday in March and the second Sunday in May on the following areas:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell;
- (c) Fort Knox;
- (d) Land Between the Lakes;
- (e) Reelfoot National Wildlife Refuge; and
- (f) Wendell H. Ford Regional Training Center.

(4) A turkey taken on the following areas shall be considered a bonus bird ~~[and shall not count toward the hunter's season bag limits]~~:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell; and
- (c) Fort Knox.

(5) A person shall not take more than one (1) turkey on the following areas:

- (a) Land Between the Lakes; and
- (b) Reelfoot National Wildlife Refuge.

(6) Otter Creek Outdoor Recreation Area. All statewide season requirements shall apply, except that shooting hours shall be from one-half (1/2) hour before sunrise to noon each day.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 15, 2022

FILED WITH LRC: June 15, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2022, at 11:00am, at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will

not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Jenny Gilbert, Legislative Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes season dates, shooting hours, and other requirements for spring wild turkey hunting in Kentucky.

(b) The necessity of this administrative regulation: To regulate spring wild turkey hunting for the effective management of wild turkeys in Kentucky.

(c) How does this administrative regulation conforms to the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and the methods of taking wildlife, including wild turkeys. KRS 150.390(1) prohibits a person from taking, pursuing, or molesting a wild turkey in any manner contrary to the provisions of Chapter 150 or its administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining the seasons, bag limits, and methods of taking wild turkeys in Kentucky.

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

(a) How the amendment will change the existing administrative regulation: This amendment will add a definition of "legal wild turkey" for pursuit and take during the spring hunting season. Subsequently, the amendment will change requirements for spring turkey hunting to reference "legal wild turkey". Most importantly, the amendment will change the bag limit for WMAs to be one legal wild turkey taken per hunter per WMA per season statewide except on certain military installations. Lastly, the amendment will add language clarifying that turkey hunting requirements in this regulation reference the spring hunting season.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enact changes and clarifications to spring turkey hunting regulations.

(c) How does the amendment conform to the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected by this administrative regulation: All hunters that pursue wild turkeys during the spring hunting season will be affected by this regulatory amendment. In 2020, there were roughly 80,000 licensed turkey hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt wild turkeys must comply with the individual requirements for hunting seasons for turkeys, which includes the amended bag limit for WMAs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for resident adults to turkey hunt is either \$57 (\$30 Spring Turkey Permit plus \$27 Annual Hunting License), \$72 (\$30 Spring Turkey Permit plus \$42 Annual Combination

Hunting/Fishing License), \$95 (Sportsman's License), or \$12 (Senior/Disabled Sportsman's License). The cost for resident youth to turkey hunt is either \$16 (\$10 Youth Turkey Permit plus \$6 Annual Youth Hunting License) or \$30 (Youth Sportsman's License). The cost for nonresident adults is \$235 (\$85 Spring Turkey Permit plus \$150 Annual Hunting License). The cost for nonresident youth is \$25 (\$15 Youth Turkey Permit plus \$10 Annual Youth Hunting License).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunting opportunity will be decreased on WMAs to ensure a sustainable turkey population for the future.

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

(a) Initially: There will be a small administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be a small cost to the department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt wild turkeys in spring are required to abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For the 2021 spring turkey season, the total amount of revenue generated from the sale of licenses and permits was approximately \$12,000,000 (this estimate includes total revenue from all license and permit types that conferred the spring turkey hunting privilege corrected for the estimated percentage of eligible license holders that hunted based on recent surveys). The amount of revenue generated by this administrative regulation will decrease if non-resident license/permit sales decline due to the reduction in bag limit.

(b) How 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 amount of revenue generated by this administrative regulation for subsequent years is unknown but will likely be less than in 2021.

(c) How much will it cost to administer this program for the first year? There will be a small administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small administrative cost incurred in subsequent years.

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

Revenues (+/-): -

Expenditures (+/-): Same.

Other explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None. This administrative regulation does not amend fees nor does it reduce the cost burden to spring turkey hunters. These amendments will allow for less spring turkey hunting opportunity at the same cost as before.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None. This administrative regulation does not amend fees nor does it reduce the cost burden to spring turkey hunters. These amendments will allow for less spring turkey hunting opportunity at the same cost as before.

(c) How much will it cost the regulated entities for the first year? The cost of a spring turkey permit or license types that confer the same privileges will remain the same. For a resident adult hunter, that cost is either \$57, \$72, or \$95. For a non-resident adult hunter, that cost is \$235. For a resident youth that cost is either \$16 or \$30. For a non-resident youth that cost is \$25.

(d) How much will it cost the regulated entities for subsequent years? Each year, the cost will remain the same under the current regulations.

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

Cost Savings (+/-): None.

Expenditures (+/-): Same.

Other Explanation: See explanations above.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This amendment will not result in any form of major economic impact as the license and permit fees associated with this regulation have not changed and the possible decline in revenue with fewer non-resident licenses and permits will be slight relative to overall agency revenues.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. None.

(2) State compliance standards. None associated with this regulation.

(3) Minimum or uniform standards contained in the federal mandate. None.

(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. N/A.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation

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establishes bear hunting and chasing seasons, bear hunting areas, legal methods of take, and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Bear" means the species *Ursus americanus*.

(6) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex.

(8) "Bear Zone 1" means Bell, Harlan, Letcher and McCreary Counties.

(9) "Bear Zone 2" means Adair, Bath, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Elliot, Estill, Fleming, Floyd, Garrard, Greenup, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Lewis, Lincoln, Madison, Magoffin, Martin, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe Counties.

(10) "Bear Zone 3" means Adair, Bath, Boyd, Carter, Casey, Clark, Cumberland, Elliot, Estill, Fleming, Garrard, Greenup, Lee, Lewis, Lincoln, Madison, Menifee, Montgomery, Morgan, Powell, Rowan, and Wolfe counties.

(11) "Bell Zone" means Bell County.

(12) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(13) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(14) "East Zone 2" means Breathitt, Clay, Floyd, Johnson, Knott, Knox, Lawrence, Magoffin, Martin and Owsley counties.

(15) "Firearm" means a breech- or muzzle-loading rifle, shotgun, or handgun.

(16) "Harlan Zone" means Harlan County.

(17) "Leslie Zone" means Leslie County.

(18) "Letcher Zone" means Letcher County.

(19) "License year" means the period from March 1 through the last day of February.

(20) "McCreary Zone" means McCreary County.

(21) "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.

(22) "Muzzleloader" means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.

(23) "Perry Zone" means Perry County.

(24) "Pike Zone" means Pike County.

(25) "Wayne Zone" means Wayne County.

(26) "West Zone 2" means Clinton, Jackson, Laurel, Pulaski, Rockcastle, Russell, and Whitley counties.

(27) "Youth" means a person under the age of sixteen (16) on the day of the hunt.

(28) "Youth bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry on his or her person a valid Kentucky hunting license and a valid:

- (a) Bear chase permit; or
- (b) Youth bear chase permit.

(2) A bear chase permit or youth bear chase permit shall only be purchased by a resident of Kentucky.

(3) A person shall not:

(a) Kill or intentionally injure a bear during a chase-only season;

(b) Chase a bear except during daylight hours while a chase season is open;

(c) Chase a bear from a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

(4) A person shall only use a dog to chase a bear on public hunting areas, or on private land with permission of the landowner, in all bear zones, except that it shall be prohibited to chase bears with dogs in the areas established in paragraphs (a) through (g) of this subsection:

(a) McCreary Zone;

(b) Daniel Boone National Forest;

(c) Miller-Welch Central Kentucky Wildlife Management Area;

(d) Beaver Creek Wildlife Management Area;

(e) Cane Creek Wildlife Management Area;

(f) Mill Creek Wildlife Management Area;

(g) Pioneer Weapons Wildlife Management Area;

(h) Redbird Wildlife Management Area.

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the seasons established in subsections (1) and (2) of this section.

(1) The chase-only season shall be from:

(a) June 1 through August 31; and

(b) September 9 through September 30; and

(2) The bear hunt with dogs season shall be pursuant to Section 8(1) of this administrative regulation.

Section 5. Bear Permit Requirements. Unless exempted by KRS 150.170, a person hunting a bear shall carry on his or her person a valid Kentucky hunting license and the appropriate valid bear permit or permits while hunting during the seasons established in Section 8(1) of this administrative regulation.

Section 6. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use a dog during the modern gun, muzzleloader, or archery and crossbow season to hunt bears, except leashed tracking dogs may be used to recover a wounded or dead bear;

(c) Hunt bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming;

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disability hunting methods exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den;

(h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den; or

(i) Use radio telemetry equipment to locate a bear that is equipped with a radio-tracking collar.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Equipment Restrictions. (1) A person shall only use the equipment and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A modern rifle:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Loaded with:
 - a. Bullets of .264 caliber (6.5 mm)[.270-caliber] or larger; and
 - b. Centerfire, single projectile ammunition designed to expand upon impact;
 - (c) A muzzleloader of .45[.50] caliber or larger;
 - (d) A shotgun of twenty (20) gauge or larger loaded with a shell containing a slug or a slug with a sabot; or
 - (e) A handgun loaded with:
 1. Centerfire cartridges;
 2. Bullets of .264 caliber (6.5 mm)[.270-caliber or larger] designed to expand upon impact; and
 3. Cartridges with a case length of 1.285 inches or larger.
 - (2) A crossbow shall contain a working safety device.
 - (3) A bear hunter using a modern gun shall not use a magazine capable of holding more than ten (10) rounds.
 - (4) A bear hunter may use archery, crossbow, or muzzleloader equipment to take a bear during bear modern gun season.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the open bear zones during the seasons established in paragraphs (a) through (f)[(e)] of this subsection:

(a) The archery and crossbow season for bears in Bear Zone 1 shall be for three (3) consecutive days beginning on the fourth Saturday in October;

(b) The archery and crossbow season for bears in Bear Zone 2 shall be for five (5) consecutive days beginning on the fourth Saturday in October;

(c) The modern gun season for bears in Bear Zone 1 shall be for three (3) consecutive days beginning on the second Saturday in December;

(d) The modern gun season for bears in Bear Zone 2 shall be for five (5) consecutive days beginning on the second Saturday in December;

(e) The bear hunt with dogs season in Bear Zone 1 shall be for five (5) consecutive days beginning on the Monday prior to the fourth Saturday in October; and

(f) The bear hunt with dogs season in Bear Zone 2 shall be for five (5) consecutive days beginning on the Monday prior to the fourth Saturday in October and for nine (9) consecutive days beginning the Thursday following the fourth Saturday in October.

~~[(a) The archery and crossbow season for bears, which shall be for seven (7) consecutive days beginning on the fourth Saturday in October in all bear zones, except Bear Zone 3;~~

~~(b) The modern gun season for bears, which shall be for seven (7) consecutive days beginning on the second Saturday in December in all bear zones; and~~

~~(c) The bear hunt with dogs season, which shall be for fourteen (14) consecutive days beginning on the third Monday in October in all bear zones, except the McCreary Zone.]~~

(2) A person shall not harvest more than one (1) bear in a license year.

~~[Section 9. Bear Season Closure. (1) The archery and crossbow season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.~~

- ~~(a) Bell Zone, two (2) female bears;~~
- ~~(b) East Zone 2, two (2) female bears;~~
- ~~(c) Harlan Zone, two (2) female bears;~~
- ~~(d) Leslie Zone, two (2) female bears;~~
- ~~(e) Letcher Zone, two (2) female bears;~~
- ~~(f) McCreary Zone, one (1) female bear;~~
- ~~(g) Perry Zone, two (2) female bears;~~
- ~~(h) Pike Zone, two (2) female bears;~~
- ~~(i) Wayne Zone, two (2) female bears; and~~
- ~~(j) West Zone 2, one (1) female bear.~~

~~(2) The modern gun season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (g) of this subsection have been reached.~~

- ~~(a) Bell Zone, two (2) female bears;~~
- ~~(b) East Zone 2, three (3) female bears;~~
- ~~(c) Harlan Zone, two (2) female bears;~~

- ~~(d) Leslie Zone, two (2) female bears;~~
- ~~(e) Letcher Zone, two (2) female bears;~~
- ~~(f) McCreary Zone, one (1) female bear;~~
- ~~(g) Perry Zone, two (2) female bears;~~
- ~~(h) Pike Zone, two (2) female bears;~~
- ~~(i) Wayne Zone, two (2) female bears;~~
- ~~(j) West Zone 2, two (2) female bears; and~~
- ~~(k) Zone 3, two (2) female bears.~~

~~(3) The bear hunt with dogs season in each open bear zone will close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.~~

- ~~(a) Bell Zone, one (1) female bear;~~
- ~~(b) East Zone 2, two (2) female bears;~~
- ~~(c) Harlan Zone, two (2) female bears;~~
- ~~(d) Leslie Zone, two (2) female bears;~~
- ~~(e) Letcher Zone, two (2) female bears;~~
- ~~(f) Perry Zone, two (2) female bears;~~
- ~~(g) Pike Zone, two (2) female bears;~~
- ~~(h) Wayne Zone, two (2) female bears;~~
- ~~(i) West Zone 2, one (1) female bear; and~~
- ~~(j) Zone 3, one (1) female bear.~~

~~(4) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the quota has been reached for that season.]~~

Section 9.[Section 10.] Bear Hunt with Dogs Requirements. (1) A person shall only harvest a bear using legal equipment with the use of unleashed dogs that are actively pursuing, chasing, baying, or treeing a bear prior to harvest.

(2) A dog used to harvest bears shall be a purebred or a crossbreed of the recognized dog breeds established in paragraphs (a) through (l) of this subsection.

- (a) Airedale;
- (b) American black and tan coonhound;
- (c) Black mouth cur;
- (d) Bluetick coonhound;
- (e) English coonhound;
- (f) Leopard cur;
- (g) Majestic tree hound;
- (h) Mathis;
- (i) Mountain cur;
- (j) Plott hound;
- (k) Redbone coonhound; or
- (l) Treeing walker coonhound.

(3) The bear hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit[, even if the quota has been met].

Section 10.[Section 11.] Hunter Orange Clothing Requirements. (1) During any modern gun or muzzleloader season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

- (a) Waterfowl; or
- (b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

- (a) May display a small section of another color; and
- (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 11.[Section 12.] Bear Reserves. The areas established in subsections (1) through (3) of this section shall be closed to all bear hunting and bear chase with dogs.

- (1) Cumberland Gap National Historical Park;
- (2) Hensley-Pine Mountain Wildlife Management Area; and
- (3) Big South Fork National River and Recreation Area.

Section 12.[Section 13.] Harvest Recording and Check-in Requirements. (1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

- (a) Species taken;
- (b) Date taken;

- (c) County where taken; and
- (d) Sex of the bear.
- (2) A person who has harvested a bear shall:
 - (a) Retain a completed hunter's log;
 - (b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:
 - 1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and
 - 2. Recording the confirmation number on the hunter's log;
 - (c) Arrange for department personnel to inspect the bear by:
 - 1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest and prior to removing the harvested bear from the Bear Zone; and
 - 2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex by including the attached:
 - a. Testicles, scrotum, or penis for a male bear; or
 - b. Udder or vulva for a female bear; and
 - (d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 15, 2022

FILED WITH LRC: June 15, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2022, at 9:00am, at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Jenny Gilbert, Legislative Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jenny Gilbert

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This regulation establishes black bear chase and hunt seasons, chase and hunt requirements, bag limits, and legal methods of take.
 - (b) The necessity of this administrative regulation: To establish bear hunting season requirements and methods of take to provide reasonable hunting and chasing opportunity, while properly managing bear populations in Kentucky.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of Chapter 150 or its regulations.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining the seasons, bag limits, and methods of chase and take used to manage black bears in Kentucky.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment will remove the bear quotas that

regulated harvest in the past and instead regulate the harvest using season length. The Bear Zone will be redrawn to include four counties in Bear Zone 1, with specific hunting seasons, and 43 counties in Bear Zone 2, again with specific hunting seasons. Additionally, the season dates for the bear hunt with dogs season will be split to not overlap with bear archery season. Finally, equipment restrictions are to be amended to include modern guns of .264 caliber (6.5 mm) and muzzleloaders of .45 caliber.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve hunter opportunity by removing harvest quotas, adjusting zones and providing dates that remove the overlap of bear hunting seasons.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hunters that pursue black bears will be affected by this regulatory amendment. In 2021, there were roughly 1200 licensed bear hunters in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt bear must comply with the individual requirements and restrictions for respective hunt or chase-only seasons for bears.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a bear chase permit is \$30, a youth bear chase permit is \$10, a resident bear permit is \$30, a resident youth bear permit is ten dollars \$10, and a non-resident bear permit is \$250, pursuant to 301 KAR 3:022.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunting opportunity will be increased while ensuring a sustainable bear population for the future.

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

(a) Initially: There will be a small administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be a small cost to the department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt bear are required to abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.390(1).

(3) Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For the 2021 bear season, the total amount of revenue generated through permit sales was approximately \$40,000. The amount of revenue generated by this administrative regulation for the first year will likely be similar.

(b) How 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 amount of revenue generated by this administrative regulation for subsequent years is unknown but will likely be similar to 2021.

(c) How much will it cost to administer this program for the first year? There will be a small administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small administrative cost incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None. This administrative regulation does not amend fees nor does it reduce the cost burden to bear hunters. Overall, these amendments will allow for more bear hunting opportunity at the same cost as before.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None. This administrative regulation does not amend fees nor does it reduce the cost burden to bear hunters. Overall, these amendments will allow for more bear hunting opportunity at the same cost as before.

(c) How much will it cost the regulated entities for the first year? The cost of a bear permit will remain the same. For a resident hunter, that cost is \$30. For a non-resident hunter, that cost is \$250.

(d) How much will it cost the regulated entities for subsequent years? Each year, the cost will remain the same under the current regulations.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not result in any form of major economic impact as the license and permit fees associated with this regulation have not changed.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. None.

(2) State compliance standards. Non associated with this regulation

(3) Minimum or uniform standards contained in the federal mandate. None.

(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. N/A.

TRANSPORTATION CABINET

Department of Highways

Division of Maintenance

(Amendment)

603 KAR 5:155. Vegetation management.~~[Removal and pruning of vegetation.]~~

RELATES TO: KRS 176.010(2), 176.050(1), 177.106, 177.830(5), 177.990(2)

STATUTORY AUTHORITY: KRS 176.050(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the department to promulgate administrative regulations concerning the care and maintenance of roads in the Commonwealth. This administrative regulation establishes a vegetation management permitting process ~~[by which a noncommercial or a commercial entity may apply to the department]~~ for the removal and pruning of vegetation on department right-of-way~~[near state roads and highways]~~.

Section 1. Definitions.

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

(2) "Department" is defined by KRS 176.010(2).

(3) "Person" means any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, cooperative, or any other group or combination acting as an individual or unit.

~~[(2) "Certified arborist" means an arborist prequalified within the landscaping classification of the Transportation Cabinet's Prequalification Committee and certified by the International Society of Arboriculture.~~

~~(3) "Commercial entity" means a business or company, including the owner of an outdoor advertising device, whose activities generate or are intended to generate revenue.~~

~~(4) "Illegal outdoor advertising device" means an outdoor advertising device that was erected or is maintained in violation of federal, state, or local law or ordinance.~~

~~(5) "Noncommercial entity" means a private landowner including a farm or single family residence.~~

~~(6) "REDA" means a roadside environmental district administrator located in each of the district offices of the Transportation Cabinet.~~

~~(7) "Specimen tree" means a native Kentucky tree outstanding for its size and quality that has been designated on the department's Web site.]~~

Section 2. Vegetation Management~~[Removal]~~ Permit Eligibility.

(1) A permit for vegetation management to remove or prune vegetation ~~[in order to remove vegetative obstructions to the visibility of a noncommercial or commercial entity]~~, including vegetative obstructions to the visibility of an [outdoor]-advertising device, located on [in a] public right-of-way under the jurisdiction of the Kentucky Transportation Cabinet, shall be obtained from the department, in accordance with this administrative regulation, prior to entry or disturbance of the right-of-way.

(2) An applicant shall apply to the department for a permit for vegetation management to remove or prune vegetation by submitting a completed Application for Encroachment Permit, TC 99-1A form, to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management.

(3) An application for a permit to remove or prune vegetation [by a noncommercial entity or a commercial entity] shall be considered [approved] by the department if the proposal:

(a) Improves [in order to improve] the safety of the traveling

public;

(b) ~~Is~~^{Is} necessary to eliminate hazards to personal property;
 (c) ~~Enhances~~^{To enhance} visibility for the travelling public;
 (d) ~~Eliminates~~^{To eliminate} an unsightly condition and ~~improves~~^{improve} roadway aesthetics ~~if recommended by the department's arborist or REDA as established in Sections 4 and 5 of this administrative regulation~~; or

(e) ~~Removes~~^{To remove the} undesirable vegetation listed on the department's Web site at www.transportation.ky.gov/permits/.

(4)~~[(3)]~~ A permit to remove or prune ~~or remove~~ vegetation shall not be issued for the purpose of increasing visibility of an advertising device in violation of KRS Chapter 177 or KAR Title 603.;

(a) For an illegal outdoor advertising device or if the legal status of an outdoor advertising device is in dispute;

(b) If an applicant is required to enter through state right-of-way in order to access property for vegetation pruning or removal unless authorized by the department as part of the permit to remove vegetation; or

(c) To remove specimen trees as listed on the department's Web site at www.transportation.ky.gov/permits/ unless recommended by the department's arborist or REDA.

(4) A noncommercial entity or a commercial entity shall apply to the department for a permit to remove or prune vegetation by using Application for Encroachment Permit, TC 99-1(A). The form shall be submitted to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management plan.;

(5) Access to department right-of-way to perform vegetation management shall be from private property unless otherwise specified as part of the permit.

Section 3. General Requirements for Vegetation Management~~[Removal]~~.

(1) An applicant requesting a permit for vegetation management to remove or prune vegetation shall submit:

(a) A completed Application for Encroachment Permit, TC 99-1A form;

(b) A general description of work to be performed;

(c) A location map;

(d) A detailed and scaled drawing showing the location of the vegetation proposed to be removed or pruned;

(e) The name, address, and phone number of the contractor that will be performing the work;

(f) A signed release from property owners whose property lines front the right-of-way where the vegetation management is proposed;

(g) A signed consent from a private property owner that gives the applicant access from the private property to the work site;

(h) A seeding and erosion control plan pursuant to the department's manual, Standard Specifications for Road and Bridge Construction;

(i) Evidence of bonding maintained until released by the department; and

(j) Proof of liability insurance equal to or more than \$1 million.

(2) The following applicants are exempt from Section 3(1) (f), (g), (i), and (j):

(a) Government agencies removing vegetation for purposes of installing or maintaining government facilities; or

(b) Public utility companies removing vegetation for purposes of installing or maintaining utility facilities.

(3) An applicant shall:

(a) Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;~~[Submit a mitigation plan to replant an area if a specimen tree is removed pursuant to Section 2(3)(c) of this administrative regulation unless the department's arborist or REDA indicates that replanting is not feasible;]~~

(b) Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;~~[Plant a designated area with noninvasive plant species that favor the bee and butterfly population if recommended by the department's~~

arborist or REDA;]

(c) Remove and dispose of cut material and debris from the state right-of-way as stated in the permit issued by the department;~~[Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;]~~

(d) Fill, grade, and compact a hole or void created by the performed work with top soil;~~[Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;]~~

(e) Use a seeding and erosion control plan;~~[Remove and dispose of cut material and debris from the state right-of-way as specified in the permit issued by the department;]~~

(f) Not remove more than twenty-five (25) percent of the crown of each tree approved for pruning by the department;~~[Fill, grade, and compact a hole or void created by the performed work with top soil;]~~

(g) Perform work during the time frame stated in the permit;~~and [Use a seeding and erosion control plan;]~~

(h) Reimburse the department for any costs incurred associated with the vegetation removal and pruning permit.~~[Not remove or prune a redbud tree, dogwood tree, or designated state tree without approval of the department based on the health and condition of the trees at the permitting;]~~

(i) Not remove more than twenty-five (25) percent of the crown of each tree approved for pruning by the department's arborist or REDA;

(j) Remove or prune vegetation with the supervision of a certified arborist or district REDA; and

(k) Perform work within 180 consecutive calendar days of the work start date.

(2) A permit to remove vegetation shall be granted by the department in areas designated as a beautification project if the areas have become so unsightly and overgrown that they no longer meet the criteria for a beautification project.;

(4)~~[(3)]~~ Work shall not be performed until a ~~[completed]~~ permit ~~[application]~~ is issued~~[received and approved]~~ by the department pursuant to Sections 4 or 5 of this administrative regulation.;

(5) If a tree approved to be pruned dies related to executing the permit for vegetation management, the department shall require the permittee to remove the dead tree from department right-of-way, mitigate for the loss of vegetation, and restore department right-of-way.

(6) If damage occurs to vegetation not included in the permit for vegetation management, the department shall require the permittee to mitigate for the loss of vegetation and restore department right-of-way.

(7) The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the permit for vegetation management.

(8) The permittee shall indemnify the department and the Transportation Cabinet pursuant to the permit if claims are brought against the department or Transportation Cabinet by third parties for damages sustained in the course of executing a permit for vegetation management.

Section 4. Mitigation.

(1) An applicant shall be required to mitigate as part of a permit for vegetation management for removal of any tree with five (5) inch or greater diameter at breast height (dbh), except:

(a) Government agencies removing vegetation for purposes of installing or maintaining government facilities; or

(b) Public utility companies removing vegetation for purposes of installing or maintaining utility facilities.

(2) For mitigation, the applicant shall make a contribution to the Kentucky Natural Lands Trust (KNLT), www.knlt.org.

(3) The department shall calculate the contribution amount pursuant to the department's Indiana Bat Conservation Memorandum of Agreement with the United States Fish and Wildlife Service.

(4) The department shall not approve a permit for vegetation removal prior to receiving proof of the required contribution from

the applicant.

Section 4. Noncommercial Assistance of a REDA.

(1) ~~A detailed explanation of the proposed vegetation management plan shall be included by the noncommercial entity with the submission of a TC Form 99-1(A) to the department.~~

(2) ~~A non-commercial entity may use either a certified arborist or a department REDA to submit a vegetation management plan to the department. A certified arborist used by a noncommercial entity shall comply with Section 5 of this administrative regulation.~~

(3) ~~The REDA shall review the submitted application to remove or prune vegetation and coordinate the process of removal with the permittee.~~

Section 5. Commercial Use of Arborist.

(1) ~~A commercial entity shall be required to use a certified arborist for vegetation management.~~

(2) ~~A commercial applicant with three (3) active permits for vegetation removal shall not be eligible for another permit until the work on at least one (1) active permit is completed.~~

(3) ~~The completed application for a permit to remove or prune vegetation shall include:~~

(a) ~~A general description of work to be performed;~~

(b) ~~The address and telephone number of the party applying for a permit;~~

(c) ~~A photograph, location map, and a detailed and scaled drawing showing the location of the vegetation proposed to be trimmed or removed;~~

(d) ~~A vegetation management plan submitted by a certified arborist that shall include:~~

1. ~~A general description of vegetation proposed to be removed and the work to be performed;~~

2. ~~An inventory of trees larger than four (4) inches in diameter as measured twelve (12) inches from ground level within the area proposed for vegetation removal or pruning; and~~

3. ~~Documentation that the applicant consulted with the United States Fish and Wildlife Service regarding a potential for the proposed work to affect federally listed, threatened, or endangered species;~~

(e) ~~Proof that the applicant has obtained local, state, or federal approval as required;~~

(f) ~~The name and address of the contractor that will be performing the work;~~

(g) ~~A signed release from property owners whose property lines from the right-of-way where vegetation management is proposed;~~

(h) ~~A signed consent from a private property owner that gives the permittee access from the private property to the work site;~~

(i) ~~A seeding and erosion control plan pursuant to the department's manual, Standard Specifications for Road and Bridge Construction;~~

(j) ~~The proposed work schedule including the beginning and ending date of work;~~

(k) ~~A payment bond and a performance bond until the project is released by the department; and~~

(l) ~~Proof of liability insurance equal to or in excess of \$3 million. The department shall be listed as the "Certificate Holder."~~

(4) ~~A permit shall not be granted if the vegetation removal will adversely affect federally listed, threatened, or endangered species unless the United States Department of Fish and Wildlife Service approves the permittee's proposal to minimize the impact.~~

(5) ~~The certified arborist shall notify the department that the work is complete and certify that the work has been performed according to the permit.~~

(6) ~~Two (2) years after the date the work is completed, a permittee shall submit to the department a report completed by a certified arborist that includes current color photographs of the area where the work was performed.~~

(7) ~~If there are expenses related to the use of a certified arborist, or a review by the department, the applicant shall submit a completed Agreement for Services to be Performed, TC 99-22, to the department and reimburse the department for administrative expenses incurred as a result of the vegetation management plan.]~~

Section 5.[Section 6.] Notice of Violation; Appeals.

(1) ~~The department shall provide notification[notify the permittee] by certified letter if a violation of this administrative regulation has occurred.~~

(2) ~~If the permittee fails to respond to the certified notice or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action against the permittee.]~~

(2)[(3)(a)] ~~A person [vegetative permit holder] aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B.~~

(a) ~~The request shall be made in writing [and] within thirty (30)[twenty-(20)] days of the certified letter[notice].~~

(b) ~~A request for a hearing shall thoroughly describe the grounds on which the hearing is requested.~~

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

(3) If a request for an administrative hearing is not received by the department or the violation is not remedied within (30) days of notice, the department shall take action to impose penalties as established in Section 6 of this administrative regulation.

Section 6.[Section 7.] Penalties.

(1) ~~Any person[A vegetative permit holder] who violates this administrative regulation shall:~~

(a) ~~Be subject to[be fined] a civil penalty [of \$500] as established in KRS 177.106.[177.990(2).]~~

(b) ~~Mitigate for loss of vegetation in accordance with Section 4 of this administrative regulation; and~~

(c) ~~Be responsible for all costs associated with the restoration of the department right-of-way to an acceptable condition including the required remedial measures provided for in Section 3(3) of this administrative regulation.[A corrective plan by a certified arborist or REDA shall be submitted within thirty (30) days of the notice of violation.]~~

(2) ~~The department shall deny or revoke a permit that contains [intentionally]false or misleading information.~~

(3) ~~If a tree dies related to executing the vegetative plan, within two (2) years of being pruned or planted, the permittee shall remove the dead tree and:~~

(a) ~~Repay the department for the loss of the state-owned tree;~~

or

(b) ~~Replant the area.~~

(4) ~~If damage occurs, related to executing the vegetative plan, to vegetation not included in the vegetation permit, the permit holder shall be fined in accordance with subsection (1) of this section and shall be required to replant the area.~~

(5) ~~The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the vegetation management plan.~~

(6) ~~The permittee shall indemnify the department and the cabinet pursuant to the Application for Encroachment Permit, TC Form 99-1(A) in the event that claims are brought against the department or cabinet by third parties for damages sustained in the course of executing a vegetation management plan.~~

Section 8. Implementation. If a provision of this administrative regulation is found to be invalid by a court of competent jurisdiction, this administrative regulation shall be invalid in its entirety.]

Section 7.[Section 9.] Incorporation by Reference.

(1) ~~The following material is incorporated by reference:~~

(a) ~~"Application for Encroachment Permit", TC 99-1(A), October 2020;["Agreement for Services to be Performed," TC 99-22, January 2015;]~~

(b) ~~"Indiana Bat Conservation Memorandum of Agreement", September 2012;["Application for Encroachment Permit", TC 99-1(A), January 2015]; and~~

(c) ~~"Standard Specifications for Road and Bridge Construction", June 1, 2019[15, 2012].~~

(2) ~~This material may be inspected, copied, or obtained,~~

subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Transportation Cabinet's Web sites at:

(a) <https://transportation.ky.gov/Permits>; and

(b) <https://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>. [cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>.]

JIM GRAY, Secretary

JAMES BALLINGER, P.E., State Highway Engineer

APPROVED BY AGENCY: June 15, 2022

FILED WITH LRC: June 15, 2022 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022 at 10:00 a.m. EST, at the Kentucky Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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 below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager / Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.
<mailto:kevin.moore@ky.gov>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines and requirements of obtaining an encroachment permit to remove vegetation on Department of Highways right of way.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 176.050(1)(i).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 176.050(1)(i) by providing the requirements for vegetation removal encroachment permits.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statute: This administrative regulation will establish the regulatory requirements for vegetation removal encroachment permits as related to KRS 176.050(1)(i).

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

(a) How the amendment will change this existing regulation: This amendment eliminates the commercial and non-commercial designation of applicants. This amendment eliminates the requirement for applicants to obtain the services of a pre-qualified arborist. This amendment provides a uniform method for determining mitigation, which is based on the same system that the Transportation Cabinet uses to determine tree mitigation on road projects.

(b) The necessity of the amendment to this administrative regulation: The existing regulation created a lengthy and complicated process for the Transportation Cabinet to process vegetation removal encroachment permit applications. The existing regulation allows flexibility in determining mitigation, which has resulted in vastly varying mitigation requirements within the Districts on individual vegetation removal permits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS

176.050(1)(i) by providing requirements for vegetation removal encroachment permits.

(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 providing a simplified process and shorter timeline to obtain vegetation removal encroachment permits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch along with all individuals and businesses intending to apply for a vegetation removal encroachment permit.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals and businesses seeking a vegetation removal encroachment permit will need to submit required documentation to the Transportation Cabinet for review. The Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch will review the vegetation removal permit application and determine the required mitigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals and businesses seeking a vegetation removal encroachment permit will be responsible for paying the mitigation fee. There are no known direct costs for the Transportation Cabinet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The overall process to apply for and obtain a permit for vegetation management to prune or removal vegetation will be simplified, and the timeline will be shortened.

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

(a) Initially: There are no additional costs associated with this amendment.

(b) On a continuing basis: There are no continuing costs associated with this amendment.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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: The amendment indirectly establishes a fee, which is for mitigation. The amendment removes requirements for vegetation removal encroachment permit applicants to obtain a pre-qualified arborist during the application process and providing physical mitigation by planting trees and other vegetation after approval of the vegetation removal encroachment permit.

(9) TIERING: Is tiering applied? No, all encroachment permit applications for vegetation removal will be treated equally.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.050(1)(i), 177.106.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the

first full year the administrative regulation is to be in effect. There will be no effect on expenditures. There is potential for an indirect increase in revenue to the Transportation Cabinet as explained in the Notes section.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Specific dollar estimates cannot be determined. Please see notes below.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Specific dollar estimates cannot be determined. Please see notes below.

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

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

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

Revenues (+/-): Applicants will be required to contribute to a mitigation organization specified by the department. Some mitigation organizations allow the Transportation Cabinet District Offices to utilize contributions for projects such as planting bee and butterfly habitats. The amount of funding will depend on the number of vegetation removal encroachment permits and the specifics of work covered under each permit.

Expenditures (+/-): There will be no effect on expenditures.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is potential for cost savings for the entities regulated with this administrative regulation. This savings will vary depending on the amount of vegetation removal being proposed, the time of year the removal is proposed, and the area of the state the removal is proposed.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is potential for cost savings for the entities regulated with this administrative regulation. This savings will vary depending on the amount of vegetation removal being proposed, the time of year the removal is proposed, and the area of the state the removal is proposed.

(c) How much will it cost the regulated entities for the first year? The costs for the entities regulated with this administrative regulation will vary depending on the amount of vegetation removal being proposed, the time of year the removal is proposed, and the area of the state the removal is proposed.

(d) How much will it cost the regulated entities for subsequent years? The costs for the entities regulated with this administrative regulation will vary depending on the amount of vegetation removal being proposed, the time of year the removal is proposed, and the area of the state the removal is proposed.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.

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

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (d), 158.140(6), 158.142, 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d), 158.140(6), 158.142

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. Definitions. (1) "Early Graduation Program" or "EGP" means an optional program in which a student may receive an Early Graduation Certificate and scholarship award upon proper notification of intent to participate and the successful completion of all program requirements in three (3) academic years or less. ~~["Early graduation" means meeting the competency-based criteria established in this administrative regulation in three (3) academic years or less.]~~

(2) "Early Graduation Certificate" means a certificate, awarded by the district and signed by the principal and superintendent, that shall ~~qualify~~~~[make]~~ the recipient ~~to be awarded a high school diploma and~~~~[eligible for]~~ a scholarship award equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level, to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools.

(3) "Individual Learning Plan" or "ILP" is defined in 704 KAR 19:002.

Section 2. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address the content as provided in the Kentucky academic standards for career studies established in 704 KAR Chapter 8. The individual learning plan shall not be a substitute for the statement of transition service needs for students with disabilities as provided in 707 KAR 1:320.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the

student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) The development of the individual learning plan for each student shall be established at[begin by] the beginning[end] of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 3. (1) For students entering grade 9 on or before the first day of the 2018-2019 academic year, each student in a public school shall have a total of at least twenty-two (22) credits for high school graduation.

(2) Those credits shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and KAR Chapter 8.

(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(4) The required credits and demonstrated competencies shall include the following minimum requirements:

(a) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky academic standards for this content area and comply with the following:

1. Language arts shall be taken each year of high school; and

2. If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(b) Social studies - three (3) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - three (3) credits to include the content contained in the Kentucky academic standards for this content area and include the following minimum requirements:

1. Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky academic standards, established in 704 KAR 3:303 and 704 Chapter 8;

2. A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;

3. Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and

4. If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(d) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan;

(h) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(i) Demonstrated performance-based competency in

technology.

Section 4. (1) Beginning with students who enter grade 9 on or after the first day of the 2019-2020 academic year, in order to receive a high school diploma, each student in a public school shall earn a total of at least twenty-two (22) credits for high school graduation.

(2) The required credits shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8.

(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(4) Each student shall be required to complete the following foundational credits and demonstrated competencies, consisting of ten (10) credits:

(a) English/language arts - two (2) credits (English I and II) to include the content contained in the Kentucky academic standards for this content area;

(b) Social studies - two (2) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - two (2) credits (Algebra I and Geometry) to include the content contained in the Kentucky academic standards for this content area;

(d) Science - two (2) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area; and

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan.

(5) In addition to the foundational requirements established in subsection (4) of this Section, every student shall earn a minimum of twelve (12) personalized credits in order to receive a high school diploma. These twelve (12) personalized credits shall include:

(a) Two (2) additional English/Language Arts credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(b) Two (2) additional mathematics credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(c) One (1) additional science credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(d) One (1) additional social studies credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(e) Academic and career interest standards-based learning experiences - six (6) credits including four (4) standards-based learning experiences based on the student's individual learning plan;

(f) Demonstrate performance-based competency in technology as approved by the Kentucky Department of Education;

(g) Pass a civics test as required by KRS 158.141; and

(h) Beginning with students entering grade 9 on or after the first day of the 2020-2021 academic year, successfully complete one (1) or more courses or programs that meet the financial literacy requirements pursuant to KRS 158.1411 and standards as established in 704 KAR Chapter 8.

Section 5. (1) Only students who meet the criteria established in this section shall be eligible for the Early Graduation Program.

(a) Those students who meet the criteria and requirements of the EGP[for early graduation] shall receive from the school district a diploma and an Early Graduation Certificate;[-]

(b) Schools and districts shall not prohibit a student from completing the EGP in the event the student meets all EGP requirements;[-]

(c)[(b)] Students wishing to participate in the EGP[graduate early] shall indicate that intent to the school principal at the beginning of grade 9 or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate;[-]

(d)[(c)] A student's intent to participate in the EGP[graduate early] shall be entered into the student information system by the school district by October 15[4] of the year in which the student makes the declaration;[-]

~~(d) Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.]~~

(e) Students participating in the EGP shall complete all requirements set forth in this section applicable to the academic year in which the student intends to graduate; and

(f) A student who has indicated an intent to complete the EGP may participate in the state administration of the college entrance exam prior to the junior year, if needed.

~~[(2) To graduate early and earn an Early Graduation Certificate, a student shall:~~

~~(a) Score proficient or higher on the state-required assessments required by the Kentucky Board of Education in 704 KAR 5:200; and~~

~~(b) Meet the college readiness exam benchmarks established by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation.~~

~~(3) A student who has indicated an intent to graduate early may participate in the student's state administration of the college readiness exam prior to the junior year, if needed.]~~

(2) By July 1, 2023, each school district shall provide each school within the district with the policy established by the local board of education for students wishing to participate in the EGP and earn an Early Graduation Certificate and scholarship. The district policy shall provide for support in the development and monitoring of an individual learning plan that shall include:

(a) Goal planning related to the attainment of established district essential workplace ethics programs as provided in KRS 158.1413;

(b) Completion of a professional resume; and

(c) Completion of one postsecondary admissions application that may be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools in which the student is interested in applying.

(3) Beginning with the 2023-2024 academic year, each EGP participant, with the support of the comprehensive school counselor, or designee, shall:

(a) Identify all EGP requirements and develop a strategy within the individual learning plan for meeting those requirements, including the district's established workplace ethics program provided in KRS 158.1413; and

(b) Complete an entrance interview with the principal, or designee, to discuss postsecondary goals and career aspirations.

(4) Beginning with the 2023-2024 academic year, to successfully complete the EGP and earn an Early Graduation Certificate and scholarship, the student shall:

(a) Communicate intent to the principal as required in subsection (1) of this section;

(b) Meet the college entrance exam benchmarks established by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation;

(c) Earn ten (10) foundational credits that shall include the content standards as provided in the Kentucky academic

standards, established in 704 KAR 3:303 and 704 KAR Chapter 8;

(d) Complete the essential workplace ethics program requirements established by the school district pursuant to KRS 158.1413; and

(e) Complete one (1) or more courses or programs that meet the financial literacy requirements pursuant to KRS 158.1411.

(5) By July 1, 2024, each local board of education shall establish a policy requiring high schools to determine performance descriptors and evaluation procedures for an EGP performance-based project, portfolio or capstone required for those students who intend to complete the EGP beginning with the 2024-2025 academic year. Performance descriptors and evaluation procedures shall provide an opportunity for the student to demonstrate attainment of the following critical skills required for postsecondary and career success:

(a) Attainment of essential workplace ethics program components as established by the board of education pursuant to KRS 158.1413;

(b) Demonstration of an ability to apply the Kentucky academic standards, established in 704 KAR 3:303 and KAR Chapter 8, as a life-long learner and contributing member of society;

(c) Demonstration of written and verbal communication skills needed for postsecondary success; and

(d) Demonstration of an ability to think critically, synthesize information and draw conclusions.

(6) Beginning July 1, 2024, the performance-based project, portfolio or capstone shall be required for completion of the EGP.

(7) A school shall maintain and make readily available to the Kentucky Department of Education the EGP participant's performance-based project, portfolio or capstone for a minimum of five years.

Section 6. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 7. (1) A local board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8, and a rigorous performance standards policy established by the local board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A local board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or

(b) A performance-based credit based on standards, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:

(a) The content of the course is the same as that described in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A local board of education which has chosen to award performance-based credit shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

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(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards established in 704 KAR 3:303 and 704 KAR Chapter 8;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Sections 3 and 4 of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year, or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) [~~and 703 KAR 4:060~~].

Section 8. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for the Early Graduation Program established in Section 5 of this administrative regulation shall be awarded a graduation diploma.

(2) A local board shall not adopt any high school graduation requirements that include achieving a minimum score on a statewide assessment as established in KRS 158.140.

(3) The local board of education shall award the diploma.

Section 9. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.

Section 10. (1) If the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Sections 3 and 4 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.

(2) This course of study shall be based upon student needs and the provisions established in 704 KAR 3:303 and 704 KAR Chapter 8, and shall be reviewed at least annually.

(3) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(4) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.

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

LU S. YOUNG, Ed.D., Chairperson

APPROVED BY AGENCY: June 14, 2022

FILED WITH LRC: June 14, 2022 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 22, 2022 at 1:00 p.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 August 31, 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: 704 KAR 3:305 establishes the minimum requirements for entitlement to a high school diploma in Kentucky, including those who are eligible to participate in the Early Graduation Program provided in KRS 158.142.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142 requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky Academic Standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142 requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the minimum requirements for high school graduation for all Kentucky students.

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

(a) How the amendment will change this existing administrative regulation: The amendments to 704 KAR 3:305 serve two purposes. First, to provide clean-up language needed throughout the regulation. Second, the amendments are needed to ensure

alignment to the statute while also providing greater clarification for schools and districts as they implement the requirements for the Early Graduation Program resulting in an Early Graduation Certificate and scholarship to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools.

(b) The necessity of the amendment to this administrative regulation: Given changes to the authorizing statute during the 2022 legislative session, these amendments are needed to ensure alignment to the statute while also providing greater clarification for schools and districts as they implement the requirements for the Early Graduation Program.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades, the minimum requirements for high school graduation and the requirements for the Early Graduation Program.

(d) How the amendment will assist in the effective administration of the statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The amendment to this administrative regulation establishes greater clarity on the expectations and competencies needed of students in order to qualify for, and successfully complete, the Early Graduation Program.

(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: all public schools, school districts, and the Kentucky Department of Education as it is tasked with providing guidance, support, and technical assistance, and monitoring of the implementation of new minimum high school graduation requirements.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Specifically, the entities identified above will need to take the following actions to comply with the amendments proposed in the regulation: Local boards of education will need to develop policies that provide a framework for the Early Graduation Program, including performance descriptors and evaluation procedures. Local schools and districts will need to align to the Early Graduation Program requirements. The Kentucky Department of Education will need to provide implementation guidance to districts and schools.

(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 little to no additional costs as a result of this amendment. The Kentucky Department of Education will be impacted by staff time to answer questions and provide guidance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): With a more comprehensive approach to the Early Graduation Program, students are the primary beneficiaries of the revisions. The updated program guidelines focus on both the academic and essential skills needed for success beyond high school.

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

(a) Initially: The Kentucky Department of Education will dedicate staff time to develop guidance to support schools and districts as they implement the Early Graduation Program. Staffing patterns at the local district may need to be adjusted in order to support schools in implementing program requirements.

(b) On a continuing basis: The Kentucky Department of Education has mechanisms in place to support ongoing costs related to staff time and resources needed to support schools and districts.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: State general funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This 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 schools and districts.

FISCAL NOTE

(1) What 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 education agencies; the Kentucky Department of Education, specifically the Office of Assessment and Accountability and the Office of Teaching and Learning; Council on Postsecondary Education; and the Kentucky Higher Education Assistance Authority may be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142 requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky core academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? While the exact cost is unknown, little to no additional expenses are expected as a result of amendment. Staffing patterns at the local district may need to be adjusted in light of minimum requirements and student needs. Local district budgets may be impacted by the need for resources to support interventions for students who need them. Kentucky Department of Education staff time will be impacted by the need for implementation guidance and answering questions from the field. This impact should decrease each year of implementation.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the Kentucky Department of Education will remain available to schools and districts to provide ongoing support. Little to no additional expenses are expected on an ongoing basis as a result of amendment. Staffing patterns at the local school and district and staff time may need to be adjusted depending upon their needs as it relates to the implementation of the Early Graduation Program performance-based portfolio, project or capstone.

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

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? Little to no additional expenses are expected as a result of this amendment.

(d) How much will it cost the regulated entities for subsequent years? Little to no additional ongoing expenses are expected as a result of this amendment.

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

Cost Savings(+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Based on the assessment of the agency, this regulation alone will not have a major economic impact on state or local regulated entities. Obviously, the regulation is aimed at the minimum requirements for high school graduation. The Commonwealth spends well over \$500,000 providing public education to elementary and secondary education students each year. However, those expenses would continue to exist absent this administrative regulation.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Kentucky Fire Commission
(Amendment)**

739 KAR 2:070. Volunteer fire department loan fund.

RELATES TO: KRS 95A.262(4), (5), (13), (14)

STATUTORY AUTHORITY: KRS 95A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.262 authorizes the Kentucky Fire Commission ~~[on Fire Protection Personnel Standards and Education]~~ to make low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. This administrative regulation is necessary to establish the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

Section 1. Definitions. (1) "Accessory equipment" means ladders, hoses, self-contained breathing apparatus, portable pump and hard suction hoses, nozzles, power extrication tools and protective equipment necessary to carry out the ordinary functions of supporting fire fighting activities.

(2) "Apparatus equipment" means NFPA-complaint pumpers, rescue pumpers, tankers, aerial equipment, rescue equipment, specialty fire apparatus equipment, and other large equipment used for firefighting operations, ~~fighting fires and emergencies.~~ This equipment is more specifically categorized as follows:

(a) "Pumper" means any pumper which can pump 500-, 750-, 1,000-, 1,250 or 1,500 gallons per minute at 150 pounds per square inch net pumping pressure.

(b) "Tanker" means a mobile water supply fire apparatus with a water capacity of 1,000 gallons or more and a minimum flow rate to

pump connection of 500 gallons per minute except when a booster pump is provided.

(c) "Rescue pumper" means an apparatus capable of pumping a minimum of 250 gallons per minute at 150 PSI net pumping pressure, carrying a minimum of 500 gallons of water.

(3) "Approved" means approved by the commission or its authorized designee for a particular purpose.

(4) "Commission" means commission as defined by KRS 95A.210.

(5) "Committee" means the loan committee of the Kentucky Fire Commission ~~[on Fire Protection Personnel Standards and Education]~~.

(6) "Communications equipment" means equipment or system, or both, necessary for the transmission and reception of signals, by voice, required to support the operations of the volunteer fire department.

(7) "Eligible" means a volunteer fire department that has met the training requirements and is in good standing for receipt of state aid pursuant to 739 KAR 2:050 and the loan request requirements of this administrative regulation.

(8) "Emergency" means fire department equipment, apparatus or facilities have been damaged, destroyed or rendered inoperable and established firefighting capacity is reduced to a level affecting public safety.

(9) "Facilities" means any structure or portion of a structure intended for storage or protection of firefighting equipment including rooms or spaces designed and used for firefighting training.

(10) "Local government" as defined by KRS 95A.210[~~(3)~~].

(11) "NFPA" means the National Fire Protection Association.

(12) "Protective equipment" means clothing or equipment used by firefighters which affords protection from injury to the wearer or user including, but not limited to, fire coats, boots, helmets and turnout pants meeting current NFPA standards.

(13) "Specialty fire apparatus equipment" means command, chief, first response, and other specialty equipment used for firefighting equipment.

(14)[~~(13)~~] "UL" means Underwriters Laboratories.

(15)[~~(14)~~] "Volunteer fire department" means a fire department recognized by the Kentucky Fire Commission ~~[on Fire Protection Personnel Standards and Education]~~ as having a membership of more than fifty (50) percent of its members being full-time volunteer firefighters.

(16)[~~(15)~~] "Volunteer fire department loan fund" means the fund established pursuant to KRS 95A.262(14).

Section 2. Eligibility. (1) A volunteer fire department may apply to the commission to receive low interest loans for the purchase of major equipment and facility construction pursuant to the requirements of this administrative regulation.

(2) Eligibility to participate in the loan fund shall be limited to those volunteer fire departments meeting the training requirements of KRS 95A.262(2) and continue in good standing to receive state aid ~~[, and which the commission finds are unable to obtain loans from conventional financial institutions at the rate of three (3) percent].~~

(3) A loan shall be considered from only one (1) fire department when more than one (1) department resides at the same physical location.

Section 3. Loan Purposes and Prohibitions. (1) Purposes. The commission shall consider a loan for the following purposes:

(a) The acquisition of apparatus equipment;
(b) The acquisition of communication equipment;
(c) The acquisition of accessory equipment or protective equipment;

(d) The construction of new facilities;

(e) The modernization of existing facilities; and

(f) The repair or rehabilitation of apparatus equipment where it has been determined that existing apparatus equipment no longer meets the standards of the NFPA and where the repair or rehabilitation, or both, of the equipment will bring it in compliance with NFPA standards.

(2) Prohibitions. A loan granted under this administrative regulation shall not be used for the following:

- (a) Operating expenses;
- (b) For payment of fees for the designing or planning of facilities or preparation of application; or
- (c) For investment or reinvestment.

Section 4. General Loan Requirements. (1) Loan period. A loan period shall not exceed ~~fifteen (15)~~~~[twelve (12)]~~ years. The period of time for repayment of the loan shall depend upon the amount of the loan and shall be set forth in the loan agreement.~~[Except in the case of approved emergency loans, the minimum amount of a loan shall be \$5,000.]~~

(2) Title of property. Any apparatus equipment or facilities financed by a loan from the fund shall be titled in the name of the volunteer fire department or in the name of the political subdivision with the commission as lien holder for the property. In the event the commission is supplying secondary funding, the commission shall become holder of a secondary encumbrance.

~~[(3) Fire department matching funds. A prerequisite to obtaining a loan for facilities, vehicles, or rehabilitation of facilities, vehicles, or equipment, the volunteer fire department shall verify the availability of unobligated funds in the amount of twenty-five (25) percent of the total cost of the facility, vehicle, or equipment or rehabilitation of the facility, vehicle, or equipment.]~~

~~[(3)][(4)] Financial responsibility. A copy of the last twelve (12) monthly bank statements must accompany the loan application.~~

~~[(4)][(5)] Repayment of loans.~~

(a) Interest on the principal amount of the loan shall accrue at the rate of three (3) percent per annum and shall be due and payable on the unpaid balance annually.

(b) The principal of the loan shall be repaid proportionally over the period of the loan. The principal may be reduced at any time through advanced payment.

(c) The principal and interest of the loan shall be payable at the office designated on the loan approval form, with the payment being deducted from the state aid allotment for that year with any additional payment due or desired be made by check made payable to the Kentucky Fire Commission~~[State Treasurer]~~.

(d) A payment shall be made before the close of business on the due date or it shall be considered delinquent.

(e) Delinquent accounts shall not receive further loans or grants for state aid or training facilities until the delinquency is cured. If the delinquency of the account extends beyond three (3) months of distribution of the state aid check, foreclosure or repossession procedures shall begin.

~~(f) The volunteer fire department shall make yearly payments equal to its full state-aid allotment unless otherwise requested and approved by the commission. [A portion of future state-aid grants may be committed by the volunteer fire department to satisfy its loan agreement.]~~

(g) Insurance. The volunteer fire department shall provide to the commission proof of insurance~~[collateral protection insurance]~~ for the apparatus, equipment and facility construction sufficient to secure and protect the loan.

~~[(5)][(6)] Emergency loans. An eligible volunteer fire department may be granted an approved emergency loan pursuant to this administrative regulation.~~

Section 5. Loan Requirements for Fire Department Facility Construction. A request for a construction loan for fire department facilities shall meet the requirements of this section and other applicable requirements of this administrative regulation.

(1) A facility loan shall be granted for establishing or modernizing those facilities that house fire-fighting equipment.

(2) A facility loan shall not exceed seventy-five (75) percent of the total cost of the construction of the facility or ~~\$125,000~~~~[\$75,000]~~, whichever is less.

(3) A facility loan shall not be used for land acquisition.

(4) Land title. The title to the land upon which facilities are to be constructed or modernized under the loan shall be in the name of the volunteer fire department or the local government which the volunteer fire department serves.

(5) Clear title. The volunteer fire department or the political subdivision for which the volunteer fire department provides service shall have clear title to the land upon which the facility is to be constructed or modernized.

(6) Real property liens. Concurrent with the receipt of the loan, the volunteer fire department shall provide a copy of the deed and execute a lien document to be filed in the county court clerk's office in which the property is located.

(7) Plans approval. Final plans for construction shall be submitted for approval to the Department of Housing, Buildings and Construction or to an authorized local building official with a copy to the commission. The volunteer fire department shall be responsible for complying with the Kentucky Building Code, the Americans with Disabilities Act and other applicable laws. If any change to the plans or specifications is desired or required, the volunteer fire department shall furnish all additional labor and materials necessary to complete the project and the improvements in compliance with the changes to the plans and specifications.

(8) A certificate of occupancy shall be submitted to the commission by the volunteer fire department upon completion of construction~~[prior to release of loan funds]~~.

Section 6. Apparatus Equipment. (1) Loan limits.

(a) The amount of a loan for the purchase of a single apparatus equipment shall not exceed ~~\$125,000~~~~[\$75,000]~~ or seventy-five (75) percent of the total cost, whichever is less. The volunteer fire department shall submit to the commission:

1. A completed vehicle inspection report from a mechanic with an Automotive Service Excellence (ASE) or Emergency Vehicle Technician (EVT) certification; and

2. A [The apparatus being purchased with the loan funding shall not be more than twenty (20) years old and a] copy of a pump test conducted within the last year [must accompany necessary documentation for the loan].

(b) The amount of a loan for the repair or rehabilitation for a single apparatus equipment shall not exceed ~~\$125,000~~~~[\$35,000]~~ or seventy-five (75) percent of the cost of repair or rehabilitation, whichever is less. The volunteer fire department shall submit to the commission a completed vehicle inspection report from a mechanic with an Automotive Service Excellence (ASE) or Emergency Vehicle Technician (EVT) certification, [and the apparatus shall not be more than twenty (20) years old.]

(2) Apparatus loans. An apparatus loan shall be for the purpose designated in the loan request and approved by the commission for the following purposes:

- (a) The purchase of firefighting apparatus equipment;
- (b) The rehabilitation of existing apparatus equipment for the purpose of upgrading the apparatus to meet applicable National Fire Protection Association standards; and
- (c) Repair of existing apparatus.

(3) Mandatory description or specification of equipment.

(a) New apparatus. The volunteer fire department shall submit one (1) complete set of specifications of the new apparatus.

(b) Repairs and rehabilitation. For the repair or rehabilitation of existing apparatus equipment, the volunteer fire department shall submit one (1) complete set of specifications along with one (1) estimate~~[three (3) estimates]~~ from a qualified manufacturer~~[manufacturers]~~ for the repair or rehabilitation. ~~[If less than three (3) estimates are available, a statement shall be submitted explaining the reason why there are less than three (3).]~~

(c) Purchase of used apparatus equipment. For used apparatus equipment, the volunteer fire department shall submit documentation of the type and quality of the equipment.

(d) Refurbished fire apparatus. For refurbished fire apparatus, the volunteer fire department shall submit the following:

- 1. Certification of refurbished equipment.
- 2. Pump test at time of purchase.
- 3. Any additional information which the committee~~[loan committee]~~ may request.

~~[(e) Loans will only be granted on repairable equipment and apparatus which are not more than twenty (20) years old and a pump test shall be submitted upon completion of repairs and must meet NFPA pump test requirements and acceptance.]~~

(4) Compliance with National Fire Codes. The apparatus shall have met the NFPA 1901 standard at the time it was manufactured.~~[The volunteer fire department shall submit to the commission verification that the new equipment is NFPA 1901-91 equipment.]~~

(5) Prerequisite materials. The volunteer fire department shall record a lien on the affected vehicle title documents in the local county court clerk's office.

Section 7. Protective, Accessory and Communication Equipment. (1) An equipment loan shall be used for the purchase of protective, accessory or~~[and]~~ communication equipment.

(2) Equipment compliance.

(a) A volunteer fire department shall select protective and accessory equipment that shall be labeled as having been tested and listed by an approved nationally recognized testing agency.

(b) A volunteer fire department shall select communications equipment identified as meeting Federal Communications Commission regulations, Title 47 of the Code of Federal Regulations~~[5 C.F.R. Part 89]~~.

(3) The amount of a loan for the purchase of equipment shall not exceed the lesser of \$125,000~~[\$75,000]~~ or seventy-five (75) percent of the total cost price quote accepted by the borrower and submitted by the borrower as the accepted quote for purchase.

(4) Security interest. The commission shall retain a security interest in the property for the life of the loan.

Section 8. Loan Request Procedure. (1) An applicant seeking a low interest loan shall submit a Low Interest Loan Application~~[Form FPPSE-1, April, 1993,]~~ to the commission.

(2) The commission administrator shall review the application and status of the volunteer fire department to determine if the minimum criteria for obtaining the loan has been met.

(3) The commission administrator shall notify the volunteer fire department of the disposition of the loan application, forwarding final forms to those eligible volunteer fire departments whose applications are satisfactory.

~~[Section 9. Establishing Priorities. (1) A loan shall be reviewed for the applicant's stated purpose in the following order of preference:~~

~~(a) A request for replacement or repairs of unsafe or unusable fire apparatus, equipment or facilities.~~

~~(b) A request for replacement of outmoded fire apparatus, equipment or facilities.~~

~~(c) A request for additional apparatus, equipment or facilities because of unusual demands or present service.~~

~~(2) Priority shall first be given to applicants establishing the greatest need, utilizing the following criteria, not excluding other considerations.~~

~~(a) Financial need.~~

~~(b) Low economic base.~~

~~(c) Unusual fire hazards.~~

~~(d) County fire death rate.~~

~~(e) Population over sixty-five (65).~~

~~(f) Population growth.~~

~~(g) Tax exempt properties.~~

~~(h) New construction.~~

~~(i) Natural disaster.~~

~~(j) High mileage/usage.~~

~~(k) Existing equipment.~~

~~(3) Approval shall be granted in order of need and availability of funds for each qualifying volunteer fire department.]~~

Section 9.~~[Section 10.]~~ Formal Application and Qualification Procedure. (1) To qualify for a loan, an eligible volunteer fire department shall submit a Low Interest Loan Application~~[Form FPPSE-2, April, 1993,]~~ to the commission.

(2) The commission shall render its decision at its next regularly scheduled meeting. Approved emergency loans may be granted prior to the regularly scheduled meeting.

(3) An eligible volunteer fire department aggrieved by a decision of the commission, may petition the commission, in

writing, for reconsideration and the commission, upon receiving the request, shall provide the applicant with an opportunity to be heard at its next meeting.

Section 10.~~[Section 11.]~~ Incorporation by Reference. (1) "Low Interest Loan Application", April 2022, is incorporated by reference.~~[The following material is incorporated by reference:~~

~~(a) Form FPPSE-1, April, 1993, Loan Application Request Form.~~

~~(b) Form FPPSE-2, April, 1993, Low Interest Loan Application.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission~~[on Fire Protection Personnel Standards and Education]~~, 110 Cleveland Drive, Paris, Kentucky 40361~~[448 James Court, Lexington, Kentucky 40505]~~, Monday through Friday, 8:30 a.m. to 4:30 p.m.

RICKY KING, Chair

APPROVED BY AGENCY: June 2, 2022

FILED WITH LRC: June 14, 2022 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25 at 1:00 p.m. ET at 110 Cleveland Drive, Paris, Kentucky 40361. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Jonathan L. Gay, Board Counsel, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan L. Gay

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 95A.262 authorizes the Kentucky Fire Commission to make low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. This administrative regulation establishes the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 95A.262 authorizes the Kentucky Fire Commission to make low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. This administrative regulation establishes the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

(2) If 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 increases the maximum loan amount to \$125,000, increases the loan period from 12 to 15 years, and removes outdated and unnecessary procedures.

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

(c) How the amendment conforms to the content of the authorizing statutes: KRS 95A.262 authorizes the Kentucky Fire Commission to make low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. This amendment conforms to KRS 95A.262 because it establishes the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 95A.262 by establishing the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all Kentucky volunteer fire departments.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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 identified will have to follow the amended criteria for qualifying for a loan and the amended procedures for obtaining and repaying a loan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to existing entities.

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

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: This amendment will result in no cost to the administrative body.

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Fire Commission is a state agency that receives its annual budget from the state government.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee increase is 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 does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because the administrative regulation is applicable to all volunteer departments. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 95A.262; KRS 95A.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 administrative regulation will not generate revenue.

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

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

(d) How much will it cost to administer this program for subsequent years? There is no cost for administering this program.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose any costs.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impose any costs.

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

Cost Savings (+/-): This administrative regulation will not generate any cost savings.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation will not have a major economic impact.

PUBLIC PROTECTION CABINET

Department of Insurance

Licensing Division

(Amendment)

806 KAR 9:025. Licensing process.

RELATES TO: KRS 12.357, 165A.330, 304.4-010, 304.9-030, 304.9-105, 304.9-130, 304.9-150, 304.9-160, 304.9-230, 304.9-260, 304.9-270, 304.9-295, 304.9-320, 304.9-430, 304.14-642

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, 304.9-133, 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-280, 304.9-295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-

230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of prelicensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

Section 1. PreLicensing Course Requirements.

(1) An individual applying for an agent license shall complete a prelicensing course of study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

- (a) Seeking a limited line of authority under KRS 304.9-230; or
- (b) Exempt pursuant to KRS 304.9-170.

(2) (a) All prelicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A prelicensing course provider shall submit either in writing or electronically through the department's Web site, <http://insurance.ky.gov>:

1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;

2. A Form CE/PL-100, Course Approval Application, for each course the approved provider wants to offer;

3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;

4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and

5. An outline of the content of the course of study.

(c) In approving a prelicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) A prelicensing course of study approved by the commissioner shall be renewed biennially.

(e) For renewals the provider and instructor approval applications shall not be required to be submitted with each course.

(3) A prelicensing course of study shall be valid for one (1) year from the date of completion.

(4) The prelicensing provider shall submit proof of completion of a course of study to the department and the applicant on Form CPL-01, Certificate of Prelicensing Course Completion or electronically through the department's Web site, <http://insurance.ky.gov>, for each applicant.

Section 2. Agent Licensing.

(1) An applicant for an individual agent license, other than a preneed funeral agent license provided under 806 KAR 9:370, shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance License Application;

(b) Documentation demonstrating successful completion of any required prelicensing course;

(c) A completed background check through the Kentucky Administrative Office of the Courts; and

(d) Payment of the fees applicable to the license and lines of authority sought in accordance with KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in

KRS 304.9-030(2) shall successfully complete an examination as follows:

- (a) For a life line of authority, a life examination;
- (b) For a health line of authority, a health examination;
- (c) For a property line of authority, a property examination;
- (d) For a casualty line of authority, a casualty examination;
- (e) For a personal lines line of authority, a property and casualty personal lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For a variable life and variable annuity products line of authority, no examination is required.

(4) An examination shall only be required for individual applicants applying for the following limited lines of authority identified in KRS 304.9-230:

(a) For a crop limited line of authority, a crop examination; and

(b) For a rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license for which an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 3. Adjuster Licensing .

(1) An applicant for an adjuster license shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance License Application;

(b) A completed background check through the Kentucky Administrative Office of the Courts; and

(c) The applicable fee established in 806 KAR 4:010.

(2) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) shall:

(a) For a property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For a workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For a crop line of authority, either:

1. Successfully complete a crop adjuster examination; or

2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

(3) Every applicant for a license for which an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 4. Consultant Licensing.

(1) An applicant for a consultant license shall:

(a) File with the department:

1. A completed Form 8301, NAIC Individual Insurance License Application;

2. A completed background check through the Kentucky Administrative Office of the Courts; and

3. Payment of the fees applicable to the license in accordance with KRS 304.4-010 and 806 KAR 4:010; and

(b) Successfully complete the consultant examination.

(2) The documents and fees required under subsection (1)(a) of this section shall be submitted prior to scheduling an

examination.

(3) An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 5. Continuing Education.

(1)(a) Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

(b) To apply for approval as a continuing education provider, an applicant shall submit to the department:

1. A completed Form KYP-01, Provider Approval Application; and

2. For proprietary schools, documentation of licensure by the Kentucky Commission on Proprietary Education.

(c) To apply for approval as a continuing education instructor, an approved continuing education provider shall submit to the department:

1. A completed Form CE/PL-200, Instructor Approval Application; and

2. The applicable fee established in 806 KAR 4:010.

(d)

1. To apply for approval of a continuing education course, an approved continuing education provider shall submit to the department Form CE/PL-100, Course Approval Application at least sixty (60) days in advance of advertising the course, unless good cause is demonstrated by the provider for the failure to timely submit the form. If the course is offered in multiple states, the provider may, in lieu of Form CE/PL-100, submit the NAIC Uniform Continuing Education Reciprocity Course Filing Form.

2. After approval of the continuing education course and the determination of the number of credit hours assigned to the course, the continuing education provider shall pay to the department the applicable fee established in 806 KAR 4:010.

(e) The commissioner shall consider the following in determining approval of a continuing education course:

1. Whether the applicant has remitted all fees due once the total credit hours are determined pursuant to 806 KAR 4:010; and

2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:

a. Insurance, annuities, and risk management;

b. Insurance laws and administrative regulations;

c. Mathematics, statistics, and probability;

d. Economics;

e. Business law;

f. Finance;

g. Taxes;

h. Agency management including all aspects of agency operations that support the long-term stability of the agency system and encourage the service and protection of customers;

i. Ethics; and

j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.

(f) The continuing education course shall:

1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;

2. Have clearly defined objectives and course completion criteria;

3. Have a written outline and study materials or texts; and

4. Include a means for evaluation.

(g) A self-study course shall require successful completion of an examination.

(h) Continuing education credit shall not be provided for:

1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

2. Committee service for professional organizations;

3. Computer training to develop functional skills; and

4. Motivational or self-help courses.

(i) The commissioner shall measure continuing education course credit hours by the following:

1. Each credit hour for live instruction courses, completed in a classroom, by video, teleconference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation; and

2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the Recommended Guidelines for Online Courses.

(j) Any material change in a previously approved continuing education course shall be filed with and approved by the commissioner prior to use.

(k) Biennially, a continuing education provider shall request renewal of a continuing education course and a continuing education instructor by submitting the information required by subsection (1)(c) and (d) of this section and the fee established in 806 KAR 4:010 to the department on or before June 30 of even-numbered years.

(2)

(a) A resident individual agent selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care insurance training, and four (4) hours of additional training for each biennial continuing education compliance period.

(b) A resident individual agent who holds a property and casualty line of authority selling flood insurance under the National Flood Insurance Program shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207.

(c)

1. An individual agent who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the agent has documented the completion of substantially similar training in another state, that shall include at a minimum information on the following topics:

a. The types of annuities and various classifications of annuities;

b. Identification of the parties to an annuity;

c. How product specific annuity contract features affect consumers;

d. The application of income taxation of qualified and non-qualified annuities;

e. The primary uses of annuities; and

f. Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

2. The training required by subparagraph 1. of this paragraph shall not include:

a. Marketing information;

b. Training on sales techniques; or

c. Specific information about a particular insurer's products.

3. Except as provided in subparagraph 4. of this paragraph an agent who has completed an annuity training course approved by the department prior to January 1, 2022 shall, within six (6) months after January 1, 2022, complete either:

a. A new four (4) credit hour training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider; or

b. An additional one-time one (1) credit hour training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider on appropriate sales practices and replacement and disclosure requirements under 806 KAR 12:120.

4. A non-resident agent who has completed a training course that is substantially similar to the training course required in subparagraph 3. of this paragraph shall meet the requirements of subparagraph 3. of this paragraph.

(3) A continuing education provider shall:

(a) Within thirty (30) days of completion of a continuing education course, submit electronically through the department's Web site, <http://insurance.ky.gov>, the Continuing Education

Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue Form CE-301, Approved Continuing Education Certificate of Completion to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

(4) A licensee shall be responsible for verifying that a continuing education provider has submitted a continuing education certificate of completion form to the department for a continuing education course that the licensee has successfully completed. If the continuing education provider has not submitted a continuing education certificate of completion form in accordance with subsection (3) of this section, the licensee shall submit the continuing education certificate of completion to the department within the timeframes established in KRS 304.9-260 and 304.9-295.

(5) A licensee may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6)

(a) If the department does not receive proof of compliance with a licensee's continuing education requirement on or before the deadline established in KRS 304.9-260 and 304.9-295, the commissioner shall:

1. Make information of the deficiency available to the licensee; and

2. Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

(b) A licensee whose license is terminated pursuant to paragraph (a) of this subsection shall:

1. Have the license reissued within twelve (12) months of the license termination if the licensee:

a. Satisfies the delinquent continuing education requirements;

b. Submits a new application with required attachments included within Section 2(1) or Section 3(1) of this administrative regulation for a license; and

c. Submits the applicable fees established in 806 KAR 4:010;

or

2. Complete all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation if the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

(7)(a) A licensee may seek exemption from continuing education requirements by completing a Form CE AFF 304, Affidavit for Exemption from Continuing Education.

(b) An agent exempted from continuing education requirements in accordance with paragraph (a) of this subsection may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

1. Completing the continuing education requirements for the immediate preceding continuing education biennium;

2. Providing a certification of completion of those continuing education requirements; and

3. Providing a signed, written statement withdrawing the affidavit.

(c) The false use of Form CE AFF 304, Affidavit for Exemption from Continuing Education for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

(8) Members of the Armed Forces who have been mobilized or deployed in support of their duties may request an extension of time for completion, or a waiver, of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the Form MLW-01, Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment.

Section 6. Business Entity Agent Application and Designation.

(1) A business entity applying for a license in accordance with

KRS Chapter 304 Subtitle 9 or Subtitle 10, other than a preneed funeral agent license provided under 806 KAR 9:370, shall submit to the department:

(a) Form 8301-BE, NAIC Business Entity Insurance License Application; and

(b) The applicable fee established in 806 KAR 4:010.

(2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form, to designate or terminate individuals authorized to act under the business entity's license or appointments.

Section 7. Agent Appointment.

(1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, in accordance with KRS 304.9-270.

(2) An insurer seeking approval of an agent's appointment shall submit to the department:

(a) Form 8302-AP, Producer Appointment; and

(b) The applicable filing fee established in 806 KAR 4:010.

(3) An insurer terminating an appointment pursuant to KRS 304.9-280 shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.

(4) The requirements of this section shall apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form to the department to make a change or update the licensee's:

(1) Name;

(2) Address;

(3) Phone number;

(4) Email address; and

(5) Name in which the licensee is doing business.

Section 9. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Form CPL-01, "Certificate of Prelicensing Course Completion," (8/2019);

(b) Form 8301, "NAIC Individual Insurance License Application," ~~(6/2022)~~(9/2021);

(c) Form 8301-BE, "NAIC Business Entity Insurance License Application," (9/2021);

(d) Form 8302-AP, "Producer Appointment," (9/2021);

(e) Form 8302-TE, "Termination of Producer Appointment," (9/2021);

(f) Form 8305, "Business Entity Designation or Termination of Designation Form," (9/2021);

(g) Form 8304, "Examination Retake Form," (9/2021);

(h) Form KYP-01, "Provider Approval Application," (9/2021);

(i) Form CE/PL-100, "Course Approval Application," (8/2019);

(j) Form CE/PL-200, "Instructor Approval Application," (8/2019);

(k) Form CE-301, "Approved Continuing Education Certificate of Completion," (9/2021);

(l) Form CE AFF 304, "Affidavit for Exemption from Continuing Education," (9/2021);

(m) Form 8303, "Record Correction Form," (9/2021);

(n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," (9/2021);

(o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019); and

(p) "Recommended Guidelines for Online Courses", National Association of Insurance Commissioners, 3/2015.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department's Web site at

<https://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner
RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on August 22, 2022 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 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 below.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide additional information to clarify the licensing requirements for adjusters and apprentice adjusters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide the Department with the necessary information to appropriately and effectively evaluate an

applicant for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation update relative statutes that this regulation conforms to based on HB 91 from the 2022 regular legislative session. KRS 12.357 requires an administrative agency to issue an initial occupational license or renew an occupational license for the spouse of a current member of the Armed Forces, so long as the spouse meets the statutory requirements for the occupational license. If the administrative agency requires electronic payment of the occupational license fee prior to issuance, the fee must be refunded within 30 days. The amendments made to the Form 8301 incorporated in this administrative regulation conform to the requirements of the new statute.

(b) The necessity of the amendment to this administrative regulation: HB 91 was passed during the 2022 regular legislative session requiring an administrative agency to issue an initial occupational license or renew an occupational license for the spouse of a current member of the Armed Forces, so long as the spouse meets the statutory requirements for the occupational license. If the administrative agency requires electronic payment of the occupational license fee prior to issuance, the fee must be refunded within 30 days.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides notice to applicants of the reimbursement to military spouses.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to the Form 8301 application gives notices of the policies and procedures the Department will enforce to abide by KRS 12.357.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of military spouses is unknown because the Department has not required this information to be filed with us previously.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant who is a military spouse will have to submit an application to the department accompanied by one of the following:

Proof that the applicant is married to a current member of the Armed Forces of the United States;

Proof that the applicant's spouse is assigned to a duty station in the Commonwealth of Kentucky; and

Proof that the applicant has satisfied all statutory and regulatory pre-licensing course of study requirements, and all statutory and regulatory examination requirements, or proof that the applicant holds a valid individual insurance license issued by another state, the District of Columbia, or any possession or territory of the United States.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These applicants whom are verified to be spouses of current Armed Forces member are exempt from paying the associated fees set out in 806 KAR 4:010.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Verified applicants will be exempt from paying any applications or licensing fees.

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

(a) Initially: There is no associated cost with implementation

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No, there is no increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any fees.

(9) TIERING: Is tiering applied? No because this administrative regulation applies equally to all licensees and applicants.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.9-080, 304.9-105, 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-295

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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. There may be a decrease in revenue for the Department when considering the Department has not been required to waive all of the fees associated with licensing for military spouses.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The cost savings are very circumstantial but at a minimum the cost of a temporary license that is waived in \$20.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cost savings would remain the same and depend on the licensee.

(c) How much will it cost the regulated entities for the first year? There should be no cost associated.

(d) How much will it cost the regulated entities for subsequent years? There should be no cost associated.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There is no major economic impact.

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examinations Division (Amendment)

806 KAR 37:010. Insurance holding company systems.

RELATES TO: KRS 304.1-050, 304.6, 304.24-390, 304.24-400, 304.24-415, 304.33, 304.37-010, 304.37-020, 304.37-030, 304.37-110, 304.37-120, 304.37-130

STATUTORY AUTHORITY: KRS 304.2-110, 304.37-060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. KRS 304.37-060 authorizes the commissioner to promulgate administrative regulations as may be necessary to carry out KRS Chapter 304 Subtitle 37[-37]. This administrative regulation establishes procedural requirements necessary to carry out the provisions of KRS Chapter 304 Subtitle 37[-37], insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers.

Section 1. Definitions.

(1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Ultimate controlling person" means that person which is not controlled by any other person.

Section 2. Forms - General Requirements. (1)(a) Forms A, B, C, D, E, and F shall specify the information required to be provided in the preparation of the statements required by KRS 304.37-120, 304.37-020 and 304.37-030. In addition, Form A shall be used as to mergers and acquisitions of domestic insurers referred to in KRS 304.24-390. They are not intended to be blank forms which are to be filled in.

(b) Filed statements shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers are prepared in a manner that[as-to] clearly indicates[indicate clearly] the scope and coverage of the items.

(c) All instructions, whether appearing under the items of the form or elsewhere, shall be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer is in the negative, a statement to that effect shall be made.

(2)(a) Duplicate originals of each statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the commissioner by personal delivery or mail addressed to: Financial Standards and Examination Division, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

(b) A copy of Form C shall be filed in each state in which an insurer may do business, if the insurance regulatory official of that state has notified the insurer of its request in writing, in which case the insurer has fifteen (15) days from receipt of the notice to file the form.

(c) The duplicate original shall be ~~manually~~ signed in the manner prescribed on the form.

(d) Unsigned copies shall be conformed.

(e) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

(3) If an applicant requests a hearing under KRS 304.37-120(4)(b), in addition to filing the Form A with the commissioner, the applicant shall file a copy of the Form A with the National Association of Insurance Commissioners in electronic form.

(4) Statements shall be prepared electronically. All copies of any statements, financial statements, or exhibits shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document

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filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Section 3. Forms - Incorporation by Reference, Summaries, and Omissions. (1)(a) Information required by any item on Forms A, B, D, E, or F may be incorporated by reference in answer or partial answer to any other item.

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item on Forms A, B, D, E, or F if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive.

(c) Documents currently on file with the commissioner which were filed within three (3) years of the current filing shall not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the material is to be incorporated by reference in an answer to the applicable item.

(d) Material shall not be incorporated by reference if the incorporation may render the statement incomplete, unclear, or confusing.

(2)(a) If an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document.

(b) In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three (3) years of the current filing and may be qualified in its entirety by the reference.

(c) If two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of only one (1) of the documents shall be filed, with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the filed documents.

Section 4. Forms - Information Unknown or Unavailable and Extension of Time to Furnish.

(1) If it is impractical to furnish any required information, document, or report when it is required to be filed, there shall be filed with the commissioner a separate document that:

(a) Identifies the information, document, or report in question;

(b) States why its filing ~~[when required]~~ is impractical; and

(c) Requests an extension of time for filing the information, document, or report to a specified date.

(2) The request for extension shall be granted unless the commissioner, within sixty (60) days after receipt of the request, enters an order denying the request.

Section 5. Forms - Additional Information and Exhibits. (1) In addition to the information expressly required to be included in Forms A, B, C, D, E, and F, the commissioner may request further material information as may be necessary to make the information contained in the filing not misleading, and which may include supplemental financial information, supporting contracts and agreements, and filings with other regulatory bodies.

(2) The person filing may also file exhibits in addition to those expressly required by the statement. These exhibits shall clearly indicate the subject matters to which they refer.

(3) Changes to Forms A, B, C, D, E, or F shall include, on the top of the cover page, the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

Section 6. Subsidiaries of Domestic Insurers. The authority to invest in subsidiaries under KRS 304.37-110 shall be in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code, KRS Chapter 304, and corresponding administrative regulations.

Section 7. Acquisition of Control - Statement Filing. A person required to file a statement pursuant to KRS 304.24-390~~[-]~~ or 304.37-120 shall furnish the required information on Form A, and on Form E, in accordance with Section 10 of this administrative regulation.

Section 8. Amendments to Form A. The applicant shall promptly advise the commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished, but prior to the commissioner's disposition of the application.

Section 9. Acquisition of Certain Insurers. (1) If the person being acquired is a "domestic insurer" solely because of the provisions of KRS 304.37-120(1)(a), the name of the domestic insurer on the cover page shall be indicated, in the following format, as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company".

(2) If an insurer referred to in subsection (1) of this section is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 10. Pre-Acquisition Notification. (1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to KRS 304.37-120, that person shall file a pre-acquisition notification form, Form E.

(2) If a non-domiciliary insurer licensed to do business in the Commonwealth is proposing a merger or acquisition pursuant to KRS 304.37-130, that insurer shall file a pre-acquisition notification form, Form E. A pre-acquisition notification form shall not be filed if the acquisition meets the requirements of KRS 304.37-130(2)(b).

(3) In addition to the information required by Form E, the commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

Section 11. Annual Registration of Insurers - Statement Filing. (1) An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall furnish the required information on Form B.

(2)(a) An amendment to Form B shall be filed within fifteen (15) days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(b) Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and shall indicate the date of the change and not the date of the original filings.

Section 12. Summary of Registration - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall also furnish information required on Form C. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the insurance regulatory official of that state.

Section 13. Alternative and Consolidated Registrations. (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under KRS 304.37-020. A registration statement may include information not required by KRS Chapter 304 Subtitle 37~~[-37]~~ regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in Kentucky. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile if:

(a) The statement or report contains substantially similar information required to be furnished on Form B; and

(b) The filing insurer is the principal insurance company in the insurance holding company system.

~~(2) [The question of whether the filing insurer shall be the principal insurance company in the insurance holding company~~

~~system shall be a question of fact.~~ An insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts which substantiates the filing insurer's claim that it is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which may be done by an authorized insurer under subsection (1) of this section.

(4) Any insurer may take advantage of the provisions of KRS 304.37-020(9) or (10) without obtaining the prior approval of the commissioner. However, the commissioner may require individual filings if consolidation renders the material incomplete, unclear, or confusing.

Section 14. Disclaimers and Termination of Registration. (1) A disclaimer of affiliation or a request for termination of registration claiming that a person shall not, or will not, upon the taking of some proposed action, control another person, referred to as the subject, shall contain the following information:

(a) The number of authorized, issued, and outstanding voting securities of the subject;

(b) With respect to the person whose control is denied and all affiliates of this person, the number and percentage of shares of the subject's voting securities which are held of record or known to be owned beneficially, and the number of these shares ~~[concerning]~~ in which there is a right to acquire, directly or indirectly;

(c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of this person; and

(d) A statement explaining why the person shall not be considered to control the subject.

(2) A request for termination of registration shall be granted unless the commissioner, within thirty (30) days after he or she receives the request, notifies the registrant otherwise.

Section 15. Transactions Subject to Prior Notice - Notice Filing.

(1) An insurer required to give notice of a proposed transaction pursuant to KRS 304.37-030 shall furnish the required information on Form D.

(2) Agreements for cost sharing services and management services shall, at a minimum and as applicable:

(a) Identify the person providing services and the nature of the services;

(b) Set forth the methods to allocate costs;

(c) Require timely settlement at least on a quarterly basis and in compliance with KRS Chapter 304 Subtitle 6[-6];

(d) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(h) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and are subject to the control of the insurer;

(i) Include standards for termination of the agreement with and without cause;

(j) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) Specify that, if the insurer is placed in receivership or seized by the commissioner under KRS Chapter 304 Subtitle 33[-33]:

1. All of the rights of the insurer under the agreement extend to the receiver or commissioner; and

2. All books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the

receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to KRS Chapter 304 Subtitle 33[-33]; and

(m) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under KRS Chapter 304 Subtitle 33[-33], and will make these available to the receiver for as long as the affiliate continues to receive timely payment for services rendered.

Section 16. Enterprise Risk Report. The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to KRS 304.37-020(13) shall furnish the required information on Form F.

Section 17. Extraordinary Dividends and Other Distributions.

(1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary, which ~~[-The work paper]~~ shall include the following information:

1. The amounts, dates, and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the ~~insurer's~~ insurers' own securities, paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.

2. Surplus as regards to policyholders, total capital and surplus, as of the 31st day of December next preceding;

3. If the insurer is a life insurer, the net gain from operations for the twelve (12) month period ending the 31st day of December next preceding;

4. If the insurer is not a life insurer, the net income less realized capital gains for the twelve (12) month period ending the 31st day of December next preceding and the two (2) preceding twelve (12) month periods; and

5. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to KRS 304.37-030(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration, including the same information required by subsection (1)(d) of this section.

Section 18. Adequacy of Surplus. (1) In determining the adequacy and reasonableness of an insurer's surplus pursuant to KRS 304.37-030(4), no single factor shall be controlling. The commissioner shall consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer.

(2) In comparing the surplus maintained by other insurers, the commissioner shall consider the extent to which each of these factors varies from insurer to insurer, and in determining the quality and liquidity of investments in subsidiaries, the commissioner shall consider the individual subsidiary and may discount or disallow its

valuation to the extent that the individual investments so warrant.

Section 19. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Form A Statement Regarding the Acquisition of Control of or Merger With a Domestic Insurer," October 2014;

(b) "Form B Insurance Holding Company System Annual Registration Statement," August 2014;

(c) "Form C Summary of Changes to Registration Statement," August 2014;

(d) "Form D Prior Notice of a Transaction," August 2014;

(e) "Form E Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer," August 2014; and

(f) "Form F Enterprise Risk Report," August 2014.

(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 of Insurance Internet Web site, <https://insurance.ky.gov/ppc/CHAPTER.aspx> ~~http://insurance.ky.gov/vj~~.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 8, 2022

FILED WITH LRC: June 14, 2022 at 2:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 22, 2022 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 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 below.

CONTACT PERSON: Abigail Gall, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS Chapter 304, Subtitle 37, requires insurers that are members of holding company systems to register with the commissioner, so as to provide notice of transactions that are material to the financial condition of the insurer. This administrative regulation establishes the information that must be submitted in filings with the department, including mergers and acquisitions, material transactions, a summary of registration statement, and prior notices of transactions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance for insurance holding company systems to comply with KRS Chapter 304, Subtitle 37. This administrative regulation is also needed to meet the financial accreditation standards established by the National Association of Insurance Commissioners (NAIC).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate reasonable administrative regulations necessary for or as an aid to the

effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth procedural requirements to carry out the provisions of KRS Chapter 304, Subtitle 37, insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process for making statutorily required filings with the commissioner.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates language from the NAIC's Model Regulation (MO-450).

(b) The necessity of the amendment to this administrative regulation: This new language is required for the Department's accreditation standards with the NAIC.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth procedural requirements to carry out the provisions of KRS Chapter 304, Subtitle 37, insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows the commissioner to grant an exemption to qualifying groups meeting the standards set forth in the NAIC's Model Regulation 450, without the requirement to file at least once. The proposed accreditation standard still requires the model's exemption language, detailing which groups qualify to request an exemption, but does not require the model language that the filing is required at least once for these groups. Therefore, the allowance to grant exemptions is not for any group and is instead only those meeting the qualifications in the model, which include groups under \$1 billion without international business.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 37 affected entities.

(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 that each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities that are required to file a pre-acquisition notification report or an enterprise risk report will need to comply with the requirements and report format outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities have been complying with these requirements for numerous years. The current fee is \$5.00 per document filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will be able to submit the appropriate statutory filings required by KRS 304, Subtitle 37, and receive approval of specific material transactions.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no associated cost to the department to implement this administrative regulation's provisions.

(a) Initially: Implementation of this amendment is not anticipated to result in any initial cost to the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to result in any ongoing cost to the Department of Insurance.

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

The Department will use funds from its current operational budget to perform the tasks, as necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees. There is an existing fee of \$5.00 per filing related to these forms. Any increase in fees received by the Department of Insurance is anticipated to be minimal.

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted as the implementer of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.24-390, 304.24-410, 304.37-020, 304.37-030, 304.37-110, 304.37-120, 304.37-130, and KRS Chapter 304, Subtitle 33.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There is an existing fee of \$5.00 per filing related to these forms. Any revenue generated by this administrative regulation is anticipated to be minimal in the first year. There are no new forms required to be filed, so revenue should be minimal.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated by this administrative regulation is expected to be minimal.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have any implementation cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have any administration cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This number is unknown, but the Department does not foresee any cost or savings impact.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This number is unknown, but the Department does not foresee any cost or savings impact.

(c) How much will it cost the regulated entities for the first year? The cost should be minimal, if any.

(d) How much will it cost the regulated entities for subsequent years? The cost should be minimal, if any.

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

Cost Savings (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulatory amendment should not have a major economic impact, as defined above, because regulated entities have already been filing the necessary forms for many years prior to this proposed amendment.

PUBLIC PROTECTION CABINET Department of Charitable Gaming (Amendment)

820 KAR 1:001. Definitions.

RELATES TO: KRS 238.500, et. seq. ~~[238.505, 238.510, 238.515, 238.520, 238.522, 238.525, 238.530, 238.535, 238.536, 238.540, 238.545, 238.547, 238.550, 238.555, 238.560, 238.565, 238.567, 238.570, 238.995]~~

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the purposes and intent of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions. (1) "Account number" means the unique identification number, if any, assigned by a card-minding device system or electronic pulltab system to a customer that uses a card-minding device to play bingo or an electronic pulltab device to purchase and play a pulltab.

(2) "Bet block" means an area that indicates the dollar amount of the wager.

(3) "Cash over" means the total amount of money actually received from the sale of gaming supplies at a charitable gaming session is more than the amount of money due from the sale of that quantity of gaming supplies.

(4) "Cash short" means the total amount of money actually received from the sale of gaming supplies at a charitable gaming session is less than the amount of money due from the sale of that quantity of gaming supplies.

(5) "Charitable gaming session" means a single gathering, event, or occurrence, at a specific location, during a specific time period, at which games of chance as defined by KRS Chapter 238 are conducted by a charitable organization.

(6) "Charitable gaming session program" means a written list of all games to be played and prize amounts to be paid for each game during a charitable gaming session, including, if the prizes are based on attendance, the amount of the prize and the attendance required.

(7) "Chief executive officer" means the director of the organization or the person who has legal authority to direct the management of the organization, distributor, manufacturer, or charitable gaming facility with respect to the conduct of charitable gaming.

(8) "Chief financial officer" means the person who is:

(a) Responsible for overseeing the financial activities of the organization, distributor, manufacturer, or charitable gaming facility;

(b) The custodian of the charitable gaming session records; and

(c) Responsible for ensuring that all records are accurate,

complete, and maintained;

(9) "Digital signature" means a method by which data, as in a software application, is expressed in a calculated number that is used to verify the accuracy of the data or a copy of the data.

(10) "Draw ticket" means a blank ticket upon which the numbers are marked as they are randomly selected.

(11) "EPROM" means Erasable Programmable read-only memory.

(12) "Gambling" is defined by KRS 528.010(4).

(13) "Merchandise prize" means a noncash prize given away at a charitable gaming session either as a game prize or a door prize.

(14) "Player tracking software" means computer software installed on a card-minding device system, electronic pulltab system, or other point of sale system that is used to identify or track certain characteristics of bingo or pulltab players, including personal data and purchasing habits.

(15) "Primary office location" means the land and building in and upon which a charitable organization conducts the majority of its charitable business. An organization's primary office location shall not include any physical space shared with a bar, restaurant, convenience store, or other commercial retail business.

(16) "PROM" means programmable read-only memory.

(17) ~~(16)~~ "Promotional" means any item available at no charge to all participants at ~~a~~^{an} charitable gaming session.

(18) ~~(17)~~ "Proprietary software" means custom computer software developed by the manufacturer that is a primary component of a card-minding device system or electronic pulltab system and is required for a card-minding device to be used in a game of bingo or for an electronic pulltab device to be used to play an electronic pulltab.

(19) ~~(18)~~ "Purchased prize" means any merchandise prize that was purchased and not donated.

(20) ~~(19)~~ "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(21) ~~(20)~~ "Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;
2. Computer software; or
3. A combination of computer hardware and software.

(22) ~~(21)~~ "Secondary component" means an additional software or hardware component that:

(a) Is part of or is connected to a card-minding device system or electronic pulltab system;

(b) Does not affect the conduct of the game of bingo or an electronic pulltab;

(c) Is provided by the manufacturer; and

(d) May include computer screen backgrounds, battery charge-up software routines, monitors, keyboards, pointer devices, mice, printers, printer software drivers, or charging racks.

(23) ~~(22)~~ "Serial number" means a number assigned by the manufacturer to track the individual product.

(24) ~~(23)~~ "Site system" means computer hardware, software, and peripheral equipment leased or purchased from a licensed distributor and used by a licensed organization to conduct, manage,

and record bingo games played on card-minding devices and electronic pulltab games played on electronic pulltab devices.

(25) ~~(24)~~ "Terminal number" means the unique identification number, if any, assigned by a manufacturer to a specific standard card-minding device or a specific electronic pulltab device.

(26) ~~(25)~~ "Transaction log" means a record of the same information printed on each outside ticket that is:

(a) Retained in the computer's memory; or

(b) Printed out by the computer.

(27) ~~(26)~~ "Version number" means a unique number designated by the manufacturer to identify a specific version of software used on or by the card-minding device system or the electronic pulltab system.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming

Advisory Commission prior to its adoption, as required by KRS 238.522(1).

AMBROSE WILSON IV, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2022, at 10:00 a.m. Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides definitions for terms used throughout the charitable gaming regulations.

(b) The necessity of this administrative regulation: This regulation is necessary to clearly articulate the regulatory requirements established in the charitable gaming regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, a draft of this regulatory amendment was submitted to members of the Charitable Gaming Advisory Commission on April 22, 2022. No written comments were received from the members of the commission. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. KRS 238.515(9) authorizes the Department to promulgate administrative regulations to carry out and implement KRS Chapter 238.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to clearly articulate the definitions for terms used in the charitable gaming regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendments to 820 KAR 1:001 adds a definition of "primary office location."

(b) The necessity of the amendment to this administrative regulation: "Primary office location" was not previously defined, though it is mentioned in various locations in KRS Chapter 238 and 820 KAR Chapter 1.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238.

(d) How the amendment will assist in the effective administration of the statutes: This definition provides an objective standard for what establishes an organization's primary office location, which will ensure fairness and objectivity to the Department when conducting office inspections during the

licensing process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. Manufacturers and distributors of paper and electronic pulltabs are also impacted by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of May 2022, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, including 647 charitable gaming organizations, over 767 exempt charitable gaming organizations, twenty (20) manufacturers of charitable gaming supplies; fifteen (15) distributors of charitable gaming supplies; and twenty-nine (29) charitable gaming facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Licensed and exempt charitable organizations must establish the existence of a primary office location. This definition sets out objective standards for determining whether an organization has complied with this licensing requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to 820 KAR 1:001 will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulatory amendment provides an objective standard so that licensees will know what is required to establish an office location.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the definitions set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use charitable gaming for fundraising will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(1) and (9).

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

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not intended to generate cost savings for regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not intended to generate cost savings for regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not intended to generate costs for regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation is not intended to have a major economic impact as defined by KRS 13A.010(13).

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. None.

(2) State compliance standards. None.

(3) Minimum or uniform standards contained in the federal mandate. None.

(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. N/A.

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)**

820 KAR 1:032. Pulltabs.

RELATES TO: KRS 238.505, 238.545

STATUTORY AUTHORITY: KRS 238.515, 238.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming. KRS 238.545 requires the department to establish standards for pulltab construction, distribution, electronic pulltabs, and rules of play. This administrative regulation establishes those standards.

Section 1. Definitions. These definitions shall apply to all administrative regulations relating to pulltabs or electronic pulltabs.

(1) "Bonus round" means a single, new screen, apart from ordinary gameplay, that incrementally reveals the results of a single electronic pulltab ticket either by simulating the opening of additional tickets or simulating a prize board from which a player may pick symbols or icons.

(2) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals or game sets that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.

(3) "Deal" means each separate game or series of pulltabs that have the same serial number and that may be composed of multiple packages.

(4) "Electronic pulltab system" means:

(a) A central computer system, which may be an optional site system;

(b) Electronic pulltab devices;

(c) Point of sale stations;

(d) Secondary components; and

(e) Proprietary software that contains reporting and control functions whereby the central computer system communicates with the electronic pulltab devices for the purpose of distributing a finite number of electronic pulltabs, a certain number of which, if randomly selected, entitle a player to prize awards at various levels.

(5) "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:

(a) The draw of a bingo ball; or

(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a paper or electronic pulltab.

(6) "Fixed-base electronic pulltab device" means a single personal computing device that has been loaded with proprietary software by a licensed manufacturer to enable it to function as an electronic pulltab device.

(7) "Flare" means the paper included with a deal of paper pulltabs, or the electronic representation of a paper flare included with a game set of electronic pulltabs, that identifies the game, the rules of the game, the payout structure, and other information required by these regulations.

(8) "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.

(9) "Game set" means the entire deal of finite electronic pulltabs that contains predefined and randomized game results assigned under a unique serial number.

(10) "Game subset" means a division of a game set into equal sizes following randomization, with each game subset also identified by a unique serial number.

(11) "Hand-held electronic pulltab device" means a single tablet or hand-held computer, other than a mobile phone or similar hand-held device that is either manufactured or customized by the manufacturer to operate as an electronic pulltab device.

(12) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes that is carried over from deal to deal, or game set to game set, until it is won.

(13) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.

(14) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab or electronic pulltab in a deal or game set.

(15) "Multipackaged pulltab deal" means a pulltab game consisting of a single deal or game set of not more than 25,000 tickets that is packed or electronically grouped in subsets and in which each subset contributes to a prize pool with or without a prize board.

(16) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals or game sets designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.

(17) "Pulltab" means a charity game ticket as defined by KRS 238.505(5).

Section 2. Conformity of Paper Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those paper pulltabs conforming to the requirements of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only those paper pulltabs conforming to the requirements of this administrative regulation.

Section 3. Paper Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut, and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numeral jar tickets with colored winning numerals shall not be required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue shall be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window slits on each break-open ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) Except as provided in subsections (10) and (11) of this section, the minimum information that shall be printed on an

unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more shall be:

- (a) The name of the manufacturer, or its distinctive logo;
- (b) The name of the game;
- (c) The manufacturer's form number;
- (d) The price per individual pulltab;
- (e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and
- (f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened shall:

- (a) Have printed on it, at a minimum, the information listed in subsection (9)(a), (b), (c), (d), and (e) of this section; and
- (b) Not be required to have the information listed in subsection (9)(f) of this section.

(11) A pulltab with an overall area of less than one and six-tenths (1.6) square inches unopened shall:

- (a) Have printed on it, at a minimum, the information listed in subsection (9)(a) and (e) of this section; and
- (b) Not be required to have the information listed in subsection (9)(b), (c), (d), or (f) of this section.

Section 4. Randomization of Paper Pulltabs. Winning paper pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly distributed throughout the deal. Banded tickets packaged in bags, rather than boxes, shall be subject to these requirements.

Section 5. Packaging and Distribution of Paper Pulltabs. (1)(a) Each paper pulltab deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed to guarantee that, if the container is opened or otherwise tampered with, evidence of the opening or tampering will be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box, or other container is received by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall be completely sealed by the application of heat or adhesive. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box, or other container; or

(b) The inside of the deal's package, box, or other container if it is clearly visible from the outside of the package, box, or other container.

(3) Manufacturers shall print on or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public."

(4) Manufacturers shall include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number, and the game serial number. The bar code label shall be visible from the outside of the package, box, or other container.

Section 6. Flares and Seal Cards for Paper Pulltabs. (1) Every deal of pulltabs shall contain a flare or a seal card. The manufacturer shall print directly on the paper flare or seal card the following information:

- (a) The name of the game;
- (b) The manufacturer's name or logo;
- (c) The manufacturer's form number;

(d) The game serial number;

(e) The ticket count;

(f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize; and

(g) The cost per play.

(2) Every deal of pulltabs shall contain instructions on how to play the game.

Section 7. Cumulative Games and Carryover or Progressive Games. (1) The rules for cumulative games, carryover, or progressive games shall apply to both paper and electronic pulltabs.

(2) The amount dedicated to a cumulative prize pool or a carryover or progressive jackpot shall be predetermined by the manufacturer and built into the payout structure for the game.

(a) For paper pulltabs, the dedicated amount shall be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game.

(b) For electronic pulltab games, the dedicated amount shall be included by the manufacturer on the flare or seal card for each game.

(3) All games contributing to the cumulative prize pool or the carryover or progressive jackpot shall be of the same form number.

(4) The paper or electronic flare or seal card for the carryover or progressive jackpot shall contain an area in which the current amount of the carryover or progressive jackpot can be posted.

(5) If a carryover or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

(6) If a carryover or progressive pulltab game uses a jackpot prize card that is separate from the jackpot seal card, each deal of the game shall possess both a seal card and a jackpot prize card that has the serial number of the deal affixed to it by the manufacturer.

(7) In a carryover or progressive pulltab game, the organization shall either start a new jackpot card with each deal or use the original jackpot card until won. The organization shall maintain each jackpot card used.

(8) A progressive pulltab game shall not be designed by the manufacturer to give any player initial odds greater than a fifty (50) percent chance to win the progressive jackpot.

(9) If a paper pulltab game contributes to a progressive raffle jackpot, a licensed charitable organization shall not sell a similar version of that paper pulltab game unless it also contributes to a progressive raffle jackpot. All paper pulltab game tickets that contribute to a progressive raffle jackpot shall be sold for cash and shall not be used as a merchandise prize for any bingo, pulltab, or door prizes.

Section 8. Event Games. (1) The rules for event games shall apply to both paper and electronic pulltabs.

(2) An event game shall not contain a "last sale" feature.

(3) The number of winners and the prize amounts shall be built into the payout structure for the game by the manufacturer.

(4) An event ticket prize shall not exceed the individual ticket prize limit for a pulltab game.

(5) The prize for an event pulltab game shall not be considered a bingo prize.

Section 9. Multipackaged Pulltab Deals. (1) The rules for multipackaged pulltab deals shall apply to both paper and electronic pulltabs. Every package shall be played for the deal to show the stated profit.

(2) Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

Section 10. Tracking by Manufacturer. Every manufacturer of

paper pulltabs shall maintain records sufficient to track each deal of paper pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 11. Tracking by Distributor. (1) Every distributor of paper and electronic pulltabs shall maintain records sufficient to track each deal of paper and electronic pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

(2) For sales in the Commonwealth of Kentucky or to residents of Kentucky, the records required under this section shall be sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale.

Section 12. Requirements of Distributor Invoice. (1) Distributors selling paper pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

- (a) The purchaser's name, address, and license number;
- (b) The address to which the shipment was delivered;
- (c) The date of sale or credit;
- (d) The conditions of the sale or credit;
- (e) The quantity of pulltabs sold including the number of deals, the name of each deal, the tickets per deal, and the serial number and form number of the deal;
- (f) The total invoice amount;
- (g) The name of the person who ordered the supplies;
- (h) The name of the person making the delivery;
- (i) The date of delivery or date the item was picked up for sale or credit;
- (j) The place or manner of delivery; and
- (k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver paper pulltabs to an agreed secure location or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

Section 13. Defects. (1) If a defect in packaging or construction of a paper pulltab is discovered by an organization, the defect shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect or replace the defective items within a reasonable time, or, if the product cannot be replaced or the defect corrected, the distributor shall provide a refund to the organization.

(2) If the department, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall, with respect to paper pulltabs for use in Kentucky, require the manufacturer to:

- (a) Recall the affected pulltabs that have not been sold at retail to licensed organizations; or
 - (b) Issue a total recall of all affected deals.
- (3) In choosing and directing a particular recall in accordance with subsection (2) of this section, the department shall be guided in each circumstance by any combination of the following factors:
- (a) The nature of the defect;
 - (b) Whether the defect affected game security;
 - (c) Whether the defect affected game playability;
 - (d) Whether the defect was limited to a specific number of deals of a particular form number;
 - (e) Whether the defect was easily detectable by a charitable organization;
 - (f) Whether the defect was easily detectable by members of the general public;
 - (g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(4) In consultation with the manufacturer, the department shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

Section 14. Pulltab Dispenser Construction and Use. (1) A pulltab dispenser shall not be sold, leased, or otherwise furnished to any person in the state unless it has been approved by the department.

(2) Before approval by the department, a dispenser that is identical to the dispenser intended to be sold, leased, or otherwise furnished shall be certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements established in Section 15 of this administrative regulation.

(3) If granted, approval shall extend only to the specific dispenser model approved, and any modification shall first be approved by the department.

Section 15. Requirements of Pulltab Dispensers. Each pulltab dispenser shall meet the following requirements:

- (1) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;
- (2) Accommodate pulltabs of different sizes;
- (3) Be constructed so that customers can see how many pulltabs remain within the dispenser, or have resettable counters visible to the customer indicating the number of pulltabs left in each column of the dispenser;
- (4) Have an outlet or tray to catch dispensed pulltabs;
- (5) Accurately dispense the correct number of pulltabs;
- (6) Contain one (1) or more player buttons on the front of the dispenser to dispense pulltabs if pressed;
- (7) Contain an illuminated electronic display to display the value of money deposited;
- (8) Be capable, if a malfunction occurs or the electrical power is interrupted after the money has been validated, of accurately redisplaying the value of the money after the malfunction or power is restored;
- (9) Not dispense any credits, or validate, read, or redeem a winning pulltab;
- (10) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;
- (11) Not have a video screen or produce audio sounds except for security alarms;
- (12) Not resemble a slot machine or other gambling device;
- (13) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;
- (14) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;
- (15) Not record test sales of pulltabs or money acceptances on the dispenser's accounting meters;
- (16) Contain a nonresettable accounting meter for total money validated and for the total of pulltabs dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;
- (17) Contain an EPROM microchip, microprocessor, or other verifiable electronic program storage media which holds the dispenser's programming code and which is identical in all respects to the manufacturer's programming code approved by the department;
- (18) Contain a RAM or an EPROM microchip equipped with a RAM microchip, which shall be installed with a tamper-proof seal inside the dispenser, or a microprocessor or flash memory microchip, or other verifiable electronic program storage media, which shall maintain the same information as required in subsection (17) of this section for six (6) months after power has been disconnected;
- (19) Automatically discontinue operation if any nonresettable accounting meter, RAM microchip, EPROM microchip, microprocessor, or other verifiable electronic program storage media is disconnected; and

(20) Contain at least one (1) electronic money validator that shall:

- (a) Only validate United States money;
- (b) Not validate money in denominations in excess of twenty (20) dollars;
- (c) Transmit the value of validated money to the pulltab dispenser;
- (d) Be equipped with mechanisms to ensure that pulltabs will not be dispensed unless the money is validated and retained;
- (e) Be capable of preventing acceptance of known counterfeit money;
- (f) Return any invalid money to the player;
- (g) Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and
- (h) Automatically discontinue accepting or validating money if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

Section 16. Pulltab Dispensing Limitations. (1) A charitable organization shall not use a dispenser until the charitable organization that previously used the dispenser has removed its pulltabs and money from the dispenser.

(2) Each charitable organization operating the dispenser shall place upon the dispenser an identification label that displays the organization's name and license number.

(3) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session.

(4) The entire deal of pulltabs shall be sold from the dispenser and shall not be sold on the floor.

(5) All pulltabs in any one column shall have the same serial number.

(6) A licensee shall not display, use, or otherwise furnish a dispenser that has in any manner been tampered with or that otherwise may deceive the public or affect a person's chances of winning.

(7) A pulltab deal shall not be placed in the dispenser until the entire deal of pulltabs previously in the dispenser has been played out or permanently removed.

(8) After placement in the dispenser, a pulltab shall not be removed from the dispenser, except for those pulltabs:

- (a) Actually played by consumers;
- (b) Removed by department representatives or law enforcement agencies;
- (c) Temporarily removed during necessary repair, and maintenance; or
- (d) Removed at the end of the charitable gaming session.

(9) At least one (1) chairperson who is listed on the application for licensure shall be present at all times a pulltab dispenser is in use and shall be responsible for the administration and conduct of the pulltab dispenser.

(10) An organization utilizing a pulltab dispenser at its office location or owned premises shall only utilize the dispenser during business hours.

Section 17. Pulltab Dispenser Inspection. The department or its authorized representatives may examine and inspect any automated pulltab dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

Section 18. Pulltab Dispenser Recordkeeping. (1) Each licensed charitable organization shall maintain the following information in connection with its use of an automated pulltab dispenser:

- (a) Date of purchase or lease of each dispenser;
- (b) Model and serial number of each dispenser;
- (c) Purchase or lease price of each dispenser;
- (d) Name, address, and license number of the distributor from whom the dispenser was purchased, leased or otherwise

furnished; and

(e) A record of all maintenance and repairs relating to the dispenser.

(2) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

- (a) Date of sale or lease;
- (b) Quantity sold or leased;
- (c) Cost per dispenser;
- (d) Model and serial number of each dispenser; and
- (e) Name, address, and license number of the purchaser or lessee.

(3) All records, reports, and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

Section 19. Pulltab Dispenser Defects. (1) If the department detects or discovers any defect or malfunction with the dispenser that is not temporary in nature or affects the integrity or security of the pulltab game, the department shall direct the manufacturer, distributor, or organization to cease the sale, lease, or use of the dispenser, as applicable, and shall require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the department to the manufacturer.

(2) If the manufacturer, distributor, or organization detects or discovers any defect or malfunction with the dispenser that is not temporary in nature, the entity shall immediately remove the dispenser from use and notify the department of that action.

Section 20. Pulltab Rules of Play. (1) All individuals involved in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The chairperson shall be in full charge of the charitable gaming session, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) More than one charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for raffles and licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall also be locked and access shall be controlled.

(5) Except for a charity fundraising event, a volunteer at any other charitable gaming session at which pulltabs are sold shall not purchase or play pulltabs at that charitable gaming session. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer does not work, and from a deal the volunteer does not sell.

(6) If the charitable organization has house rules concerning its charitable gaming session, the house rules shall:

- (a) Be posted in at least two (2) conspicuous locations at the charitable gaming session and announced prior to the commencement of the charitable gaming session or be listed on the program;
- (b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;
- (c) Be followed; and
- (d) Include the organization's name and license number.

Section 21. Playing. (1) The flare or seal card for paper pulltabs, including a progressive jackpot card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play, including the time after all tickets have been sold until all prizes have been claimed or the time to claim prizes has expired. Electronic pulltab games shall include an electronic flare or seal card, including a progressive jackpot card relating to carryover or progressive prizes, that is available for view on the electronic pulltab device by players at all times while the game set is in play.

(2) Paper pulltabs shall not be sold to the public from the

original packing box or container. Paper pulltabs shall be removed from the original box or container and mixed by shuffling together prior to sale.

(3) If a deal of paper pulltabs is packed in more than one (1) box or container, an individual container shall not designate a winner or contain a disproportionate number of winning or losing tickets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the manufacturer to be played in subsets. Those subsets may be placed out for play in succession.

(4) Paper pulltabs that have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner that tends to deceive the public or affect the chances of winning or losing, shall not be placed into play. The organization shall notify the Department of Charitable Gaming of the existence of these tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the paper pulltabs within each deal matches the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal or game set do not match the serial number on the flare or seal card accompanying the deal or game set, the organization shall not place the deal or game set into play and shall notify that distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the department in writing.

(6) Any licensed charitable organization that sells pulltabs from its office location or from a pulltab dispenser shall comply with 820 KAR Chapter 1 regarding the play, proper recordkeeping, and reporting of those sales. The sales shall be reported on the financial report.

(7)(a) If a deal or game set is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal or game set closed or completed, declare the winners, and post winning numbers for fifteen (15) days with information directing the method of claiming a prize at its office location. All unsold pulltabs shall be retained pursuant to subsection (15) of this section.

(c) If no winning pulltabs remain in the paper deal, the licensed charitable organization may consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs pursuant to subsection (15) of this section.

(d) A licensed charitable organization shall not complete play of a deal, game set, or a seal card it did not initiate.

(8) A pulltab shall not be sold to the public at a price different than that generated by the manufacturer of the pulltab upon the flare or seal card that accompanies the deal or game set.

(9) Only authorized representatives of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) In playing paper pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal or game set of tickets as designed by the manufacturer. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the paper flare or seal card the prize structure to be awarded before placing the deal or game set into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen

(15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid in full no later than five (5) days from the date of redemption.

(14) All winning paper pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15)(a) The charitable organization shall retain, in paper or electronic form, for a period of twelve (12) months, to allow auditing by the staff of the department:

1. All winning pulltabs with a prize value of fifty (50) dollars and above;

2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;

3. All seal cards with a prize value of fifty (50) dollars and above;

4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and

5. All unsold pulltabs.

(b) These records may be maintained at the gaming location.

(16) The fair market value of bingo paper, a card-minding device, pulltab, or electronic pulltab device given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, pulltab, or electronic pulltab device at that charitable gaming session.

(17)(a) If bingo paper is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of bingo paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its charitable gaming session records.

(18)(a) If a card-minding device or electronic pulltab device is awarded as a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device, or the number of electronic pulltab devices and credits loaded on each device, if any, given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device or electronic pulltab device. No more than one (1) card-minding device or one (1) electronic pulltab device may be redeemed per player per charitable gaming session.

(d) The organization shall retain the voucher with its charitable gaming session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher involving a card-minding device and electronic pulltab device.

(19) If a paper pulltab or electronic pulltab device is awarded as a promotional item or a door prize, the amount and description of the pulltab or electronic pulltab device and credits loaded on each device, if any, shall be listed on the charitable gaming session program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(20) If a paper pulltab or electronic pulltab device is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs or electronic pulltab device and any credits loaded to the device from the pulltab manager by transfer of cash from bingo payout to pulltab sales, and it shall be recorded as a

sale on the charitable gaming session records.

(21) Vouchers shall be redeemed on the same day as awarded.

(22) Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

(23) "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 22. Seal Card Games. (1) The organization shall post the paper seal card for the deal in play at the location of the seal game while the deal is in play. An electronic seal for an electronic game set shall be viewable, upon player request, on the video screen of the electronic pulltab device while the game set is in play.

(2) If a deal or game set with a seal card is not completed during a charitable gaming session, the organization shall require the patrons with holders to sign or enter their name electronically on the seal card and provide a means of contacting them when the winner is declared.

(3)(a) The seal for the deal or game set shall be broken, torn open, or otherwise revealed in plain view of all persons present when:

1. All tickets from a deal or game set have been sold;
2. All the winning tickets from a deal or game set have been sold;
3. All the lines on the sign-up card have been filled;
4. The deal or game set has been closed because no future date is anticipated; or
5. Instructed to by the game as designed by the manufacturer.

(b) Each winning combination, the name of the game, and the serial number of the deal or game set shall be announced and posted at the location of the game.

(c) The date the seal tab was opened shall be recorded on the seal card.

Section 23. Seal Card Games with Carry Over or Progressive Prizes. (1) The prize pool for a progressive pulltab game shall be established only through the play of deals or game sets of the same game that bear a manufacturer's form number identical to the form number of any previously-played deals or game sets contributing to the prize pool.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets shall not be required to match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one (1) deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until the progressive jackpot prize is awarded. If the game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day its office is open. If an organization stops conducting charitable gaming or wishes to stop playing a progressive pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another progressive game or determine a method to award the progressive jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) The seal card for each deal or game set in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(5) Every seal card for each deal or game set that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot card, shall be displayed at all times while the game is in play, until the progressive jackpot prize is won.

(6) The serial numbers for each deal or game set contributing

to a carryover or progressive jackpot prize shall be recorded in the charitable gaming session records.

(7) A progressive or carryover pulltab game shall be played in accord with the manufacturer's specifications for the determination of a winner, unless the department permits otherwise pursuant to subsection (3) of this section.

(8) If a progressive or carryover pulltab game bearing the same manufacturer's form number is no longer available, the organization shall contact the department for instructions on how to proceed.

(9)(a) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times either:

1. The jackpot card being played and each seal card contributing to the jackpot prize pool; or

2. A legible poster identifying by name, serial number, and form number each deal or game set of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) calendar days after the organization awards the prize. For progressive pulltab games played on an electronic pulltab device, a poster shall be displayed to fulfill this requirement.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) calendar days after the date the organization considers the game closed and retains the prize as its property.

(d) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times, the current value of the jackpot.

(10) An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number and form number on the winning ticket match the serial number and form number on a seal card from a deal or game set of tickets that contributed to the jackpot prize.

(11) For jackpot prizes of \$250 or over, the organization shall attach a copy of the valid state identification card that contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

(12) The jackpot prize in a progressive game may accrue in excess of \$2,400. An individual jackpot prize shall not be paid in excess of \$2,400. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot carried forward to the next charitable gaming session at each charitable gaming session shall be recorded in the charitable gaming session record.

(13) Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool if it also includes the statement that the individual payout shall not exceed \$2,400.

(14) A licensed charitable organization shall report to the department concerning its play of seal card games with a progressive prize on the financial report.

(15) The jackpot prize pool in a progressive game shall be considered an adjusted gross receipt that shall be deposited within two (2) business days of the charitable gaming session.

Section 24. Seal Card Games with Cumulative Prizes. (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals or game sets of the same game that bear a manufacturer's form number identical to the form number of any previously played deals or game sets contributing to the prize pool, unless the department permits otherwise pursuant to subsection (3) of this section.

(2) Before placing a paper deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal matches the serial number on the flare, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall remain in play continuously until the cumulative prize pool has been awarded. If that game is begun at a bingo session, it shall be

offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day their office is open. If an organization stops conducting charitable gaming or wishes to stop playing a cumulative pulltab game, the organization shall, with prior approval from the department, transfer the current jackpot to another cumulative game or determine a method to award the cumulative jackpot to the players. With prior approval from the department, an organization may alter the suggested rules of the manufacturer to determine a winner.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's predesignated prize structure for the game, unless the department permits otherwise pursuant to subsection (3) if this section.

(5) The seal card for each deal or game set in a cumulative pulltab game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the cumulative prize pool.

(6) Every seal card for each deal or game set that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed at all times while the game is in play, until the cumulative prize pool is awarded.

(7) The serial numbers for each deal or game set contributing to a cumulative prize pool shall be recorded in the charitable gaming session records.

(8) An organization shall not award the cumulative prize pool unless the serial number and form number on the winning ticket matches the serial number and form number on a seal card from a deal or game set of tickets that contributed to the cumulative prize board.

(9) A cumulative prize board shall not contain prizes totaling in excess of \$2,400.

(10) A licensed charitable organization shall report to the department concerning its play of seal card games of cumulative games on the financial report.

Section 25. Electronic Pulltab System Construction Standards.

(1) An electronic pulltab system's central computer system shall be dedicated to electronic accounting, reporting, presentation, randomization, and transmission of electronic pulltabs to electronic pulltab devices. It shall also be capable of generating the data necessary to provide reports required by regulation or otherwise specified by the department.

(2) A player shall purchase or otherwise obtain access to an electronic pulltab device[,] and load money to a player account for purchase of electronic pulltabs during the current charitable gaming session[,—only] from a point of sale station or by inserting currency into the gaming device. The point of sale station may be stationary, mobile, or self-service.

(3) All equipment used to facilitate the distribution, play, or redemption of electronic pulltabs shall be physically located within the boundaries of the Commonwealth of Kentucky. Electronic pulltab devices, site system if used, point of sale stations, and all secondary components shall be located on the premises where the charitable gaming session is being held.

(4) A manufacturer, distributor, or charitable organization shall not add to an electronic pulltab system any software or program unless the software or program has been certified by an independent testing facility. If the department detects or discovers an electronic pulltab system at a playing location that is using a program or software that has not been certified by an independent testing facility, the electronic pulltab system shall be determined to have an unauthorized modification and use of the system shall cease immediately.

(5) Any element of the central computer system that holds or maintains game data, other than an electronic pulltab device or point of sale station, shall be kept in a locked and secure enclosure with limited access to designated personnel. The system shall provide a secure physical and electronic means for securing the games and game data against alteration, tampering, or unauthorized access.

(6) The central computer system shall include a central server

located in the Commonwealth of Kentucky that is accessible to the department so the department has the ability to remotely verify the operation, compliance, and internal accounting systems of the electronic pulltab system at any time. The department shall have real time and complete read-only access to all data for all systems and devices.

(a) The manufacturer shall provide to the department all current protocols, passwords, and any other required information needed to access the electronic pulltab system prior to the operation of the system within Kentucky, and at all times while the system remains operational within Kentucky.

(b) The department shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system at least three (3) days prior to the change.

(c) Any reports maintained or generated by the electronic pulltab system shall be capable of being downloaded or otherwise accessed via the internet by the department.

(7) A site system, if used, shall:

(a) Be located at the gaming premises;

(b) Be operated by the charitable organization;

(c) Interface with, connect with, control, or define the operational parameters of the electronic pulltab devices;

(d) Report and transmit the game results as prescribed by the department;

(e) Provide security and access levels sufficient so that the internal control objectives are met as prescribed by the department; and

(f) Contain a point of sale station.

(8) The site system, if used, may include the following components:

(a) Required printers;

(b) Proprietary executable software;

(c) Report generation software; and

(d) An accounting system or database.

(9) The electronic pulltab system shall provide password protection for each organization.

(10) An electronic pulltab system shall provide a means for terminating a game set if information about electronic pulltabs in an open game set has been accessed, or if the department determines there has been a breach of game security. Traceability of unauthorized access including time and date, users involved, and any other relevant information shall be available.

(11) An electronic pulltab system shall not permit the alteration of any accounting or significant event information. Significant events shall include power resets or failures, communication loss between an electronic pulltab device and the electronic pulltab system, any award in excess of the single-win limit for an electronic pulltab, or corruption of the electronic pulltab system memory or storage. If financial data is changed, an automated audit log shall be capable of being produced to document the following:

(a) Data element altered;

(b) Data element value prior to alteration;

(c) Data element value after alteration; and

(d) Time and date of alteration.

(12) An electronic pulltab system shall provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components, including the following:

(a) All programs and data files shall only be accessible via the entry of a password that shall be known only to authorized personnel;

(b) The electronic pulltab system shall have multiple security access levels to control and restrict different privilege levels;

(c) The electronic pulltab system access accounts shall be unique when assigned to the authorized personnel;

(d) The storage of passwords and PINs shall be in an encrypted, nonreversible form; and

(e) A program or report shall be available that lists all authorized users on the electronic pulltab system including their privilege level.

(13) All components of an electronic pulltab system that allow access to users, other than end-users for game play, shall have a password sign-on comprised of:

(a) A personal identification number; or

(b) a personal identification code and a personal password.

(14) Electronic pulltab system software components shall be verifiable by a secure means at the system level. An electronic pulltab system shall have the ability to allow for an independent integrity check of the components from an outside source and is required for all control programs that may affect the integrity of the electronic pulltab system. This shall be accomplished by being authenticated by a third-party device, which may be embedded within the electronic pulltab system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check shall provide a means for field verification of the electronic pulltab system components.

(15) The electronic pulltab system shall have a medium for securely storing electronic pulltab game sets that shall be mirrored in real time by a backup medium. The electronic pulltab system shall also provide a means for storing duplicates of the game sets already transmitted to the electronic pulltab devices so as to reflect, on an ongoing basis, changes in the transmitted game sets as they occur.

(a) All storage shall be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so that if the primary storage medium fails, the functions of the electronic pulltab system and the process of auditing those functions shall continue with no critical data loss.

(b) The database shall be stored on redundant media so that a single failure of any portion of the system shall not result in the loss or corruption of data.

(c) If there is a catastrophic failure when the electronic pulltab system cannot be restarted in any other way, it shall be possible to reload the electronic pulltab system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;
2. All accounting information; and

3. Auditing information, including all open game sets and the summary of completed game sets.

(16) Connections between all components of the electronic pulltab system shall only be through use of secure communication protocols that are designed to prevent unauthorized access or tampering, employing Data Encryption Standards (DES) or equivalent encryption with changeable seeds or algorithms.

(17) An electronic pulltab system's central computer system may be used to record the data used to verify game play and to configure and perform security checks on electronic pulltab devices, if the functions do not affect the security, integrity, or outcome of any game and meet the requirements established in this administrative regulation regarding program storage devices.

(18) An electronic pulltab system shall not display to the player, the licensed charitable organization, or the licensed distributor the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play. Once a game set has been closed, it shall not be able to be opened for play.

(19) The electronic pulltab system shall render unplayable the electronic pulltabs of a charitable organization once the organization logs out of the system at the end of the organization's charitable gaming session and until the organization logs back onto the system at the start of the organization's next scheduled charitable gaming session. If multiple organizations use the same electronic pulltab devices and electronic pulltab system, one (1) organization's electronic pulltab games and data shall not be accessible or played by another organization.

(20) An electronic pulltab system may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(21) One (1) or more electronic internal accounting systems shall be required to perform recordkeeping, reporting, and other functions in support of an electronic pulltab system. The electronic

internal accounting system shall not interfere with the outcome of any gaming function.

(22) The electronic internal accounting system shall be capable of recording and retaining for a period of not less than three (3) years the following information:

(a) The name and license number of the organization utilizing an electronic pulltab system; and

(b) For each charitable gaming session:

1. The date and time of each log-on and log-off of an organization;

2. The total amount of all monetary transactions regarding electronic pulltabs and electronic pulltab devices at each charitable gaming session;

3. The total number of electronic pulltab devices sold or provided at each charitable gaming session;

4. The serial number of each hand-held electronic pulltab device sold or provided;

5. The terminal number for each fixed base electronic pulltab device sold or provided;

6. The name, serial number, price, and predetermined finite number of tickets within each game set available for play at each charitable gaming session;

7. The total number of electronic pulltabs played from each game set at each charitable gaming session;

8. All prize payouts for each game set per charitable gaming session; and

9. All wagers and other information necessary to fully reconstruct a game outcome.

(23) The information required pursuant to subsection (22) of this section shall be secure and shall not be accessible for alteration. Information pertaining to the number of electronic pulltabs that remain in an open game set, or the number of winners or losers that have been drawn or still remain in an open game set shall not be accessible to the licensed organization or the licensed distributor.

(24) The electronic pulltab system's central computer system shall maintain a printable, permanent record of all transactions involving each device and each closed electronic pulltab game played on each device.

(25) An electronic pulltab system shall have report generation software with the capability to print all information required to be maintained on the system's active or archived databases, and pursuant to the restrictions related to information available on open game sets.

(26) All data required to be available or reported by this administrative regulation shall be retained for a period of not less than three (3) years.

(27) An electronic pulltab system shall utilize randomizing procedures in the creation of game sets for electronic pulltabs or utilize externally generated randomized game sets. After randomization, game sets may be broken into game subsets of equal size that shall be assigned a unique serial number.

(28) Winning electronic pulltabs shall be distributed randomly among all other pulltabs in a game set to eliminate any pattern between game sets, or portions of game sets.

(29) Any random number generation, shuffling, or randomization of outcomes used in connection with an electronic pulltab system shall be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability.

Section 26. Electronic Pulltab Point of Sale Requirements. (1) An electronic pulltab system shall include a point of sale station that is used to facilitate the sale of an electronic pulltab device, to load money to a player account for purchase of electronic pulltabs during the current charitable gaming session, and to cash-out or redeem credits from the play of electronic pulltabs.

(a) The point of sale station may be stationary, mobile, or self-service.

(b) The point of sale station shall not be designed or manufactured to resemble an electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(c) The point of sale station shall not have vertical or horizontal spinning reels, a pull handle, sounds or music, flashing lights, tower light, top box, enhanced animation, artwork, or any other attribute or representation that mimics a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

(d) The point of sale station shall not function simultaneously as an electronic pulltab device.

(2) The point of sale station shall be capable of printing a receipt, which the organization shall provide to the player, that details each transaction. The receipt shall contain, at a minimum, the following information:

(a) The date and time of the transaction;

(b) A unique non-resettable transaction number that is printed in continuous, consecutive order;

(c) The dollar amount of the transaction, including the cost, if any, of the electronic pulltab device and the amount of money loaded to a player account that will be available for the purchase of electronic pulltabs during that charitable gaming session;

(d) A unique entry code or account number that will be used to activate an electronic pulltab device and make available to the player the money loaded to the player account at the point of sale for the purchase of electronic pulltabs during that charitable gaming session;

(e) The name of the charitable organization and license number; and

(f) The point of sale identification number or name.

(3) If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required pursuant to subsection (2) of this section.

(4) The point of sale station shall be capable of displaying, at minimum, the following for each charitable gaming session:

(a) The sales transaction history, including:

1. The organization name and license number;
2. Date and time of each transaction;
3. Dollar value of each transaction;
4. Quantity of electronic pulltab devices sold;
5. All transaction numbers; and
6. The point of sale identification number or name; and

(b) A pay-out history detailing all pay-outs, including:

1. The organization name and license number;
2. Date and time of each pay-out;
3. Dollar value of each pay-out; and
4. Point of sale identification number or name.

(5) A point of sale station shall not display information relating to prizes already paid out in a particular game set, the number of electronic pulltabs that remain in a game set, or the number of winners or losers that have been drawn or still remain in the game set while the game set is still open for play.

(6) A player shall only cash-out or redeem credits from a point of sale station.

(7) A point of sale station shall not be capable of accepting payment from a credit card or debit card.

Section 27. Electronic Pulltab Device Construction Standards.

(1) An electronic pulltab device shall not be capable of being used for the purpose of engaging in any game prohibited by the department.

(2) An electronic pulltab device shall be designed as a handheld or fixed base personal computing device that:

(a) Is used to play one (1) or more electronic pulltab games;

(b) Requires coded entry or insertion of currency or a credit ticket to activate a device for a player to purchase and play electronic pulltabs[, but does not allow the use of coin, currency, or tokens to be inserted to purchase and play electronic pulltabs];

(c) Maintains and displays information pertaining to accumulation of credits that may be applied to games in play or redeemed upon termination of play;

(d) Has no vertical or horizontal spinning reels, pull handle, ~~[sounds or music other than those allowed by Section 28(5)(b) of this administrative regulation,]~~ flashing lights, tower light, top box, coin tray, ~~[ticket acceptor,]~~ hopper, coin acceptor, ~~[cabinet, artwork,]~~ the ability to dispense coins, cash, tokens, or anything of

value other than a credit ticket, or any other attribute or representation that mimics a video slot machine;

(e) Shall not be capable of displaying any animation while in an idle state. An electronic pulltab device may use simple display elements or screen savers to prevent monitor damage;

(f) Has no additional function as a gambling device other than as an electronic pulltab device or as an approved card-minding device;

(g) Is not a pulltab dispenser as established in this administrative regulation; and

(h) The device shall have adjustable volume accessible to the player or the charitable organization.

(3) An electronic pulltab device shall not have hardware or software that determines the outcome of any electronic pulltab, produces its own outcome, or affects the order of electronic pulltabs as dispensed from the electronic pulltab system's central computer system. The game outcome shall be determined by the electronic pulltab system's central computer system.

(4) An electronic pulltab device may utilize a touch screen. The touch screen shall meet the following requirements:

(a) It shall be accurate once calibrated;

(b) It shall be able to be recalibrated; and

(c) It shall have no hidden or undocumented buttons or touchpoints anywhere on the touch screen.

(5) A fixed based electronic pulltab device may incorporate an attached bill validator, which shall be constructed to ensure proper handling of inputs that protect against vandalism, abuse, or fraudulent activity. A bill validator shall only accept United State paper currency or a valid credit ticket to initiate play. Bill validators shall be tested to comply with accepted industry standards. [A fixed base electronic pulltab device shall not be built into a cabinet or in any way be designed or manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.]

(6) An based electronic pulltab device shall not be capable of accepting payment by credit card or debit card.

Section 28. Electronic Pulltab Software Construction Standards. (1) Any game available for play in the Commonwealth of Kentucky shall be installed on the demonstration terminals at the Department of Charitable Gaming's office in Frankfort, Kentucky.

(2) An electronic pulltab system shall dispense, upon player request and payment of consideration, an electronic pulltab. A player shall win if the player's electronic pulltab reveals whether and how much money a player has won, or if the electronic pulltab contains a combination of symbols or numbers that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game. All games shall be played without replacement.

(3) An electronic pulltab game or game set shall:

(a) Be a version of a paper pulltab game, with a prize structure and gameplay rules substantially similar to a paper pulltab game, that is played on an electronic pulltab device;

(b) Have a predetermined, finite number of winning and losing tickets, not to exceed 25,000 tickets per game set;

(c) Charge the same price for each ticket in a game set;

(d) Comply with KRS Chapter 238, and 820 KAR Chapter 1;

(e) Comply with prize limits established in KRS Chapter 238;

(f) Have a unique serial number for each game set that shall not be regenerated. Each pulltab in a game set shall bear the same serial number and only one (1) serial number shall be used in a game set. After randomization, game sets may be broken into subsets of equal size. If game subsets are used, they shall each be assigned a unique serial number and be traceable to a parent game set. If a seal card is used with a pulltab game set, the seal card shall bear the same serial number as each pulltab;

(g) Have an electronic flare or seal card, viewable upon player request, that displays the name of the game, manufacturer's name or logo, manufacturer's form number, the game serial number, the predetermined finite number of tickets in the game set, and the prize structure, including a description of the number of winning pulltabs by denomination, and amounts, if any, dedicated to the

prize pool in a seal card game with a cumulative prize, or a carryover or progressive prize, and the cost per play of an electronic pulltab within the game set; and

(h) Every game set of electronic pulltabs shall contain electronic rules of play.

(4) An electronic pulltab game shall not contain vertical or horizontal spinning reels, a pull handle, or other representations that mimic a video slot machine, including representations of coins falling into a coin tray or hopper.

(5) Games shall not contain obscene or offensive graphics, sounds, or references.

~~[(a) Game animation shall be limited to:~~

~~1. Animated characters related to the theme of the game;~~

~~2. An animation, not to exceed five (5) seconds in duration, to simulate the opening of the ticket, a window on the ticket, or a window in a player-pick bonus round that simulates a prize board; and~~

~~3. An animated graphic, not to exceed five (5) seconds in duration, indicating whether and how much money the player's ticket or a simulated free ticket in a bonus round has won or lost.~~

~~(b) Game sounds shall have a duration of no longer than five (5) seconds and shall be limited to:~~

~~1. Indicating that the player's ticket has won;~~

~~2. Indicating that the player's ticket has lost;~~

~~3. Indicating that the player has pressed a button; and~~

~~4. Simulating the opening of a paper pulltab ticket.~~

~~(c) Any electronic pulltab game approved by the department prior to October 1, 2018, may remain available for play.]~~

(6) The result of an electronic pulltab ticket shall be clearly shown on the video display. If the game uses symbols or combinations of symbols to reveal whether the player's ticket has won, winning tickets shall indicate to the player the symbols or combination of symbols that resulted in a winning ticket. Prizes shall be added as a credit to the player's account.

(7) The available games, flare, and rules of play shall be displayed on the electronic pulltab device's video screen upon player request.

(8) Any number of games may be selectable for play on any given electronic pulltab device. Only one (1) of the games shall be playable at a time.

(9) An electronic pulltab device shall have one (1) or more buttons, or an electromechanical or touch screen to facilitate the following functions:

(a) Viewing of the game "help" screens;

(b) Viewing of the game rules including the flare or seal card;

(c) Initiating game play;

(d) Cash-out or logout; and

(e) Purchasing or revealing the pulltab.

(10) Each electronic pulltab shall be initially displayed so that the numbers, letters, or symbols on the pulltab are concealed. Each electronic pulltab game shall require the player to press a "purchase" or equivalent button to initiate the purchase of an electronic pulltab. The game shall then require the player to press a subsequent button or buttons to reveal the numbers, letters, or symbols on the pulltab. A player shall have the option of opening each individual line, row, or column of each electronic pulltab or choosing to "open all".

~~(11) If an electronic pulltab game contains~~~~[If the player's winning ticket leads to]~~ a bonus round that simulates the opening of additional tickets, then the following disclaimer shall be displayed in a conspicuous manner in the player interface of the electronic pulltab device every time the player wins a supplemental tab ~~or~~~~[and]~~ on the [HELP]flare or help screen: "Tabs that appear in (name of the bonus round) do not represent equal or separate chances to win. The supplemental tabs are utilized to reveal the value of the initial, winning pulltab ticket incrementally. These supplemental tabs appear for entertainment value only."

(12) An available player account balance shall be collected by the player by pressing the "cash-out" button or "logoff" button on the electronic pulltab device and taking the device, the receipt, or, if allowed, a player account card to the point of sale station.

(13) The cost of any individual electronic pulltab ticket shall not exceed five (5) dollars.

Section 29. Independent Testing Facility Certification for Electronic Pulltabs. (1) An electronic pulltab system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of charitable gaming until an identical system containing identical software has been tested and certified by an independent testing facility.

(2) The cost of testing and certification shall be the responsibility of the manufacturer.

(3) The independent testing facility shall certify in writing that the electronic pulltab system and associated hardware and software conform, at a minimum, to the requirements and restrictions established in KRS Chapter 238 and these administrative regulations.

(4)(a) The department, in consultation with the independent testing facility, shall determine if the electronic pulltab system and associated hardware and software conform to the requirements and restrictions established in KRS Chapter 238 and these administrative regulations, and shall notify the manufacturer of its decision in writing.

(b) Once the department has received the test results from the independent testing facility, the department may request a demonstration of the product within thirty (30) days.

(5) Any modifications to an electronic pulltab system or its software, except as provided in Section 31(7) of this administrative regulation, shall be tested and certified by an independent testing facility, demonstrated to the department by the manufacturer upon request, in the same manner as a new system or new software. Testing and certification shall be at the manufacturer's expense.

Section 30. Electronic Pulltab Defect and Recall. (1) If a manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the manufacturer, distributor, or charitable organization shall immediately notify the department. The charitable organization shall also immediately notify the distributor of the defect, malfunction, or problem. The distributor shall immediately notify the manufacturer of the defect, malfunction, or problem.

(2) If the department detects, discovers, or is notified of any problem with an electronic pulltab system, electronic pulltab device, or electronic pulltab game that affects the security or the integrity of the electronic pulltab system, electronic pulltab device, or electronic pulltab game, the department shall direct the manufacturer, distributor, and charitable organization to immediately cease the sale, lease, or use of the affected electronic pulltab system, electronic pulltab device, or electronic pulltab game until the problem can be assessed by the department in consultation with the manufacturer or distributor.

(3) If the department, in consultation with the manufacturer or distributor, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the department shall require the manufacturer to issue a total recall of all affected electronic pulltab systems, electronic pulltab devices, or electronic pulltab games or affected game sets or subsets, if necessary.

(4) In choosing and directing a particular recall pursuant to paragraph (c) of this subsection, the department shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable organization;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely

affect the fair play of the game.

(5) The manufacturer or distributor may correct the defect, if possible, without issuing a total recall if the affected electronic pulltab devices and electronic pulltabs are not offered for sale, lease, or use until the department allows. The manufacturer or distributor shall make all corrections within a reasonable time, not to exceed thirty (30) days, and the manufacturer or distributor shall demonstrate the correction to the department. If the department believes the defect has been corrected and that the defect no longer affects game security or otherwise threatens public confidence in the game, the department may issue written notification that the affected electronic pulltab system, devices, or pulltab game may be reoffered for sale, lease, or use.

(6) If a recall of an electronic pulltab system or electronic pulltab device is necessary, the department, in consultation with the manufacturer, shall determine a specific date for the recall of any affected electronic pulltab system or electronic pulltab device to be completed and whether the manufacturer is required to reimburse the organization or distributor. The recall of any electronic pulltab game shall occur no later than twenty-four (24) hours after the manufacturer is notified of the defect.

Section 31. Electronic Pulltab Manufacturer Requirements. (1) A manufacturer shall affix to each electronic pulltab device an identification badge that shall include the following information:

- (a) Manufacturer name;
 - (b) A unique serial number;
 - (c) The electronic pulltab device model number, if applicable;
- and

- (d) The date of manufacture, if applicable.

(2) Each manufacturer selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, and electronic pulltabs shall maintain a log or other record showing the following:

- (a) The name, address, and license number of the distributor to whom the electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs were sold, leased, or otherwise furnished;
- (b) The date of the transaction with the distributor;
- (c) The model, version, and serial number of each hand-held electronic pulltab device, if applicable;
- (d) The account number or terminal number of each fixed base electronic pulltab device, if applicable;
- (e) The quantity of each type of electronic pulltab device;
- (f) The model and version number of the system software;
- (g) The name, form number, and serial number of each game set of electronic pulltabs; and
- (h) The quantity of game sets sold, the cost per game set, the selling price per ticket, the cash take-in per game set, and the cash payout per game set.

(3) A manufacturer selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a distributor shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The address to which the shipment was delivered;
- (d) The date of sale or credit and the time period covered by the invoice;
- (e) The conditions of the sale or credit;
- (f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;
- (g) The total invoice amount;
- (h) The name of the person who ordered the supplies;
- (i) The name of the person making the delivery;
- (j) The date of delivery or date the item was picked up for sale or credit;
- (k) The place or manner of delivery; and
- (l) The name and signature of the person taking delivery, if any.

(4) A manufacturer providing electronic pulltabs to a distributor

for distribution to a licensed charitable organization shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

- (a) The manufacturer name, address, and license number;
- (b) The distributor name, address, and license number;
- (c) The organization name, address, and license number;
- (d) The date of sale or credit and the time period covered by the invoice;
- (e) The conditions of the sale or credit;
- (f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and
- (g) The total invoice amount.

(5) The manufacturer shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(6) A manufacturer shall supply any available financial reports to distributors and organizations, upon request, that provide detailed pulltab sales activity for the requesting distributor or organization for a selected date range.

(7) A manufacturer may conduct routine maintenance activities and replace secondary components of an electronic pulltab system without additional testing and certification if this activity does not affect the operation of any proprietary software, the manner in which an electronic pulltab game is played, the integrity of any critical or controlled software, or the outcome of an electronic pulltab game. A record of all activities shall be maintained and provided to the department within ten (10) days of the maintenance or replacement.

(8) A licensed manufacturer of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 32. Electronic Pulltab Distributor Requirements. (1) Before initial use by a charitable organization, the distributor shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated software version are approved by the department for use in Kentucky.

(2) A distributor shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component that has in any manner been marked, defaced, or tampered with, or that is otherwise intended to deceive the public or affect a person's chances of winning.

(3) Before the complete removal of any electronic pulltab system, the distributor shall supply a copy of the data files to each charitable organization that used the electronic pulltab system and to the department.

(4) Each distributor selling, leasing, or otherwise furnishing electronic pulltab devices, site systems, point of sale stations, secondary components, or electronic pulltabs shall maintain a log or other record showing the following information, if applicable:

- (a) The name of the location, physical address, telephone number, and facility license number, if applicable, where the electronic pulltab devices, site systems, point of sale stations, and secondary components are located for play;
- (b) A description, including the quantity, of all electronic pulltab devices, site systems, point of sale stations, and secondary components at each playing location;
- (c) The date any electronic pulltab device, site system, point of sale station, or secondary component was installed in or removed from a playing location;
- (d) The model, version, and serial numbers or terminal numbers of the electronic pulltab devices, site systems, point of sale stations, and secondary components, if applicable;
- (e) The name and license number of the charitable organization or distributor to whom the electronic pulltab devices, site systems, point of sale stations, or secondary components were

sold, leased, or otherwise furnished;

(f) The name and license number of the manufacturer or distributor from whom the electronic pulltab devices, site systems, point of sale stations, and secondary components were purchased, leased, or otherwise obtained;

(g) Each contract, lease, or purchase agreement between a distributor and the charitable organization or other distributor to which the electronic pulltab devices, site systems, point of sale stations, or secondary components are furnished; and

(h) The total dollar amount of electronic pulltab device, site system, point of sale station, and secondary component sales or lease transactions regarding each charitable organization to which the equipment was furnished during each calendar quarter.

(5) A distributor selling, leasing, or otherwise providing electronic pulltab devices, site systems, point of sale stations, or secondary components to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) A description of the type and the quantity of electronic pulltab devices, site systems, point of sale stations, and secondary components provided;

(g) The total invoice amount;

(h) The name of the person who ordered the supplies;

(i) The name of the person making the delivery;

(j) The date of delivery or date the item was picked up for sale or credit;

(k) The place or manner of delivery; and

(l) The name and signature of the person taking delivery, if any.

(6) A distributor providing electronic pulltabs to a licensed charitable organization shall provide the organization with an invoice or other documentation that contains, at a minimum, the following information:

(a) The manufacturer name, address, and license number;

(b) The distributor name, address, and license number;

(c) The organization name, address, and license number;

(d) The date of sale or credit and the time period covered by the invoice;

(e) The conditions of the sale or credit;

(f) The quantity of electronic pulltabs sold including the number of game sets, the name of each game set, the number of tickets per game set, and the serial number and form number of the game set; and

(g) The total invoice amount.

(7) An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the department.

(8) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of not less than three (3) years.

(9) A distributor shall deliver electronic pulltab devices, site systems, point of sale stations, and secondary components to an agreed secure location or to an identified person.

(10) A licensed distributor of charitable gaming supplies and equipment shall sell, lease, distribute, or otherwise provide in the Kentucky market only those electronic pulltab systems and electronic pulltabs that conform to the requirements of these administrative regulations. A licensed charitable organization shall provide to the public only those electronic pulltab systems and electronic pulltabs that conform to the requirements of this administrative regulation.

Section 33. Charitable Organization Requirements. (1) Before initial use, the organization shall ascertain that the particular electronic pulltab system, electronic pulltab device, and associated

software version are approved by the department for use in Kentucky.

(2) An organization shall not display, use, or otherwise furnish an electronic pulltab device, site system, or secondary component that has in any manner been marked, defaced, or tampered with, or that is otherwise intended to deceive the public or affect a person's chances of winning.

(3) The number[use] of electronic pulltab devices shall be limited to the following:

(a) A maximum of 35 electronic pulltab devices on or in the primary office location of a licensed charitable organization;

(b) A maximum of 50 electronic pulltab devices during the bingo session of a licensed charitable organization;

(c) A maximum of 50 electronic pulltab devices in a licensed charitable gaming facility; or

(d) With prior approval of the department, at any authorized charity fundraising event conducted by a licensed charitable organization at an off-site location.

(4) All electronic pulltab games shall be sold and played at the authorized locations, which shall be stated on the organization's charitable gaming license, and shall not be linked to other authorized locations. A distributor may install electronic pulltab systems or devices in unlicensed locations, for demonstration purposes only, if the system and devices do not accept payments or pay out prizes, and the time period of the demonstration does not exceed seventy-two (72) hours. The electronic pulltab system and devices shall not be operated unless a representative of the licensed manufacturer or distributor conducting the demonstration is present.

(5) Electronic pulltab games shall not be transferred electronically or otherwise to any other location by the licensed organization.

(6) An organization may remove from play a device that a player has not maintained in an activated mode for a specified period of time determined by the organization. The organization shall provide the notice in its house rules and shall allow the player to cash-out.

(7) Before purchasing or being provided with an electronic pulltab device, a player shall present proof that the player is at least eighteen (18) years of age. Proof shall be in the form of a picture identification card that includes the player's date of birth. If an organization uses a self-service point of sale kiosk, identification shall be presented and verified at the door.

(8) Each player shall be limited to the use of one (1) electronic pulltab device at a time.

(9) If a player's electronic pulltab device malfunctions during a game, it shall be repaired or the credits shall be transferred to another electronic pulltab device.

(10) The department shall be allowed access to examine and inspect any part of an electronic pulltab system. The department shall be granted access to all electronic pulltab devices in use by a charitable organization.

(11) The organization shall reasonably ensure that the connection to the electronic pulltab system's central computer system is operational at all times.

(12) If the organization sells electronic pulltab devices for a discounted price or gives them away as a promotion, the site system shall be programmed to account for the discounted item and priced separately from those sold at the regular price. A generic discount key shall not be allowed.

(13) The organization shall generate an Electronic Pulltab Receipts and Payouts report at the end of each charitable gaming session and maintain it with the charitable gaming session records. The Electronic Pulltab Receipts and Payouts worksheet shall be completed in the format of Form CG-EPRP.

(14) A manufacturer's representative or distributor's representative may be present during a charitable gaming session only to consult, demonstrate, provide technical support, or train the organization on the operation of the electronic pulltab system.

(15) A licensed charitable organization shall ensure that an authorized chairperson is present on the premises at all times that electronic pulltab devices are made available to the public.

Section 34. Incorporation by Reference. (1) Form CG-EPRP, "Electronic Pulltab Receipts and Payouts (2018)", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, Public Protection Cabinet, 500 Mero Street[–2NW24], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

AMBROSE WILSON IV, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2022, at 10:00 a.m. Eastern Time at the Mayo-Underwood Building, Room 133CE, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Doug Hardin, Staff Attorney, Department of Charitable, 500 Mero Street 2NW24, Frankfort, Kentucky 40601, phone (502) 782-8204, fax (502) 573-6625, email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Doug Hardin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth standards consistent with the department's statutory mission for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 238.522, a draft of this regulatory amendment was submitted to members of the Charitable Gaming Advisory Commission on April 22, 2022. No written comments were received from the members of the commission. KRS 238.515 authorizes the department to promulgate administrative regulations to carry out and implement KRS Chapter 238. This administrative regulation sets forth standards consistent with the department's statutory mission for pulltab operation, including instructions for the construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for one comprehensive regulation governing pulltab operations.

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

(a) How the amendment will change this existing administrative

regulation: The amendments to 820 KAR 1:032 will clarify some existing gameplay rules that had been confusing for licensees. These amendments will further eliminate certain restrictions on electronic pulltab construction standards.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation remove restrictions on electronic pulltab construction standards that licensees had complained were unduly burdensome. These amendments further ensure the protection of customers who play these games by requiring that each winning ticket must be paid in full and prohibiting players from purchasing electronic play codes with credit or debit cards, thus mitigating the risk of problem gambling.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 238.515(9) authorizes the department to promulgate administrative regulations in accordance with KRS Chapter 13A which are necessary to carry out the purposes and intent of Chapter 238. These amendments set forth the standards governing pulltab operations for charitable purposes.

(d) How the amendment will assist in the effective administration of the statutes: This regulation provides a clearer set of construction standards for electronic pulltab devices to ensure that they comply with the statutory requirement that these devices do not resemble video slot machines.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Charitable Gaming and its employees are affected by this administrative regulation. Manufacturers and distributors of paper and electronic pulltabs are also impacted by this administrative regulation. In addition, the licensees and exempt organizations will be affected by this administrative regulation. As of May 2022, the Department of Charitable Gaming regulated over 1,400 charitable gaming entities that will be affected by this administrative regulation, including 647 charitable gaming organizations, over 767 exempt charitable gaming organizations, twenty (20) manufacturers of charitable gaming supplies; fifteen (15) distributors of charitable gaming supplies; and twenty-nine (29) charitable gaming facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to conform to the requirements of this regulation, which sets forth standards for construction of pulltabs, requirements of electronic pulltab gaming systems, and pulltab rules of play.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to 820 KAR 1:032 will impose no new costs on regulated persons or entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulatory amendment removes restrictions on electronic pulltab devices, both on the physical construction of the devices and animation and sound rules concerning the gameplay software, which should give manufacturers more freedom to design electronic pulltab hardware and software. This is intended to allow for more entertaining games to be created and allow organizations that conduct charitable gaming to better compete with other forms of gaming.

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

(a) Initially: There will be no additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding necessary to implement this amendment to the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation requires no increase in fees or funding.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because the pulltab standards set forth in this administrative regulation apply equally to all licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Charitable Gaming is the agency responsible for implementing this regulation. Local fire departments and school districts that use pulltabs for charitable gaming will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.515(1) and (9).

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

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings generated in the first year for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings generated in the first year for regulated entities.

(c) How much will it cost the regulated entities for the first year? There will be no costs to regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-): None

Expenditures (+/-): None

Other Explanation: None

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated

entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact as defined by KRS 13A.010(13).

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. None.

(2) State compliance standards. None.

(3) Minimum or uniform standards contained in the federal mandate. None.

(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. N/A.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Health Data and Analytics

Division of Health Benefit Exchange

(Amendment)

900 KAR 10:120. KHBE eligibility and enrollment in a qualified health plan, SHOP, and SHOP Formal Resolution Process.

RELATES TO: KRS Chapter 304, 304.14-110, 304.17A-243, 304.17A-245, 26 U.S.C. 36B(b)(3)(A), 26 U.S.C. 5000A, 6011, 6012, 9831, 42 U.S.C 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market, the operation of a Small Business Health Options Program, and the formal review process related to SHOP on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Eligibility and Enrollment.

(1) An applicant shall be eligible to enroll in a QHP through the KHBE if the applicant:

(a)

1. Is a citizen or national of the United States;

2. Is a non-citizen who is lawfully present in the United States and is reasonably expected to become a citizen or national; or

3. Is a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(b) Except for an incarceration pending a disposition of a charge, is not incarcerated; and

(c) Meets a residency requirement in 45 C.F.R. 155.305(a)(3).

(2) An applicant may apply for a determination of eligibility at any time during a year; however, the applicant shall only enroll during open enrollment or SEPs.

(3) An applicant determined eligible for enrollment in a QHP as set forth in subsection (1) of this section shall be eligible to enroll in a QHP during:

(a) An open enrollment period as established in Section 5(2) of this administrative regulation; or

(b) A SEP as established in Sections 5(4) and 6 of this administrative regulation.

(4) An applicant shall attest to whether or not information affecting the applicant's eligibility has changed since the most recent eligibility determination if the applicant:

(a) Was determined eligible to enroll in a QHP, but:

1. Did not select a QHP within the applicable enrollment period as set forth in Section 5 or 6 of this administrative regulation; or

2. Was not eligible for an enrollment period; and

(b) Seeks a new enrollment period prior to the date on which the applicant's eligibility is redetermined as established in Section 8 of this administrative regulation.

(5) An applicant shall submit an application for enrollment in a QHP:

(a) Via the Web site at www.kynect.ky.gov;

(b) By telephone;

(c) By mail; or

(d) In person.

(6)

(a) An applicant who has a Social Security number shall provide the number to the KHBE.

(b) An individual who is not seeking coverage for himself or herself shall not provide a Social Security number, except as established by Section 2(8) of this administrative regulation.

(7) In accordance with 45 C.F.R. 155.310(a)(2), an individual shall not provide information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself.

(8)

(a) Except as established by paragraph (b) of this subsection, an applicant who requests an eligibility determination for an insurance affordability program shall have an eligibility determination for all insurance affordability programs.

(b) An applicant who requests an eligibility determination for a QHP only shall not have an eligibility determination for an insurance affordability program.

(9) An applicant shall not provide information beyond the minimum amount necessary to determine eligibility and enrollment through the KHBE.

Section 2. Eligibility Standards for Advanced Payments of the Premium Tax Credit.

(1) A tax filer shall be eligible for APTC if:

(a) The tax filer is expected to have a household income as prescribed in 45 C.F.R. 155.305(f)(1)(i) for the benefit year for which coverage is requested; and

(b) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year:

1. Meets the requirements for eligibility for enrollment in a QHP through the KHBE as established by Section 1 of this administrative regulation; and

2. Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-2(a)(2) and (c).

(2) A tax filer who is a non-citizen and lawfully present and ineligible for Medicaid for reason of immigration status shall be eligible for APTC if:

(a) The tax filer meets the requirement in subsection (1)(b) of this section;

(b) The tax filer is expected to have a household income of less than 100 percent of the FPL for the benefit year for which coverage is requested; and

(c) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year is:

1. A non-citizen who is lawfully present; and

2. Not eligible for Medicaid for reason of immigration status.

(3) A tax filer shall attest that one (1) or more applicants for whom the tax filer attests that a personal exemption deduction for the benefit year shall be claimed is enrolled in a QHP that is not a catastrophic plan.

(4) A tax filer shall not be eligible for APTC if HHS notifies the KHBE that APTCs were made on behalf of the tax filer or tax filer's spouse for a year in accordance with 45 C.F.R. 155.305(f)(4).

(5) An APTC amount shall be:

(a) Calculated in accordance with 26 C.F.R. 1.36B-3; and

(b) Allocated between QHPs and stand-alone dental policies in accordance with 45 C.F.R. 155.340(e).

(6) An applicant for APTC may accept less than the full amount of APTC for which the applicant is determined eligible.

(7) An APTC shall be authorized by the KHBE on behalf of a tax filer only if the KHBE obtains necessary attestations from the tax filer that:

(a) The tax filer shall file an income tax return for the benefit year in accordance with 26 U.S.C. 6011 and 6012;

(b) If the tax filer is married, a joint tax return shall be filed for the benefit year;

(c) Another taxpayer shall not be able to claim the tax filer as a dependent for the benefit year; and

(d) The tax filer shall claim a personal exemption deduction on the tax filer's return for the applicants identified as members of the tax filer's family, including the tax filer and the spouse of the tax filer, in accordance with 45 C.F.R. 155.305(f)(4).

(8) An application filer who is not an applicant shall provide the Social Security number of a tax filer only if the applicant attests that the tax filer:

(a) Has a Social Security number; and

(b) Filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(9) The effective date for APTC shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 155.335(i), as applicable.

(10) An employer may be notified of an employee's eligibility for APTC in accordance with 45 C.F.R. 155.310 (h).

Section 3. Eligibility Standards for Cost Sharing Reductions.

(1) An applicant shall be eligible for CSRs if the applicant:

(a) Meets the eligibility requirements for enrollment in a QHP as set forth in Section 1 of this administrative regulation;

(b) Meets the requirements for APTC as set forth in Section 2 of this administrative regulation;

(c) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 155.305(g)(1)(i)(C) for the benefit year for which coverage is requested; and

(d) Except for an enrollee who is an Indian, enrolls in a silver level QHP through the KHBE.

(2) An eligibility determination for CSRs shall be based on the categories as described in 45 C.F.R. 155.305(g)(2).

(3) If two (2) or more individuals enrolled in the individual market under a single policy would be eligible for different cost sharing amounts if enrolled in separate policies, the individuals under the single policy shall be found by the KHBE to be collectively eligible only for the last category listed in 45 C.F.R. 155.305(g)(3) for which all the individuals covered by the policy would be eligible.

(4) The effective date for CSRs shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 45 C.F.R. 155.335(i), as applicable.

(5) An employer shall be notified of an employee's eligibility for CSRs in accordance with 45 C.F.R. 155.310(h).

Section 4. Verification Processes.

(1) Verification of eligibility for an applicant seeking enrollment in a QHP shall be performed in accordance with:

(a) 45 C.F.R. 155.315; and

(b) The Kentucky QHP/APTC Eligibility Verification Plan.

(2) Verification of eligibility for an applicant or tax filer who requests an eligibility determination for an insurance affordability program shall be in accordance with:

(a) 45 C.F.R. 155.320; and

(b) The Kentucky QHP/APTC Eligibility Verification Plan.

Section 5. QHP Enrollment Periods and Effective Dates of Coverage.

(1) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during an open enrollment period.

(2) The timeframe for an open enrollment period shall be established by the secretary of the Cabinet for Health and Family Services.

(3) A qualified individual or enrollee who selects a QHP during an open enrollment period shall have an effective date of coverage of:

(a) January 1, if a QHP selection is made on or before December 15 of the previous year;

(b) If after December 15, the first day of the following month, if a QHP selection is made between the first and the fifteenth of a month; or

(c) If after December 15, the first day of the second following month, if a QHP selection is made between the sixteenth and last day of a month.

(4)

(a) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during a SEP as established by Section 6 of this administrative regulation.

(b) A qualified individual or an enrollee who selects a QHP during a SEP shall have an effective date of coverage as set forth in Section 6 of this administrative regulation.

(5) An initial enrollment in a QHP shall not be effective until the first month's premium is received by the QHP issuer.

Section 6. Special Enrollment Periods.

(1) Except as established by subsection (3) of this section, a qualified individual or enrollee shall have sixty (60) days from the date of a qualifying event as set forth in subsection (2) of this section to select a QHP.

(2) A qualified individual may enroll in a QHP or an enrollee or a dependent of an enrollee may change QHPs during a SEP if:

(a) The qualified individual or a dependent of the qualified individual:

1. Loses minimum essential coverage;

2. Is enrolled in any non-calendar year group health plan, individual health insurance coverage, or qualified small employer reimbursement arrangement even if the qualified individual or his or her dependent has the option to renew or reenroll in the coverage;

3. Loses pregnancy-related coverage described in 45 C.F.R. 155.420(d)(1)(iii);

4. Loses medically needy coverage as described under 42 C.F.R. 435.320 only once per calendar year; or

5. Is enrolled in coverage under 26 C.F.R. 54.9801–6(a)(3)(i) through (iii) for which an employer is paying all or part of the premiums and the employer ceases its contributions;

(b) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, placement in foster care, a child support order, or other court order;

(c) The qualified individual, or a dependent of the qualified individual, who was not previously a citizen, national, or lawfully present gains status as a citizen, national, or lawfully present;

(d) The enrollee is determined newly eligible or newly ineligible for APTC;

(e) The enrollee or a dependent of the enrollee becomes newly eligible for CSRs and is not enrolled in a silver-level QHP;

(f) The enrollee or a dependent of the enrollee becomes newly ineligible for CSRs and is enrolled in a silver-level QHP;

(g) The qualified individual or a dependent of the qualified individual who is enrolled in qualifying coverage in an employer-sponsored plan is determined newly eligible for APTC in part on a finding that the individual shall no longer be eligible for qualifying coverage in the employer-sponsored plan in the next sixty (60) days and is allowed to terminate existing coverage;

(h) The qualified individual or enrollee or a dependent of the

qualified individual or the enrollee:

1. Gains access to new QHPs as a result of a permanent move; and

2. Had MEC for one (1) of more days during the sixty (60) days preceding the date of the permanent move;

(i) The qualified individual is an Indian who may enroll in a QHP or change from one (1) QHP to another QHP one (1) time per month;

(j) The qualified individual is or becomes a dependent of an Indian and is enrolled or is enrolling in a QHP on the same application as the Indian, and may change from one (1) QHP to another QHP one (1) time per month, at the same time as the Indian;

(k) The qualified individual or enrollee or a dependent of the qualified individual or enrollee is no longer incarcerated;

(l) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee:

1. Gains access to an individual HRA; or

2. Is newly provided a QSEHRA[~~arrangement~~];

(m) The plan in which the enrollee or a dependent of the enrollee is enrolled is decertified by the division;

(n) The enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation;

(o) The enrollee or a dependent of the enrollee dies;

(p) The qualified individual or enrollee:

1. Is a victim of domestic abuse or spousal abandonment as defined by 26 C.F.R. 1.36B-2, or a dependent of the qualified individual or enrollee, or an unmarried victim of domestic abuse or spousal abandonment residing within the same household as the qualified individual or enrollee;

2. Is enrolled in MEC; and

3. Sought to enroll in coverage separate from the perpetrator of abuse or abandonment;

(q) The qualified individual or enrollee:

1. Is a dependent of an individual described in paragraph (i) of this subsection;

2. Is on the same application as the individual described in paragraph (i) of this subsection; and

3. Enrolls at the same time as the individual described in paragraph (i) of this subsection;

(r) The qualified individual or enrollee:

1. Applies for coverage during:

a. An annual open enrollment period; or

b. If there is a qualifying event, a SEP; and

2. Is determined ineligible for Medicaid or KCHIP:

a. After open enrollment has ended; or

b. More than sixty (60) days after the qualifying event;

(s) The qualified individual or dependent of the qualified individual enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or representative of the KHBE;

(t) The enrollee or dependent of the enrollee demonstrates to the KHBE that the QHP in which the enrollee or the dependent of the enrollee is enrolled substantially violated a provision of its contract in relation to the enrollee or dependent;

(u) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee, demonstrates to the KHBE that a material error related to a plan benefit, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP through KHBE. Material errors may include any incorrect premium, copay, co-insurance or deductible amount as well as services covered or providers included in network;

(v) The qualified individual:

1.

a. Was previously ineligible for APTC because of a household income below 100 percent of the FPL; and

b. Was ineligible for Medicaid due to living in a non-Medicaid expansion state during the same timeframe; and either

2.

a. Experiences a change in household income; or

b. Makes a permanent move to the Commonwealth of Kentucky resulting in the individual becoming newly eligible for APTC;

(w) The qualified individual or a dependent of the qualified individual:

1. Experiences a decrease in household income;
2. Is newly determined eligible by the KHBE for APTC; and
3. Had MEC for one (1) or more days during the sixty (60) days preceding the date of the change in household income; or

(x) The qualified individual or a dependent of the qualified individual meets other exceptional circumstances as defined by 45 C.F.R. 155.420(d)(9).

(3) The date of the triggering event for the loss of minimum essential coverage shall be:

(a) For a decertification of a QHP as set forth in 900 KAR 10:115, the date of the notice of decertification;

(b) For an event described in subsection (2)(a)2. of this section, the last day of the plan year;

(c) For an event described in subsection (2)(a)5. of this section, the last day of the period for which COBRA continuation coverage is paid for, in part or in full, by an employer; or

(d) For all other cases, the date the qualified individual or dependent of the qualified individual loses eligibility for minimum essential coverage.

(4) Loss of minimum essential coverage shall include those circumstances described in 26 C.F.R. 54.9801–6(a)(3)(i) through (iii).

(5) Loss of minimum essential coverage shall not include termination or loss due to:

- (a) Failure to pay premiums on a timely basis; or
- (b) A situation allowing for a rescission as established by 45 C.F.R. 147.128.

(6) Except as established by subsection (7), (8), or (9) of this section, a qualified individual or enrollee who selects a QHP during a SEP shall have an effective date of coverage of:

(a) The first day of the following month for a selection made between the first and the fifteenth day of any month; or

(b) The first day of the second following month for a selection made between the sixteenth and last day of any month.

(7) A qualified individual or enrollee who selects a QHP:

(a) For a birth, adoption, placement for an adoption, placement in foster care, or child support or other court order, shall have an effective date of coverage of either:

1. The date of the birth, adoption, placement for adoption, placement in foster care, or effective date of court order; or

2. If the qualified individual or enrollee elects:

a. The first of the month following plan selection; or

b. In accordance with subsection (6) of this section;

(b) For a marriage, shall have an effective date of coverage of the first day of the month following plan selection;

(c) For a loss of coverage as described in subsection (2)(a) of this section, for a gain of access to a new QHP as a result of a permanent move as described in subsection (2)(h) of this section, or for being newly eligible for enrollment in a QHP as described in subsection (2)(c) or (2)(k) of this section, if:

1. The plan selection is made on or before the day of the triggering event, shall have a coverage effective date of the first day of the month following the triggering event; or

2. The plan selection is made after the date of the triggering event, shall have a coverage effective date in accordance with this subsection; or

(d) For a death as described in subsection (2)(o) of this section, shall have a coverage effective date:

1. Of the first day of the month following a plan selection; or

2. In accordance with paragraph (c) of this subsection.

(8) A qualified individual, enrollee, or dependent of the qualified individual or enrollee who selects a QHP as described in subsection (2)(g) of this section shall have a coverage effective date:

(a) If the plan selection is made before the day of the triggering event:

1. On the first day of the month following the triggering event; or

2. If the triggering event is on the first day of a month, on the date of the triggering event; or

(b) If the plan selection is made on or after the day of the

triggering event, on the first day of the month following plan selection.

(9) A qualified individual or enrollee who selects a QHP in accordance with subsection (2)(a)4., (r), (s), (t), (u), or (v) of this section shall have a coverage effective date based on the circumstances of the SEP.

(10)

(a) An individual described in subsection (2)(g) of this section may access a SEP sixty (60) days prior to the end of the individual's qualifying coverage in the employer-sponsored plan.

(b) An individual who accesses a SEP as set forth in paragraph (a) of this subsection shall not be eligible for APTCs until the end of the individual's qualifying coverage through the eligible employer-sponsored plan.

(11) If an existing enrollee becomes newly eligible for CSRs and is not enrolled in a silver plan, the enrollee may choose a silver plan.

(12) If an enrollee and a dependent of an enrollee become newly ineligible for CSRs and are enrolled in a silver-level QHP, the enrollee may change to a QHP one (1) metal level higher or lower.

(13) If an enrollee gains a dependent due to marriage, birth, adoption, foster care, or court order, the enrollee shall:

(a) Not change plans; and

(b) Either:

1. Add the new dependent to the enrollee's current enrollment;

or

2. Enroll the new dependent in a plan of any plan category.

(14) Except for the qualifying events established by subsection (2)(i), (l), (p), (u), and (v) of this section and the events described in subsections (11), (12), and (13) of this section:

(a) If an enrollee qualifies for a SEP, the enrollee may change to a QHP within the same level of coverage;

(b) If a dependent of an enrollee qualifies for a SEP and the enrollee does not also qualify for a SEP, the enrollee shall add the dependent to the enrollee's current QHP; or

(c) If a qualified individual who is not an enrollee qualifies for a SEP and has a dependent who is an enrollee who does not qualify for a SEP, the qualified individual shall be added to the dependent's current QHP.

(15) For a qualified individual, enrollee, or dependent described in subsection (2)(l) of this section, the triggering event shall be:

(a) The first day on which coverage for the qualified individual, enrollee, or dependent under the individual coverage HRA can take effect; or

(b) The first day on which coverage under the QSEHRA takes effect.

(16) A qualified individual, enrollee, or dependent described in subsection (2)(l) of this section shall:

(a) Qualify for a SEP regardless of whether they were previously offered or enrolled in an individual HRA or previously provided a QSEHRA, if:

1. The qualified individual, enrollee, or dependent is not enrolled in the individual coverage HRA; or

2. The qualified individual, enrollee, or dependent is not covered by the QSEHRA on the day immediately prior to the triggering event; and

(b)

1. Have sixty (60) days before the triggering event to select a QHP; or

2. Have sixty (60) days before or after the triggering event if the HRA or QSEHRA was not required to provide the notice described in 45 C.F.R. 146.123(c)(6), 26 C.F.R. 54.9802-4(c)(6), and 29 C.F.R. 2590.702-2(c)(6) or 26 U.S.C. 9831(d)(4).

(17) A qualified individual or enrollee, or the dependent of a qualified individual or enrollee, who is eligible for advance payments of the premium tax credit, and whose household income, as defined in 26 C.F.R. 1.36B-1(e), is expected to be no greater than 150 percent of the Federal poverty level, may enroll in a QHP or change from one QHP to another one time per month during periods of time when the applicable taxpayer's applicable percentage for purposes of calculating the premium assistance

amount, as defined in 26 U.S.C. 36B(b)(3)(A), is set at zero.

(18) If a qualified individual, enrollee, or dependent of a qualified individual or an enrollee did not receive timely notice of an event that triggers eligibility for a SEP under this section, and otherwise was reasonably unaware that a triggering event described in this section occurred, the qualified individual, enrollee, or his or her dependent shall have sixty (60) days from the date that he or she knew, or reasonably should have known, of the occurrence of the triggering event.

(19) A qualified individual, enrollee, or dependent of a qualified individual or enrollee, described in 45 C.F.R. 155.420 as being eligible for a SEP not specified in this section of this administrative regulation shall be eligible for a SEP.

(20) For purposes of this section, a qualified individual, enrollee, or dependent of a qualified individual or enrollee shall be:

(a) Eligible for APTC if eligibility is for an amount greater than zero dollars per month; or

(b) Ineligible for APTC if eligible for a maximum of zero dollars per month.

Section 7. Verifications for Special Enrollment Periods.

(1) KHBE shall conduct pre-enrollment verification of newly enrolling individuals as established by this section.

(2) A QHP enrollment for an individual subject to verification shall not be submitted to the issuer pending verification for a SEP.

(3) For an enrollment subject to verification as described in this section, a new enrollee shall have thirty (30) days from the date of plan selection to provide requested documentation.

(4) A qualifying individual described in Section 6(2)(h) of this administrative regulation shall provide proof of:

(a) A permanent move during the past sixty (60) days; and

(b) Either:

1. Having had minimum essential coverage for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Having:

a. Lived in a foreign country or in a US territory for one (1) or more days during the sixty (60) days preceding the qualifying event;

b. Lived in a service area where no qualified health plan was available through KHBE for one (1) or more days during the sixty (60) days preceding the qualifying event or their most recent open enrollment or SEP; or

c. Status as an Indian.

(5) For a marriage, as described in Section 6(2)(b) of this administrative regulation, a qualified individual shall provide proof of marriage during the past sixty (60) days.

(6) Other than as described in subsections (4) and (5) of this section, a qualified individual described in Section 6(2)(b) of this administrative regulation shall provide proof of:

(a) The qualifying event during the past sixty (60) days; and

(b) Either:

1. Having minimum essential coverage as described in Section 6(2)(a) of this administrative regulation for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Meeting the requirements in subsection (4)(b) of this section.

(7) For a loss of minimum essential coverage as described in Section 6(2)(a) of this administrative regulation, a qualified individual shall provide proof of coverage for one (1) or more days during the past sixty (60) days.

(8) SEP verification shall not impact an enrollee's effective date of coverage except as provided in 45 C.F.R. 155.400(e)(1)(iii).

Section 8. Eligibility Redetermination During a Benefit Year.

(1) Eligibility shall be redetermined for an enrollee during a benefit year if the KHBE receives and verifies:

(a) New information reported by an enrollee; or

(b) Updated information obtained in accordance with 45 C.F.R. 155.330(d).

(2) Except as established by subsection (3) of this section, an enrollee or an application filer, on behalf of an enrollee, shall report within thirty (30) days:

(a) A change related to an eligibility standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Via a method described in Section 1(5) of this administrative regulation.

(3) An enrollee who did not request an eligibility determination for an insurance affordability program shall not report a change related to income.

(4) If new information provided by an enrollee in accordance with subsection (1)(a) of this section is verified:

(a) Eligibility shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation;

(b) The enrollee shall be notified of the redetermination in accordance with the requirements in 45 C.F.R. 155.310(g); and

(c) If applicable, the enrollee's employer shall be notified in accordance with the requirement established by 45 C.F.R. 155.310(h).

(5) If updated information obtained in accordance with subsection (1)(b) of this section regarding death or related to eligibility not regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information; and

2. The projected enrollees' eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice in paragraph (a) of this subsection to notify the KHBE if the information is inaccurate.

(6) If an enrollee responds to the notice in subsection (5)(a) of this section, contesting the updated information in the notice, the KHBE shall proceed in accordance with 45 C.F.R. 155.315(f).

(7) If an enrollee does not respond to the notice in subsection (5)(a) of this section within the thirty (30) day timeframe specified in subsection (5)(b) of this section, the KHBE shall:

(a) Redetermine eligibility in accordance with the standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(8) With the exception of information regarding death, if updated information regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information regarding income, family size, and family composition obtained in accordance with subsection (1)(b) of this section; and

2. The projected eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice to:

1. Confirm the updated information; or

2. Provide additional information.

(9) If the enrollee responds to the notice in subsection (8)(a) of this section by confirming the updated information, the KHBE shall:

(a) Redetermine the enrollee's eligibility in accordance with Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(10) If the enrollee does not respond to the notice in subsection (8)(a) of this section within the thirty (30) day timeframe established by subsection (8)(b) of this section, the KHBE shall maintain the enrollee's existing eligibility determination without considering the updated information in subsection (8)(a) of this section.

(11) If the enrollee responds with more updated information, the KHBE shall verify the updated information in accordance with 45 C.F.R. 155.315 and 155.320.

(12) The effective date of a change resulting from a redetermination pursuant to this section shall be in accordance with 45 C.F.R. 155.330(f).

(13) The amount of an APTC or eligibility for a CSR as a result of an eligibility redetermination in accordance with this section shall be recalculated in accordance with 45 C.F.R. 155.330(g).

Section 9. Annual Eligibility Redetermination.

(1) A qualified individual shall:

(a) Have an annual redetermination of eligibility; and

(b) Be sent a notice of the annual redetermination that includes:

1. The data obtained under subsection (2) of this section;

2. The data used in the qualified individual's most recent eligibility determination; and

3. The projected eligibility determination for the following year, after considering the information in subparagraph 1. of this paragraph.

(2)

(a) A qualified individual requesting an eligibility determination for an insurance affordability program shall authorize the release of updated tax return information, data regarding Social Security benefits, and data regarding MAGI-based income as described in 45 C.F.R. 155.320(c)(1) for use in the qualified individual's eligibility redetermination.

(b) Eligibility shall not be redetermined for a qualified individual requesting an eligibility determination for an insurance affordability program who does not authorize the release of updated tax return information.

(3) A qualified individual may authorize the release of tax return information for a period of no more than five (5) years based on a single authorization, if the authorization permits the qualified individual to:

(a)

1. Decline to authorize the release of updated tax return information; or

2. Authorize the release of updated tax return information for fewer than five (5) years; and

(b) Discontinue, change, or renew the authorization at any time.

(4) A qualified individual, an application filer, or an authorized representative, on behalf of the enrollee, shall report any changes with respect to the information listed in the notice described in subsection (1)(b) of this section:

(a) Within thirty (30) days from the date of the notice; and

(b) Via a method listed in Section 1(5) of this administrative regulation.

(5) Any information reported by a qualified individual under subsection (4) of this section shall be verified as set forth in Section 4 of this administrative regulation.

(6) For a qualified individual who fails to act on the notice described in subsection (1)(b) of this section within the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined as set forth in subsection (7)(a) of this section.

(7)

(a) After the thirty (30) day period established by subsection (4) of this section:

1. Eligibility of a qualified individual shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation using the information provided in the notice, as supplemented with any information reported by the qualified individual verified in accordance with Section 4 of this administrative regulation;

2. The qualified individual shall be notified in accordance with the requirements in 45 C.F.R. 155.310(g); and

3. If applicable, the qualified individual's employer shall be notified in accordance with 45 C.F.R. 155.310(h).

(b) If a qualified individual reports a change with respect to the information provided in the notice established by subsection (1)(b) of this section that has not been verified by the KHBE as of the end of the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined after verification in accordance with Section 4 of this administrative regulation.

(8) The effective date of a redetermination in accordance with this section shall be the later of:

(a) The first day of the coverage year following the year in which the notice in subsection (1)(b) of this section is issued to the qualified individual; or

(b) The date determined in accordance with 45 C.F.R. 155.330(f)(1).

(9) If an enrollee remains eligible for coverage in a QHP upon annual redetermination and has not terminated coverage from the QHP in accordance with Section 10 of this administrative regulation, the enrollee shall:

(a) Remain in the QHP selected the previous year that may include modifications that shall be approved by the Department of Insurance; or

(b) Be enrolled by KHBE in a QHP that is substantially similar that shall be approved by the Department of Insurance.

(10) Eligibility shall not be redetermined if a qualified individual was redetermined eligible in accordance with this section during the prior year, and the qualified individual was not enrolled in a QHP when the redetermination and has not enrolled in a QHP since the redetermination.

Section 10. Eligibility to Enroll in a QHP that is a Catastrophic Plan.

(1) In addition to the requirements in Section 1 of this administrative regulation, to enroll in a QHP that is a catastrophic plan, an applicant shall:

(a) Not have attained the age of thirty (30) before the beginning of the plan year; or

(b) Have a certificate of exemption from the shared responsibility payment issued by the KHBE or HHS for a plan year in accordance with:

1. 26 U.S.C. 5000A(e)(1); or

2. 26 U.S.C. 5000A(e)(5).

(2) Verification related to eligibility for enrollment in a QHP that is a catastrophic plan shall be in accordance with 45 C.F.R. 155.315(j).

Section 11. Special Eligibility Standards and Processes for Indians.

(1) An applicant who is an Indian shall be eligible for the special cost sharing described in 45 C.F.R. 155.350(b) if the applicant:

(a) Meets the requirements established by 45 C.F.R. 155.305(a) and (f);

(b) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 305(g)(3)(vi) for the benefit year for which coverage is requested; and

(c) Enrolls in a QHP through the KHBE.

(2) An applicant who is an Indian shall have an eligibility determination for the special cost sharing described in 45 C.F.R. 155.350(b) without requesting an eligibility determination for an insurance affordability program.

Section 12. Eligibility Determination and Notification Standards.

(1) Eligibility shall be determined in accordance with 45 C.F.R. 155.310(e).

(2) Notifications regarding eligibility determinations shall be made in accordance with 45 C.F.R. 155.310(g).

Section 13. Termination of Coverage.

(1) An enrollee, including an enrollee who has obtained other minimum essential coverage, may terminate coverage in a QHP by submitting a request:

(a) Via the Web site at www.kynect.ky.gov;

(b) By telephone;

(c) To the QHP issuer;

(d) By mail; or

(e) In person.

(2) An enrollee in a QHP may choose to remain in a QHP without financial assistance if the enrollee:

(a)

1. Has been identified as eligible for other minimum essential coverage through the data matching described in 45 C.F.R. 155.330(d); or

2. Has been identified as eligible for Medicaid, KCHIP, or Medicare and has granted prior permission to KHBE; and

(b) Does not request termination in accordance with subsection

(1) of this section.

(3) The last day of coverage of an enrollee who terminates coverage in accordance with subsection (1) of this section shall be:

(a) The termination date requested by the enrollee if the enrollee provides reasonable notice in accordance with subsection (7) of this section;

(b) Fourteen (14) days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice in accordance with subsection (7) of this section;

(c) A date determined by the issuer of an enrollee's QHP if the issuer is able to terminate coverage in fewer than fourteen (14) days and the enrollee requests an earlier termination effective date; or

(d) If the enrollee is newly eligible for Medicaid or KCHIP, the day before coverage in Medicaid or KCHIP begins.

(4) An enrollee's health coverage shall be terminated by an issuer if:

(a) The enrollee is no longer eligible for coverage in a QHP through the KHBE;

(b) The enrollee has failed to pay a premium; [and]

1. A three (3) month grace period required for an individual receiving an APTC has been exhausted as described in 45 C.F.R. 156.270(g); or

2. A thirty (30) day grace period required by KRS 304.17A-243 for an individual not receiving an APTC has been exhausted;

(c) The enrollee's coverage is rescinded in accordance with 45 C.F.R. 147.128 or KRS 304.14-110;

(d) The enrollee is enrolled in a QHP that:

1. Has been decertified pursuant to 900 KAR 10:115; or

2. Has withdrawn from participation in the KHBE; or

(e) The enrollee changes from one (1) QHP to another during an open enrollment period or SEP in accordance with Section 5 or 6 of this administrative regulation.

(5) The last day of coverage of an enrollee shall be:

(a) If terminated in accordance with subsection (4)(a) of this section, the last day of the month following the month in which the notice described in subsection (7) of this section is sent by KHBE, unless the enrollee requests an earlier termination date in accordance with subsection (3) of this section;

(b) If terminated in accordance with subsection (4)(b)1. of this section, the last day of the first month of the three (3) month grace period; or

(c) If terminated in accordance with subsection (4)(b)2. of this section, in accordance with KRS 304.17A-245.

(6) For an enrollee who is terminated in accordance with subsection (4)(e) of this section, the last day of coverage in an enrollee's prior QHP shall be the day before the effective date of coverage in the enrollee's new QHP.

(7) Reasonable notice shall be fourteen (14) calendar days from the requested date of termination of coverage.

Section 14. Authorized Representative.

(1) An individual may designate an authorized representative in accordance with 45 C.F.R. 155.227.

(2) An authorized representative shall comply with state and federal laws regarding:

(a) Conflict of interest; and

(b) Confidentiality of information.

(3) An applicant may authorize a representative to:

(a) Sign an application on behalf of the applicant;

(b) Submit an update or respond to a redetermination of eligibility for the applicant in accordance with Section 7 or 8 of this administrative regulation;

(c) Receive a copy of a notice or communication from the KHBE;

(d) Make an appeal request on behalf of an appellant; and

(e) Act on behalf of the individual in a matter with the KHBE.

(4) An authorization for an authorized representative shall be valid until:

(a) An applicant:

1. Changes the authorization; or

2. Notifies the KHBE and the authorized representative, through a method described in 45 C.F.R. 155.405(c), that the

authorized representative is no longer authorized to act on behalf of the individual; or

(b) The authorized representative informs the KHBE and the individual that the authorized representative is no longer acting as the authorized representative.

Section 15. SHOP Employer Eligibility.

(1) An employer shall be a qualified employer and eligible to purchase coverage through SHOP if the employer meets the eligibility requirements established in 45 C.F.R. 155.710(b).

(2) An employer shall apply for an eligibility determination online to participate in SHOP at www.kynect.ky.gov.

(3) Upon application, an employer shall provide:

(a) Employer name;

(b) Address of employer location;

(c) A valid federal employer identification number; and

(d) A statement from the employer attesting that the employer is:

1. A small employer; and

2. Offering at a minimum, all full-time employees coverage in a QHP through SHOP.

(4) Except as provided in 45 C.F.R. 147.104(b)(1)(i)(B), a qualified employer shall meet a minimum group participation rate of fifty (50) percent, calculated as described in 45 C.F.R. 155.706(b)(10)(i).

(5) A qualified employer may purchase coverage for its qualified employees at any time during the year.

(6) An employer's plan year shall be the twelve (12) month period beginning with the effective date of coverage.

(7) An employer shall enroll in a QHP or SADP certified by the division by contacting an issuer or a participating agent.

(8) A qualified employer who ceases to be a small employer by reason of an increase in the number of employees shall be eligible to participate in SHOP until the employer:

(a) Fails to otherwise meet the eligibility criteria of this section;

or

(b) Chooses to no longer purchase health coverage.

(9) An employer that fails to meet the requirements in subsection (1) of this section, shall be denied eligibility to participate in SHOP.

Section 16. SHOP Right to Formal Review.

(1) An employer applicant may request a formal review of a:

(a) Denial of eligibility as set forth in Section 15(9) of this administrative regulation; or

(b) Failure of the KHBE to make an eligibility determination to participate in SHOP within fifteen (15) calendars days of receiving an application from an employer.

(2) Within ninety (90) days of receipt of a notice of denial of eligibility, an employer may submit a formal review request to the division by:

(a) [By]Telephone;

(b) [By]Mail; or

(c) [By]Email.

(3) A formal review request shall clearly state a reason for the formal review in accordance with subsection (1) of this section.

(4) If an employer is notified that a formal review request does not meet the requirements of this section, the employer may amend the request to satisfy the requirements.

Section 17. SHOP Dismissal of a Formal Review.

(1) A formal review by an employer shall be dismissed if the employer:

(a) Withdraws the formal review request in writing; or

(b) Fails to submit a formal review request that meets the requirements in Section 16 of this administrative regulation.

(2) If a formal review is dismissed in accordance with subsection (1) of this section, the division shall provide written notice to the employer:

(a) Within three (3) business days of the dismissal; and

(b) That includes the reason for dismissal.

(3) The division may reverse a dismissal under subsection (2) of this section if an employer makes a written request within thirty (30) days of the date of the notice of dismissal in subsection (2) of

this section and provides new information supporting a reversal of the previous decision.

Section 18. SHOP Desk Review.

(1) An employer shall have the opportunity to submit evidence to the division for review of an eligibility determination.

(2) The division shall consider:

(a) The information used to determine the employer's eligibility; and

(b) Any additional evidence provided by the employer under subsection (1) of this section.

(3) An applicant's formal review request shall be desk reviewed by one (1) or more impartial division officials who have not been directly involved in the eligibility determination implicated in the formal review.

Section 19. SHOP Formal Review Decision.

(1) A desk review by an official of the division shall result in a final formal review decision.

(2) A final formal review decision shall:

(a) Be in writing;

(b) Be based on the eligibility requirements in Section 15 of this administrative regulation;

(c) State the decision and the effect of the decision on the eligibility of the employer;

(d) Summarize the facts relevant to the formal review;

(e) Identify the legal and regulatory basis for the decision;

(f) State the effective date of the decision; and

(g) Be rendered within ninety (90) days of receipt by the division of an employer formal review request.

(3) The division shall issue written notice of the formal review decision to the employer within ninety (90) days of the date of receipt of a formal review request.

(4) If the formal review decision affects the employer's eligibility, the division shall implement the formal review decision.

Section 20. SHOP Formal Review Record. The formal review record shall be available and accessible to an employer:

(1) In a convenient format; and

(2) During regular business hours, which shall:

(a) Be Monday through Friday from 8:00 a.m. to 4:30 p.m.; and

(b) Exclude holidays.

Section 21. Incorporation by Reference.

(1) "Kentucky QHP/APTC Eligibility Verification Plan", Revised May 2022[March, 2024], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Health Benefit Exchange, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.khbe.ky.gov.

JILNAR E. MASRI, Acting Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 28, 2022

FILED WITH LRC: June 7, 2022 at 8:03 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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 Advisor, 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: Melea Rivera and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market, the operation of a Small Business Health Options Program, and the formal review process related to SHOP on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform issuers of the requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange. This administrative regulation is necessary:

1. So the Kentucky Health Benefit Exchange may timely determine eligibility and facilitate enrollment in qualified health plans. Eligibility determination and enrollment in qualified health plans is necessary for the provision of health care services provided in the commonwealth through the KHBE. Additionally, individuals must enroll through the KHBE for the purchase of health insurance to receive advanced payments of the premium tax credit and cost sharing deductions;

2. To establish the policies and procedures relating to the operation of a Small Business Health Options Program; and

3. To establish policies and procedures for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides detailed requirements for individual enrollment and eligibility on the Kentucky Health Benefit Exchange, requirements for the small business health options program and how small businesses may enroll employees in qualified plans to comply with the statute and qualify for small employer health insurance tax credits, and establishes a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for individual enrollment and eligibility on the Kentucky Health Benefit Exchange; requirements for the small business health options program and how small businesses may enroll employees in qualified plans to comply with the statute and qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R; and provides detailed requirements for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(2) If 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 new special enrollment options and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This is to clarify that these options are available to Kentuckians.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.99 requires the Division of health benefit exchange to carry out the functions and responsibilities required pursuant to 42 U.S.C. sec. 18031 to implement and

comply with federal regulations. This amendment adds additional Special Enrollment Periods as provided by federal regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will give Kentuckians access to additional special enrollment period as provided by state and federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 75,000 enrollees that may apply for health insurance in a qualified health plan to be offered on the Kentucky Health Benefit Exchange, approximately 2,500 small business employees that may purchase health insurance for their employees and potentially qualify for small employer health insurance tax credits, and approximately 250 SHOP employers seeking health insurance coverage on the Kentucky Health Benefit Exchange that may request a formal review.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual will make an application for a qualified health plan in the individual market offered on the KHBE. An application may be submitted via the KHBE website, by telephone, by mail, or in person; each small employer will be able to submit an application online to participate in SHOP and purchase insurance for their employees through an agent or issuer; and each employer seeking to participate on SHOP may make request a formal review related to eligibility on the Kentucky Health Benefit Exchange.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to an individual or small employer that wishes to make an application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual as individuals that enroll in a qualified health plan through the KHBE may be able to receive advanced payments of the premium tax credit and cost sharing deductions for the purchase of health insurance; each small business as it may ease the administrative burden of administering their health insurance program and may benefit certain employers through health insurance tax credits; and each employer that may request to participate on the Kentucky Health Benefit Exchange by providing a formal review process.

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

(a) Initially: The estimated cost to implement these changes will be approximately \$150,000 to the state but will result in significant help to Kentuckians who are seeking insurance outside of open enrollment.

(b) On a continuing basis: There are no additional cost expected to implement these changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Division of Health Benefit Exchange existing budget. Approximately \$100,000 of Federal Grant funds will be used to implement these changes. No new funding will be needed to implement the provisions of this regulation.

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

(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 and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation

applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. KRS 304.14-110, 304.17A-125, 304.17A-243, 304.17A-245, Chapter 304, 26 U.S.C. 5000A, 6011, 6012, 9831, 42 U.S.C. 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

(2) State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market to be offered on the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156, it establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156, and it establishes the policies and procedures for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(3) Minimum or uniform standards contained in the federal mandate The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky. KHBE must establish eligibility and enrollment criteria for individuals wishing to enroll in qualified health plans offered on the KHBE. KHBE must establish a Small Business Health Options Program (SHOP). A SHOP is designed to assist qualified small employers in the state in enrolling their employees in qualified health plans in the state's small group market. KHBE must make a formal review process available to SHOP employers.

(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 administrative regulation does not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE

(1) What 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 the Office of Health Data and Analytics, Division of Health Benefit Exchange within the Cabinet for Health and Family Services and the Department of Insurance within the Public Protection and Regulation Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 304.14-110, 304.17A-125, 304.17A-243, 304.17A-245, Chapter 304, 26 U.S.C. 5000A, 6011, 6012, 9831, 42 U.S.C. 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? The amendment to this program will cost approximately \$150,000 to implement.

(d) How much will it cost to administer this program for subsequent years? No additional cost should be incurred to administer the amendment to this program.

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

Revenues (+/-):

Expenditures (+/-): \$150,000

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings for a regulated entity.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings for a regulated entity.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not generate any cost for a regulated entity.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not generate any cost for a regulated entity.

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

Cost Savings (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This regulation provides eligibility requirements for an available program.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic major impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Amendment)

907 KAR 1:008. Ambulatory surgical center services and reimbursement.

RELATES TO: KRS 205.520(3), 205.560(2), 42 C.F.R. 416.164 and 416.166, 447.271, Part 441 Subpart E or F

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's

indigent citizenry. This administrative regulation establishes the coverage provisions and method for establishing payment for an ambulatory surgical center.

Section 1. Scope of Coverage. The Medicaid Program shall cover medically necessary, medically appropriate services rendered by a participating ambulatory surgical center (ASC) licensed by its respective state and certified for Medicare participation.

Section 2. Basis for Reimbursement. (1) Beginning with the effective date of this regulation, the Department for Medicaid Services shall utilize the January 1, 2022, ASC fee schedule published by the Centers for Medicare and Medicaid Services (CMS) to determine the ASC rates, subject to the following adjustments and updating procedures:

(a) Reimbursement for a procedure shall be the rate specific to that procedure as assigned by CMS, adjusted by the wage index utilized by CMS for the Cincinnati, OH, Core-Based Statistical Area, or its equivalent.

(b) Procedure codes that are considered a packaged service by CMS with a Medicare rate of \$0 shall be reimbursed at a rate of \$0.

(c) Medicaid covered procedures not included on the Medicare fee schedule shall be reimbursed at forty-five (45) percent of billed charges.

(d) Bilateral procedures shall be reimbursed at one hundred and fifty (150) percent of billed charges.

(e) Reimbursement shall follow applicable Medicare rules for multiple endoscopy discounting and multiple procedure discounting. In the event that both discounts apply to a single claim, the multiple endoscopy discount shall be applied first.

(f) Effective January 1, 2023, and each January 1 thereafter, the ASC fee schedule utilized for payment purposes shall be updated to reflect the latest January 1 Medicare ASC fee schedule published by CMS, inclusive of any applicable correction notices.

(2) Ambulatory surgical center coverage provisions shall be as established in 42 C.F.R. 416 Subpart F, including 42 C.F.R. 416.164 and 416.166, [1996 Medicare ambulatory surgical center group rates for the federal Cincinnati, Ohio – Kentucky region to reimburse for an ambulatory surgical center service. The following chart establishes the ambulatory surgical center reimbursement rate for each corresponding surgical group:

Ambulatory Surgical Center Group	Reimbursement Rate
Group 1	\$307.38
Group 2	\$412.79
Group 3	\$471.90
Group 4	\$582.25
Group 5	\$664.02
Group 6	\$775.59
Group 7	\$921.15
Group 8	\$911.55

(2) Reimbursement for a procedure shall be the surgical group rate specific to that procedure as assigned by the Centers for Medicare and Medicaid Services.

(3) Reimbursement for a procedure which does not have a surgical group rate shall be forty-five (45) percent of charges.

(4) Ambulatory surgical center group surgical and covered provisions are established in the Ambulatory Surgical Centers Manual.]

Section 3. Reproductive Services. (1) A reproductive service shall be reimbursable when performed in compliance with this administrative regulation and 42 C.F.R. Part 441 Subpart E or F, as relevant:

(2) The appropriate certification form or forms shall be completed and signed by the physician. A copy of the completed form and an operative report shall accompany each claim submitted for payment.

(3) If a sterilization is performed in conjunction with another surgical procedure and federal regulations governing payment for

the sterilization have not been met, the department shall only make payment for the covered non-sterilization procedure.

(4) Claims for unilateral or laparoscopic surgical procedures that could result in sterilization shall be submitted with documentation verifying that the recipient was not sterilized as a result of the performed procedure.

Section 4. Documentation Requirements. (1) All services reimbursed by the department shall be:

- (a) Medically necessary;
- (b) Medically appropriate; and
- (c) Related to the diagnosis or treatment of:
 - 1. Illness;
 - 2. Injury;
 - 3. Impairment; or
 - 4. Maternity care.

(2) Documentation in recipient medical records shall support necessity and substantiate the level of service billed.

(3) Medical necessity shall be determined in accordance with 907 KAR 3:130.

(4) The department shall have the authority to audit any:

- (a) Claim;
- (b) Medical record; or
- (c) Documentation associated with any claim or medical record.

Section 5. Federal Approval and Federal Financial Participation. The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

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

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant. ~~Incorporation by Reference. (1) "The Ambulatory Surgical Centers Manual", October 2002 edition, Department for Medicaid Services, is incorporated by reference.~~

~~(2) It may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 25, 2022

FILED WITH LRC: June 7, 2022 at 8:03 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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 Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement rates and coverage provisions for procedures performed in ambulatory surgical centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement rates and coverage provisions for procedures performed in ambulatory surgical centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement rates and coverage provisions for ambulatory surgical centers as authorized by KRS 194A.030(3), 194A.050(1), and 205.560(2).

(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 reimbursement rates and coverage provisions for ambulatory surgical centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment moves certain requirements that were previously located within the ambulatory surgical centers manual into the body of the administrative regulation. The administrative regulation is further amended to update to the 2022 ambulatory surgical center fee schedule, and to establish an ongoing updating process to the most currently available ambulatory surgical center fee schedule. The administrative regulation also adds a new section relating to reproductive services. This language previously existed within the ambulatory surgical center manual and is being moved to the administrative regulation with the deletion of the manual. Another new section relating to documentation requirements is being included that contains requirements that were previously located in the Ambulatory Surgical Centers Manual. Language relating to the 1996 fee schedule is being deleted and the section relating to material incorporated by reference is also being deleted.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the clinical criteria established by 907 KAR 3:130.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by updating ambulatory surgical center reimbursement policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by updating reimbursement policies and documentation requirements for services provided in ambulatory surgical centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Seventy-four (74) enrolled ambulatory surgical centers will be impacted by the amendment to the administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

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

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to a process for updating and modernizing documentation and

reimbursement.

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

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

(b) On a continuing basis: No additional expenditures are necessary to implement this amendment.

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 416 Subpart F.

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

(3) Minimum or uniform standards contained in the federal mandate. Subpart F of 42 C.F.R. 416 establishes and describes the broader categories of covered services and limitations of ambulatory surgical centers.

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? This amendment is expected to cost approximately an additional \$108,494 total annually, \$30,194 of which would be the state's responsibility. Estimate could vary depending on CMS updates to the fee schedule and utilization.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to cause additional costs in administering this program in subsequent years. This amendment is expected to cost approximately an additional \$108,494 total annually, \$30,194 of which would be the state's responsibility. Estimate could vary depending on CMS updates to the fee schedule and utilization.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 1:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

RELATES TO: KRS 194A.060, 202A.011, [205.520(3), 205.8451(7), (9), 205.622, 369.101 - 369.120, 422.317, 434.840-434.860, 42 C.F.R. Part 2, 400.203, 415.208, 431.17, 431.52, 431 Subpart F, 45 C.F.R. Parts 160 and 164, 42 U.S.C. 290ee-3, 1320d-2 to 1320d-8]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 210.450[; 42 U.S.C. 1396a-d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding community mental health center (CMHC) behavioral health services provided to Medicaid recipients.

Section 1. Definitions. (1) "Approved behavioral health practitioner" means an independently licensed practitioner who is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) A licensed professional art therapist;
- (l) A licensed clinical alcohol and drug counselor; or
- (m) A licensed behavior analyst.

(2) "Approved behavioral health practitioner under supervision" means an individual who is under the billing supervision of an approved behavioral health practitioner and who is:

- (a)1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
- 2. A certified psychologist working under the supervision of a board-approved licensed psychologist;
- 3. A marriage and family therapy associate;
- 4. A certified social worker;
- 5. A licensed professional counselor associate;
- 6. A licensed professional art therapist associate;
- 7. A licensed clinical alcohol and drug counselor associate;
- 8. A certified alcohol and drug counselor; or
- 9. A licensed assistant behavior analyst; and
- (b) Employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

(3) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(4) "Community mental health center" or "CMHC" means a facility that[which] meets the community mental health center requirements established in 902 KAR 20:091.

(5)[(2)] "Department" means the Department for Medicaid Services or its designee.

(6)[(3)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(7)[(4)] "Face-to-face" means occurring[:

(a)] in person[; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication].

(8)[(5)] "Federal financial participation" is defined by[is] 42 C.F.R. 400.203.

(9)[(6)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10)[(7)] "Mental health associate" means an individual who meets the mental health associate requirements established in the [Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers.

(11) "Paraprofessional practitioner under supervision" means an individual who performs services under the billing supervision of an approved behavioral health practitioner who is employed by the same CMHC or under contract with the same CMHC as the billing supervisor. Paraprofessional practitioners include:

- (a) Peer support specialists;
- (b) Community support associates; or

(c) Registered behavior technicians.

(12)[(8)] "Professional equivalent" means an individual who:

(a) Met[meets] the professional equivalent requirements established in the [Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers prior to January 1, 2018; and

(b) Performs services under the billing supervision of an approved behavioral health practitioner, who is employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

(13)[(9)] "Provider" is defined by KRS 205.8451(7).

(14)[(10)] "Qualified mental health professional" means an individual who meets the requirements established in KRS 202A.011[0044](12).

(15)[(11)] "Recipient" is defined by KRS 205.8451(9).

(16) "Telehealth" is defined by KRS 205.510(16).

Section 2. Requirements for a Psychiatric Nurse. A registered nurse employed by a participating community mental health center shall be considered a psychiatric or mental health nurse if the individual:

(1) Possesses a Master of Science in nursing with a specialty in psychiatric or mental health nursing;

(2)(a) Is a graduate of a four (4) year nursing educational program with a Bachelor of Science in nursing; and

(b) Possesses at least one (1) year of experience in a mental health setting;

(3)(a) Is a graduate of a three (3) year nursing educational program; and

(b) Possesses at least two (2) years of experience in a mental health setting; or

(4)(a) Is a graduate of a two (2) year nursing educational program with an associate degree in nursing; and

(b) Possesses at least three (3) years of experience in a mental health setting.

Section 3. ~~[Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers.~~ The conditions for participation, services covered, and limitations for the community mental health center behavioral health services component of the Medicaid program shall be as specified in:

(1) This administrative regulation; and

(2) The ~~[Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers.~~

Section 4. Covered Services. (1) Behavioral health services covered pursuant to this administrative regulation and pursuant to the ~~[Community Mental Health Center]Behavioral Health Services Manual for Community Mental Health Centers~~ shall be rehabilitative mental health and substance use disorder services including:

(a) Individual ~~[outpatient]~~therapy;

(b) Group ~~[outpatient]~~therapy;

(c) Family ~~[outpatient]~~therapy;

(d) Collateral ~~[outpatient]~~therapy;

(e) Therapeutic rehabilitation services;

(f) Psychological testing;

(g) Screening;

(h) An assessment;

(i) Crisis intervention;

(j) Service planning;

(k) A screening, brief intervention, and referral to treatment;

(l) Mobile crisis services;

(m) Assertive community treatment;

(n) Intensive outpatient program services;

(o) Residential crisis stabilization services;

(p) Partial hospitalization;

(q) Residential services for substance use disorders;

(r) Day treatment;

(s) Comprehensive community support services;

(t) Peer support services;[or]

(u) Withdrawal management;

(v) Medication assisted treatment (MAT);

(w) Applied behavior analysis;

(x) Chemical dependency treatment center services;

(y) Prevention education with substance use risk factors and case management services for pregnant or postpartum individuals with a substance use disorder; or

(z) A narcotic treatment program (NTP), if separately licensed pursuant to 908 KAR 1:374[Parent or family peer support services].

(2)(a) To be covered under this administrative regulation, a service listed in subsection (1) of this section shall be:

1. Provided by a community mental health center that is:

a. Currently enrolled in the Medicaid program in accordance with 907 KAR 1:672; and

b. Except as established in paragraph (b) of this subsection, currently participating in the Medicaid program in accordance with 907 KAR 1:671;

2. Provided in accordance with:

a. This administrative regulation; and

b. The ~~[Community Mental Health Center]~~Behavioral Health Services Manual for Community Mental Health Centers; and

3. Medically necessary.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid program.

Section 5. Electronic Documents and Signatures. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with requirements established in KRS 369.101 to 369.120 and all applicable state and federal laws and regulations.

(2) A CMHC choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy ~~that~~[which] shall:

1. Be complied with by each of the center's employees, officers, agents, and contractors; and

2. Stipulate which individuals have access to which electronic signatures and password authorization;

(b) Ensure that electronic signatures are created, transmitted, and stored securely;

(c) Develop a consent form that shall:

1. Be completed and executed by each individual utilizing an electronic signature; and

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(d) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 6. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, on the same day of service.

(2) For example, if a recipient is receiving a behavioral health service from an independently enrolled approved behavioral health practitioner~~[behavioral health service provider]~~, the department shall not reimburse for the same service provided to the same recipient by a community mental health center on the same day of service.

Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information, if available, regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The name of the physical health provider; and

j. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening if the community mental health center performed the screening;

b. Assessment; and

c. Disposition;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services;

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

a. Cabinet for Health and Family Services upon request; or

b. Managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient; and

(c) Document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.

(4)(a) Except as established in paragraph (b) or (c) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's health record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) or (b) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(5) A provider shall comply with 45 C.F.R. Part 164.

(6) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(7)(a) A provider's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b) Include the following:

1. The specific service rendered;

2. The date and actual time the service or services were rendered;

3. The name and practitioner level of the individual who rendered the service;

4. The setting of the service rendered and the amount of time to deliver the service;

5. The relationship of the service or services to the treatment goals and objectives in the plan of care; and

6. The individual's progress toward the treatment goals and objectives in the plan of care.

(c) 1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated.

2. Notes shall not be erased or illegibly marked out.

(d) [(e)] If services are provided by a practitioner working under supervision or a paraprofessional practitioner working under supervision, there shall be:

1. A billing supervisor co-signature on the service note within thirty (30) days; and

2. A monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision or the paraprofessional practitioner working under supervision concerning the:

1. Case; and

2. Supervising professional's evaluation of the services being provided to the recipient.

(8) Immediately following a screening of a recipient, the provider shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c) 1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(9) Any change to a recipient's plan of care shall be documented, signed, and dated by the:

(a) Rendering practitioner; and

(b) Recipient or recipient's representative.

(10)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering provider and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other nonreimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(11)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

b. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who was terminated from receiving services shall be fully completed within ten (10) days following termination.

(12) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to

the prior case history with a note regarding the interval period shall be acceptable.

(13)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring CMHC shall, if the recipient gives the CMHC written consent to do so, within ten (10) business days of the transfer or referral, transfer the recipient's health records in a manner that complies with the health records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring CMHC shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's health records in a manner that complies with the health records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290ee-3; and

b. 42 C.F.R. Part 2.

(14)(a) If a CMHC's Medicaid program participation status changes as a result of voluntarily terminating from the Medicaid program, involuntarily terminating from the Medicaid program, a licensure suspension, or death of a provider, the health records regarding recipients to whom the CMHC has provided services shall:

1. Remain the property of the CMHC; and

2. Be subject to the retention requirements established in subsection (4) of this section.

(b) A CMHC shall have a written plan addressing how to maintain health records if there is ~~in the event of~~ a provider's death.

Section 8. Medicaid Program Participation Compliance. (1) A CMHC shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a CMHC receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the CMHC shall return the payment to the department or managed care organization that issued the duplicate payment or overpayment.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

(3) Documentation associated with the claim or health record.

Section 11. Federal Approval and Federal Financial Participation. [(4)] The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) [(a)] Receipt of federal financial participation for the coverage; and

(2) [(b)] Centers for Medicare and Medicaid Services' approval for the coverage.

~~[(2) The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.]~~

Section 12. Appeal Rights. (1) An appeal of an adverse action by the department regarding a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 13. Incorporation by Reference. (1) The "Behavioral Health Services Manual for Community Mental Health Centers", April 2022~~["Community Mental Health Center Behavioral Health Services Manual", May 2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <https://chfs.ky.gov/agencies/dms/dpo/bpb/Pages/cmhc.aspx>~~[http://www.chfs.ky.gov/dms/incorporated.htm]~~.

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 25, 2022

FILED WITH LRC: June 7, 2022 at 8:03 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the behavioral health coverage provisions and requirements regarding Medicaid program services provided within a community mental health center (CMHC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022), mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal

mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates a new manual that is titled the Behavioral Health Services Manual for Community Mental Health Centers. This amendment also contains a definition for "approved behavioral health practitioner" and "approved behavioral health practitioner under supervision" instead of a listing of each provider and each service. This provides for more transparency and compactness in the administrative regulation and manual. The administrative regulation also contains a definition for the "ASAM Criteria", "paraprofessional practitioner under supervision", and "telehealth." New covered services include withdrawal management, medication assisted treatment, applied behavior analysis, chemical dependency treatment center services, and narcotic treatment programs if separately licensed. The amendment also updates language relating to prevention education with substance use risk factors and case management services for pregnant or postpartum individuals with a substance use disorder. The administrative regulation also requires a billing supervisor's signature within thirty (30) days when a service is delivered by an approved behavioral health practitioner under supervision.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to align with existing Office of Inspector General (OIG) administrative regulations, to implement an SUD 1115 waiver, to require compliance with the ASAM Criteria, and to provide additional formatting improvements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing an SUD 1115 waiver and making conforming amendments following amendments to 907 KAR Chapter 15.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the statutes by providing additional clarity and requirements relating to all behavioral health services performed in CMHCs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: CMHCs that wish to expand their behavioral health practice to include the newly covered services. There are currently 14 CMHCs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. All CMHCs utilizing approved practitioner under supervision will need to begin having a billing supervisor sign appropriate documents within 30 days. CMHCs that provide chemical dependency treatment center services or narcotic treatment program services will also need to acquire appropriate certification or licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid program reimbursement for providing behavioral health services to Medicaid recipients. Medicaid recipients in need of behavioral health services

will benefit from an expanded base of providers from which to receive certain services.

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

(a) Initially: DMS does not anticipate additional costs as a result of this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022).

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

(3) Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act (42 U.S.C. Sec. 18022) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment."

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendment is not expected to cause additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to cause additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year. This administrative regulation could result in higher reimbursement for regulated entities by opening up additional practice opportunities for some provider types.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years. This administrative regulation could result in higher reimbursement for regulated entities by opening up additional practice opportunities for some provider types.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 23:020. Reimbursement for outpatient drugs.

RELATES TO: KRS 205.5510 to 205.5520, 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.622, 205.6316(4), 217.015, 42 C.F.R. 440.120, 447.45, 447.500 - 447.520, 42 U.S.C. 256b, 1396a - 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5514(1)(b), 205.560, 205.561(2), 205.6316(4), 205.647(5), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services

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

Section 1. Reimbursement. Reimbursement to a pharmacy or medical provider participating in the Medicaid Program for a covered outpatient drug provided to an eligible recipient shall be determined in accordance with the requirements established in this section. (1) A rebate agreement in accordance with 42 U.S.C. 1396r-8(a) shall be signed by the drug manufacturer, or the drug shall be provided based on an exemption from the rebate requirement established by 907 KAR 23:010, Section 5(3).

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

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

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

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

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

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

(5) Reimbursement shall be denied if:

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

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

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

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

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

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

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

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

Section 2. Reimbursement Methodology. (1) Drug cost shall be determined in the pharmacy program using drug pricing and coding

information obtained from nationally recognized comprehensive drug data files with pricing based on the actual package size utilized.

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

(a) National Average Drug Acquisition Cost or NADAC, plus the professional dispensing fee, as established in Section 3;

(b) Wholesale acquisition cost or WAC, plus the professional dispensing fee, as established in Section 3;

(c) Federal upper limit or FUL, plus the professional dispensing fee, as established in Section 3;

(d) Maximum allowable cost or MAC, plus the professional dispensing fee, as established in Section 3; or

(e) The provider's usual and customary charge to the public, as identified by the claim charge[price].

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

(4) Pursuant to KRS 205.5510 to 205.5520:

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

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

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

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

(3)(a) As warranted by the applicable standard of care, the professional dispensing fee for a qualifying drug that is dispensed for the treatment of a substance use disorder shall be \$10.64 per pharmacy provider per recipient per drug reimbursed once every seven (7) days.

(b) Any additional dispenses after the first dispensing shall be warranted by the applicable standard of care.

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

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

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

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

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

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

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

(6) [340B Pharmacy Transactions.

(a) A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B-eligible prescription from a covered

~~entity shall bill the department no more than the actual 340B acquisition cost, plus the professional dispensing fee.~~

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

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

~~(7) Physician administered drugs (PAD).~~

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

~~(b) Non-340B purchased PAD. Reimbursement for drug cost for a drug administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, not purchased through the 340B Program, and submitted for reimbursement as a medical benefit shall be reimbursed only for the drug cost by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. A professional dispensing fee shall not be paid for PAD.~~

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

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

Section 5. 340B Pharmacy Transactions for Fee-For-Service.

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

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

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

Section 6. 340B Pharmacy Transactions for Managed Care. (1)

A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department and be reimbursed pursuant to Section 2 of this administrative regulation.

(2) A 340B covered entity pharmacy shall notify the department on its own behalf and on behalf of any contracted pharmacy if it intends to use 340B drugs to fill prescriptions for qualified pharmacy claims within the managed care Medicaid program.

(3)(a) A covered entity that intends to use 340B drugs to fill prescriptions for qualified pharmacy claims shall submit a complete and accurate "Kentucky Medicaid 340B Participation Form".

1. A form shall be filed by the fifteenth (15th) of the last month of a quarter in order to be effective for that quarter. A form that is submitted later than the fifteenth (15th) of the last month of a quarter shall be effective for the following quarter and until revoked.

2. The form shall be effective until revoked pursuant to subsection (4) of this section.

(b) Any covered entity that no longer intends to participate and use 340B drugs to fill prescriptions for qualified pharmacy claims shall submit a complete and accurate "Kentucky Medicaid 340B Nonparticipation Form".

(4) All submissions shall be via electronic mail to an email account designated on the Kentucky Pharmacy Program website

located at:
<https://chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx>

(5) The following entities, as relevant, shall review each previous quarter's eligible pharmacy claims:

(a) The covered entity, or the entity's designated claims administrator; and

(b) The contract pharmacy, or the entity's designated claims administrator.

Section 7. The maximum allowable cost, or MAC, shall be determined by taking into account each drug's cost, rebate status (non-rebateable or rebateable) in accordance with 42 U.S.C. 1396r-8(a), marketplace status (obsolete, terminated, or regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors considered shall include clinical indications of drug substitution, utilization, and availability in the marketplace. (1) Drug pricing resources used to compare estimated acquisition costs for multiple-source drugs shall include comprehensive data files maintained by a vendor under contract to the department, such as:

(a) NADAC as published by CMS;

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

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

(d) ASP as published by CMS;

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

(f) Pharmacy providers; or

(g) Wholesalers.

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

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

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

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

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

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

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

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

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

Section 8.[Section 6.] Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 9.[Section 7.] Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "Kentucky Medicaid MAC Price Research Request Form", 2012;[is incorporated by reference.]

(b) "Kentucky Medicaid 340B Participation Form", 2022;

(c) "Kentucky Medicaid 340B Nonparticipation Form", 2022.

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

(a) The Department for Medicaid Services, 275 East Main

Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

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

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 20, 2022

FILED WITH LRC: June 1, 2022 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment implements 2020's SB 50 and the department's awarded request for proposals as required by that legislation. The amendment further implements needed 340B data tracking measures in order to ensure that the Medicaid program is able to comply with federal law relating to duplicate discounts. 340B pharmacies are required to inform the department whether they will participate or not in providing 340B medications to Medicaid recipients. These changes are part of a new Section 5 and 6 of the administrative regulation that consolidate most 340B

provisions. Section 5 is for Fee-For-Service 340B transactions and Section 6 is for MCO transactions. The administrative regulation is also amended to allow certain substance use disorder (SUD) drugs to receive additional dispensing fees per month by allowing the dispensing fee to be available once every seven days. The administrative regulation is amended to clarify when the professional dispensing fee can be assessed, clarify clotting factor reimbursement, and establish professional dispensing fees for compounded drugs. The regulation is further amended to remove cost-sharing and comply with 2021 Senate Bill 55's removal of all co-pays. In addition, the regulation is amended to clarify that both in-house and contract 340B pharmacy reimbursement do not include the 340B ceiling price in the lowest of logic methodology. In addition, clotting factor reimbursement is now addressed in Section 2 of the administrative regulation, as a result, Section 4(8) became redundant and is being deleted. Finally, additional citations have been included in the "Relates To" and "Statutory Authority" sections.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to implement 2020's SB 50 and the department's awarded request for proposals as required by that legislation. In addition, 340B pharmacy claims are better tracked in order to comply with federal requirements.

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to be reimbursed by the DMS, participating providers will have to submit pharmacy or medical claims for covered outpatient drugs in accordance with this administrative regulation and applicable billing rules. In addition, 340B providers will need to submit participation or nonparticipation forms in order to inform DMS if they will be utilizing 340B drugs to fulfill Medicaid pharmacy claims.

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

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

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

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

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

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

enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

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

FISCAL NOTE

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

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur

costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities. As drafted, DMS anticipates that this administrative regulation will provide equivalent or greater dispensing fee reimbursement for pharmacies than was available under the pharmacy reimbursement system prior to the passage of 2020's SB 50.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department For Income Support

Child Support Enforcement

(Amendment)

921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process.

RELATES TO: KRS 205.705, 205.710-205.802[800], 205.992, 213.046(4), 403.211, 405.430(5), 405.467, 405.520, 406.021, 406.025, 407.5101-407.5903, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.8, 303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 205.795, and 405.520 authorize the secretary of the Cabinet for Health and Family Services to promulgate

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administrative regulations to operate the Child Support Enforcement Program (CSEP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires the child support application process to be accessible to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental case.

Section 1. Child Support Enforcement Case Types. (1) Kentucky Transitional Assistance Program (KTAP[K-TAP]) or Kinship Care.

(a)1. An applicant for, or recipient of, KTAP[K-TAP] or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and 921 KAR 2:006.

2. The assignment shall:

a. Include members of the case for whom support rights apply; and

b. Be completed when applying for KTAP[K-TAP] or Kinship Care benefits using the application form incorporated by reference in 921 KAR 2:040.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the:

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been established; and

b. An assigned support obligation;

5. Enforcement of:

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSEP;

2. Review and approve a foster care child support referral;

3. Complete a change of status if a change occurs that relates to the child support process; and

4. Forward to the CSEP a copy of the child support court documents.

(c) If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

1. Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or

2. Establish a child support obligation if:

a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and

b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP shall obtain the following information, if available:

1. Medicaid case number;

2. Name of the noncustodial parent or obligor;

3. Social Security number of the noncustodial parent or obligor;

4. Name and Social Security number of the child;

5. Home address of the noncustodial parent or obligor;

6. Name and address of the noncustodial parent or obligor's place of employment; and

7. Whether the noncustodial parent has a health insurance policy and, if so, the policy name, policy number, and name of any person covered.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 20:005.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 20:005, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP the CS-140, Assignment of Rights and Authorization to Collect Support.

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP shall make child support services available to any individual who:

1. Assigns rights for medical support only;

2. Applies for services pursuant to paragraph (c) of this subsection; or

3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1. Upon the request of a nonpublic assistance applicant, the CSEP shall give an application packet to the applicant.

2. If the request is:

a. Made in person, the packet shall be provided the same day; or

b. Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

3. The application packet shall include the:

a. CS-33, Application for Child Support Services;

b. CS-202, Authorization for Electronic Deposit of Child Support Payments; and

c. CS-11, Authorization and Acknowledgement of No Legal Representation.

4. In order to receive child support services, the applicant shall complete and return the:

a. CS-33, Application for Child Support Services; and

b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a location-only case, services provided to a nonpublic assistance client through the CSEP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1) of this administrative regulation.

(f) The CSEP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and Social Security number of the child;

2. Name of the custodial and noncustodial parent or obligor;

3. Social Security number of the custodial and noncustodial parent or obligor;

4. Date of birth of the custodial and noncustodial parent or obligor;

5. Home address or last known address of the custodial and noncustodial parent or obligor; and

6. Name and address of the custodial and noncustodial parent's or obligor's employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

(a) Location of the noncustodial parent or obligor;

(b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity based upon the receipt of either:

1. A court order; or
2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation by:

1. Petitioning the court or administrative authority to establish child support pursuant to the Kentucky Child Support Guidelines; and

2.a. Petitioning the court or administrative authority to include health care coverage pursuant to 45 C.F.R. 303.31(b)(1) in new or modified court or administrative orders for support; or

b. Petitioning the court or administrative authority to include cash medical support in new or modified orders until health care coverage that is accessible and reasonable in cost, as defined by KRS 403.211(8)(a) and (b), becomes available;

(e) Enforcement of a:

1. Child support or medical support obligation; and

2. Spousal support obligation if the:

a. Custodial parent is the spouse or ex-spouse;

b. Child lives with the spouse or ex-spouse; and

c. Cabinet is collecting support on behalf of the child;

(f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual fee assessed against a custodial parent who has never received assistance, as defined by 42 U.S.C. 654(6)(B)(ii) and KRS 205.721(4), during each Federal fiscal year in which \$550 has been disbursed for the case; and

(h) Submission of an application to the health plan administrator to enroll the child if the parent ordered to provide health care coverage is enrolled through the insurer and has failed to enroll the child.

(2) The CSEP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

(a) Referral from the public assistance agency;

(b) Foster care referral; or

(c) Nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

(3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2:006 or 922 KAR 1:530.

(b) If the CSEP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, Section 25, location shall be attempted for a:

(a) Public assistance case referred to the CSEP; or

(b) Nonpublic assistance case for which child support services are being provided.

(2) The CSEP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's employer, sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP pursuant to KRS 205.712, 205.730(5), and 45 C.F.R. 303.69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSEP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. Intergovernmental Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5903, and 45 C.F.R. 303.70, the CSEP shall:

(1) Extend to an intergovernmental IV-D child support case the same services available to an intrastate case; and

(2) Provide a responding state with sufficient and accurate information and documentation on the appropriate intergovernmental transmittal forms, the:

(a) CS-98, General Testimony;

(b) CS-99, Declaration in Support of Establishing Parentage;

(c) CS-100, Uniform Support Petition;

(d) CS-103, Child Support Enforcement Transmittal #1 – Initial Request;

(e) CS-138, Child Support Locate Request;

(f) CS-153, Child Support Enforcement Transmittal #2 – Subsequent Actions;

(g) CS-154, Child Support Enforcement Transmittal #3 – Request for Assistance/Discovery;

(h) CS-155, Notice of Determination of Controlling Order;

(i) CS-157, Letter of Transmittal Requesting Registration;

(j) CS-210, Child Support Agency Confidential Information Form;

(k) CS-211, Personal Information Form for UIFSA § 311;

(l) CS-212, Child Support Agency Request for Change of Support Payment Location Pursuant to UIFSA §319; and

(m) CS-213, Child Support Enforcement Transmittal #1 – Initial Request Acknowledgment.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's services and encourage their use may include:

(1) Public service announcements;

(2) Posters;

(3) Press releases;

(4) Videos;

(5) Annual reports;

(6) Newsletters;

(7) Mail inserts;

(8) Pamphlets;

(9) Letters; and

(10) Internet.

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

(a) "CS-11, Authorization and Acknowledgement of No Legal Representation", 10/12;

(b) "CS-33, Application for Child Support Services", 6/2022[8/49];

(c) "CS-98, General Testimony", 10/2020;

(d) "CS-99, Declaration in Support of Establishing Parentage", 10/2020;

(e) "CS-100, Uniform Support Petition", 10/2020;

(f) "CS-103, Child Support Enforcement Transmittal #1 - Initial Request", 10/2020;

(g) "CS-138, Child Support Locate Request", 10/2020;

(h) "CS-140, Assignment of Rights and Authorization to Collect Support", 6/2022[40/42];

(i) "CS-153, Child Support Enforcement Transmittal #2 - Subsequent Actions", 10/2020;

(j) "CS-154, Child Support Enforcement Transmittal #3 - Request for Assistance/Discovery", 10/2020;

(k) "CS-155, Notice of Determination of Controlling Order", 10/2020;

(l) "CS-157, Letter of Transmittal Requesting Registration", 10/2020;

(m) "CS-202, Authorization for Electronic Deposit of Child Support Payments", 6/2022[2/47];

(n) "CS-210, Child Support Agency Confidential Information Form", 10/2020;

(o) "CS-211, Personal Information Form for UIFSA § 311", 10/2020;

(p) "CS-212, Child Support Agency Request for Change of Support Payment Location Pursuant to UIFSA §319", 10/2020; and

(q) "CS-213, Child Support Enforcement Transmittal #1 - Initial Request Acknowledgment", 10/2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dis/Pages/cse.aspx>.

STEVEN P. VENNO, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 31, 2022

FILED WITH LRC: June 7, 2022 at 8:03 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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: Mary W. Sparrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental case.

(b) The necessity of this administrative regulation: This administrative regulation provides the procedures for applying for child support enforcement services, the scope of child support enforcement services available as well as the procedures for establishing an intergovernmental case in accordance with 42 U.S.C. 651-654, 657, 663, 666, and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050(1), 205.721, 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-654, 657, 663, and 666, to outline the application process for child support services, scope of child support enforcement services available, and the procedures for establishing an intergovernmental case.

(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 procedures and processes utilized by the cabinet for applicants to apply for child support enforcement services, the scope of child support enforcement services available, and the procedures for establishing an intergovernmental child support case.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates three existing forms that are incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update three forms that are incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes provide guidance for the Child Support Enforcement Program (CSEP).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through the updates to three forms that are incorporated by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates in this regulation will affect participants and workers in the Child Support Enforcement Program (CSEP). There are currently 254,251 cases.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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 forms will be completed by child support staff based on answers provided by the participants in the child support case.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Two of the forms are being revised to update language and the third form, the CS-202, is being updated to notify participants that child support payments can now be placed on a debit card.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds from The Child Support Enforcement State Program under Title IV-D of the Social Security Act support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

(7) Provide an assessment of whether an 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 new funding or fees are associated with this update.

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

(9) TIERING: Is tiering applied? Tiering is not necessary because the child support requirements are applied uniformly.

FISCAL NOTE

(1) What 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. 42 U.S.C. 454(6)(B)(ii) and KRS 205.721.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 funding will be necessary.

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

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no cost savings associated with this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no cost savings associated with this administrative regulation.

(c) How much will it cost the regulated entities for the first year? There is no cost associated with this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There is no cost associated with this administrative regulation.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 654(6)(b)(ii).

(2) State compliance standards. KRS 205.721(4).

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 654(6)(b)(ii)

(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 requirements, or additional or different responsibilities of requirements, than those required by the federal mandate.

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:300. Standards for child-caring facilities.

RELATES TO: KRS 2.015, 13B.050, 17.165(6), 17.500(8), 189.125(3), 198B.050-198B.090, 199.011, 199.640, 199.642, 199.650, 199.660, 199.670, 211.350-211.380, 214.034(5), Chapter 271B Subtitle 8, 273.161(7), Chapter 424, 600.020(23), 605.080(3), 605.090(1), 610.110(6), 615.010, 615.030, 615.040, 620.020, 620.030, 620.090(2), 620.140(1), 620.230(3), 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5),

199.645, 605.150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) requires the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. KRS 615.050 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 615. This administrative regulation establishes basic standards of care and service for child-caring facilities.

Section 1. Definitions. (1) "Aftercare" means a service provided to a child after discharge from a child-caring facility.

(2) "Board of directors" is defined by KRS 273.161(8).

(3) "Cabinet" is defined by KRS 199.011(3).

(4) "Case" means an individual child or family being provided services by a child-caring facility social worker or counselor.

(5) "Chemical restraint" means a drug used as a restraint that is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition.

(6) "Child" is defined by KRS 199.011(4) and 600.020(9) and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A person who meets the exceptions to the age of majority in accordance with KRS 2.015.

(7) "Child with medical complexity" means a child who is determined to have a medical condition pursuant to 922 KAR 1:350, Section 4(1)(b).

(8) "Child-caring facility" is defined by KRS 199.011(5).

(9)[(8)] "Child-placing agency" is defined by KRS 199.011(6).

(10)[(9)] "Child-caring program" means the method of delivering a child-caring service.

(11)[(10)] "College or university" means:

(a) An institution accredited by one (1) of the regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education;

(b) For a Kentucky institution, one (1) that is licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; and

(c) For an out-of-state institution, one (1) that is licensed in its home state if licensure is required in that state.

(12)[(11)] "Community resource" means a service or activity available in the community that supplements those provided by the child-caring facility or child-placing agency in the care and treatment of a child.

(13)[(12)] "Corporal physical discipline" means reasonable physical discipline in accordance with KRS 199.640(6).

(14)[(13)] "Crisis intervention unit" means a unit that serves a child in need of short-term intensive treatment, to avoid risk of placement to a higher level of care.

(15)[(14)] "De-escalation plan" means a treatment method used to decrease the intensity of emotional conflict or aggressive behavior.

(16)[(15)] "Direct child-care staff" means a child-caring facility employee or volunteer providing face-to-face care and supervision of a child.

(17)[(16)] "Discharge" means a planned release of a child from a child-caring facility program.

(18)[(17)] "Emergency discharge" means the release of a child from a program as a result of a circumstance that presents a risk to the health or safety of a child.

(19)[(18)] "Emergency shelter child-caring facility" means a child-caring facility that meets the requirements of 922 KAR 1:380.

(20)[(19)] "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

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(21) [(20)] "Group home" is defined at KRS 199.011(11).

(22) [(21)] "Independent living services" means services provided to an eligible child, as described in Section 8 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(23) [(22)] "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(24) [(23)] "Indoor living area" means an area in the child-caring facility that is separate from a hallway, bedroom, kitchen, stairway, vestibule, bathroom, closet, unfinished basement, or attic.

(25) [(24)] "Institution" is defined by KRS 199.011(12).

(26) [(25)] "Latching device" means an instrument used to secure a seclusion room door that does not require the use of a key or combination.

(27) [(26)] "Living unit" means a building or part thereof in which a child resides, not exceeding sixteen (16) beds.

(28) [(27)] "Permanence" is defined by KRS 620.020(9).

(29) [(28)] "Physical management" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement in order to maintain a safe environment for the child and others.

(30) [(29)] "Qualified mental health professional" is defined by KRS 600.020(52).

(31) [(30)] "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(32) [(31)] "Reasonable and prudent parenting standards" is defined by 42 U.S.C. 675(10).

(33) [(32)] "Seclusion" means the temporary placement of a child in a room in a residential treatment facility to prevent harm to the child or others.

(34) [(33)] "Sex crime" is defined by KRS 17.500(8).

(35) [(34)] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

(36) [(35)] "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a non-secure area for a time-limited period, in order to permit the child to regain control over his behavior.

(37) [(36)] "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving his or her emotional conflict or behavioral disorder.

(38) [(37)] "Treatment director" means an individual who oversees the day-to-day operation of the treatment program.

(39) [(38)] "Treatment professional" means an individual with the following credentials or an individual with a master's degree in a human services field practicing under the direct supervision of an individual with the following credentials:

- (a) A licensed psychiatrist;
- (b) A certified or licensed clinical psychologist;
- (c) A licensed clinical social worker;
- (d) A licensed marriage and family therapist;
- (e) A licensed professional clinical counselor;
- (f) A licensed professional art therapist;
- (g) A licensed clinical alcohol and drug counselor; or
- (h) A licensed behavior analyst.

(40) [(39)] "Treatment team" means a representative group of people who provide services to the child and the child's family.

(41) [(40)] "Unplanned discharge" means the release of a child from the child-caring facility that is not in accordance with the ITP.

Section 2. Operations and Services. (1) This administrative regulation establishes standards for the following child-caring facilities:

(a) An emergency shelter child-caring facility, also governed by 922 KAR 1:380;

(b) An emergency shelter child-caring facility with treatment, also governed by 922 KAR 1:380, Section 3;

(c) A residential child-caring facility, including:

1. A group home; and
2. An institution; and

(d) A residential treatment program, including:

1. A crisis intervention unit;
2. A group home; and
3. An institution.

(2) Except for a child-caring facility maintaining a license prior to October 16, 2000, a child-caring facility shall not be located or operated on the grounds of a psychiatric hospital.

Section 3. Administration and Operation. (1) The licensing procedure for a child-caring facility shall:

(a) Be administered as established in 922 KAR 1:305; and

(b) Based upon the services provided, meet the requirements of this administrative regulation, 922 KAR 1:290, and 922 KAR 1:380.

(2) Board of directors.

(a) The child-caring facility shall have a board of directors in accordance with KRS Chapter 271B, Subtitle 8.

(b) The board of directors shall:

1. Consist of at least seven (7) members;
2. Meet at least quarterly;
3. Cause minutes of each meeting to be taken and kept in written form;

4. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local law;

5. Have procedures in place to ensure [insure] that its staff receives ongoing training as defined in subsection (6)(o) of this section;

6. Obtain a criminal records check consistent with KRS 199.642 and 922 KAR 1:290 [17.465] of prior convictions of the executive director prior to employment; and

7. Approve a mission statement delineating:

- a. The purpose;
- b. Objective; and
- c. Scope of service to be provided.

(3) Executive director.

(a) Duties of the executive director shall be determined by the board of directors.

(b) The executive director shall be responsible for the child-caring facility and its affiliates in accordance with the child-caring facility's written policy.

(c) If the executive director is not on the premises and not available to make decisions, a designated staff person shall be responsible for the day-to-day operation of the child-caring program.

(d) The executive director shall oversee and report to the board on a quarterly basis, providing an evaluation of program services addressing measurable goals, staff training, and incident reports.

(e) The criteria and process of the quarterly evaluation shall be approved by the board.

(4) Staff qualifications.

(a) A person employed as an executive director after the effective date of this administrative regulation shall possess the following qualifications:

1. A master's degree in business administration or a human services field from a college or university, supplemented by two (2) years of work experience in or management of a human services program related to working with families and children; or

2. A bachelor's degree in a human services field from a college or university, supplemented by four (4) years' work experience in management of a human services program related to working with families and children.

(b) A treatment director or person employed by the child-caring facility in a position responsible for supervising, evaluating, or monitoring social work and related activities shall:

1. Hold at least a master's degree in a human service discipline; and

2. Have at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

- a. Supervision;
- b. Evaluation; and
- c. Monitoring of the:
 - (i) Treatment program;

(ii) Social work; and
 (iii) Other treatment staff.
 (c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.
 (d) A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director, if at least fifty (50) percent of his duties are spent supervising the treatment program. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.
 (e) An employee responsible for social work, counseling, or planning and coordinating these services for a child shall have at least a bachelor's degree in a human services field from a college or university.
 (f) A person employed in a position responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least:
 1. Two (2) years of education from a college or university and two (2) years of work experience in a child-caring facility; or
 2. A high school diploma, or an equivalence certificate, and at least five (5) years of work experience in a child-caring facility.
 (g) A person employed in a position responsible for the daily direct care or supervision of a child shall possess at least a high school diploma or equivalency certificate.
 (h) If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet the more rigorous qualifications.
 (i) A child-caring facility contracting for the services of a social worker or treatment director not on the staff of the child-caring facility shall document that the social worker or treatment director meets the qualifications established in paragraphs (b) and (e) of this subsection. An agreement for provision of service shall be on file at the child-caring facility, and shall specify the qualifications of the social worker or social services professional.
 (5) Staffing requirements.
 (a) The child-caring facility shall have:
 1. A written policy describing a child-to-direct-child-care-staff ratio that is consistent with the staff-to-child ratios required in paragraph (b) of this subsection; and
 2. An explanation of the assignment of staff in order to:
 a. Ensure the health and safety of a child; and
 b. Implement the child-caring program.
 (b) Staff-to-child ratios for each type of facility shall be as follows:
 1. An emergency shelter child-caring facility: one (1) staff member to ten (10) children at all times.
 2. An emergency shelter child-caring facility with treatment: one (1) staff member to six (6) children at all times.
 3. A residential child-caring facility:
 a. One (1) staff member to ten (10) children age six (6) and over; and
 b. One (1) staff member to five (5) children under age six (6).
 4. A residential child-caring facility with treatment:
 a. One (1) staff member to six (6) children; and
 b. One (1) staff member to twelve (12) children during sleeping hours.
 5. A crisis intervention unit:
 a. One (1) staff member to four (4) children; and
 b. One (1) staff member to six (6) children during sleeping hours.
 6. A group home:
 a. One (1) staff member to four (4) children; and
 b. One (1) staff member to accompany a child while away from the home.
 7. An institution: one (1) staff member to ten (10) children.
 (c) There shall be at least one (1) staff member present in each child-caring facility building if a child is present.
 (d) At least one (1) staff member certified in first aid and cardiopulmonary resuscitation shall be on the premises, if a child is present.
 (e) The child-caring facility shall have a written work schedule and a policy that provides for utilization of relief staff.

(f) The child-caring facility shall employ an individual who is responsible for the overall planning and coordinating of social services for a family and child.
 (g) Social services staff shall not carry a caseload of more than fifteen (15) children and their families.
 (6) Personnel policy.
 (a) A child-caring facility shall have and comply with a written personnel policy and procedure.
 (b) An employee of the child-caring facility shall be at least eighteen (18) years of age and, effective July 1, 2022, newly-hired direct care staff shall be at least twenty-one (21) years of age unless the agency has an agreement with a college or university to employ students.
 (c) The employment of an individual shall be governed by KRS 199.642 and 922 KAR 1:290[17.165], with regard to a criminal record check.
 (d) A new criminal record check shall be completed at least every ~~ten (10)~~^{two (2)} years pursuant to 922 KAR 1:290 on each staff member, as defined by KRS 199.642(1)~~[employee or volunteer]~~.
 (e) ~~[An employee under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with all children within the child-caring facility until the employee is cleared of the charge.]~~
 (f) ~~Each employee or volunteer shall submit to a check of the central registry pursuant to 922 KAR 1:470. An individual listed on the central registry shall not be a volunteer at or be employed by a child-caring facility.~~
 (g) Each licensee shall report to the cabinet and each child-caring facility employee or volunteer shall report to the licensee or facility's director, an incident that occurs subsequent to the most recent background~~[central registry]~~ check, if the employee or volunteer:
 1. Is the subject of a cabinet child abuse or neglect investigation;
 2. Has been found by the cabinet or a court to have abused or neglected a child; or
 3. Has been indicted for or charged with a violent or sex crime as defined in KRS 17.165.
 (f)(h) ~~An individual shall not be left alone in the presence of any child if a central registry check has not been completed.~~
 (i) Determination by the cabinet of risk of potential harm by an employee to a child in a child-caring facility shall result in:
 1. Investigation of the employee for evidence of child abuse or neglect; and
 2. The removal of the employee from direct contact with all children:
 a. For the duration of the investigation; and
 b. Pending completion of the administrative appeal process in accordance with 922 KAR 1:320;
 (g)(j) A current personnel record shall be maintained for each employee that includes the following:
 1. Name, address, Social Security number, date of employment, and date of birth;
 2. Evidence of a current registration, certification, licensure, and college credentials, if required by the position;
 3. Record of ongoing participation in an agency staff development program as specified in paragraphs (n) and (o) of this subsection;
 4. Record of performance evaluation;
 5. Criminal records check as required by paragraph (c) of this subsection;
 6. ~~[Documentation of a central registry check completed every two (2) years in accordance with 922 KAR 1:470;~~
 7. ~~Personnel action; and~~
 8. Application for employment, resume, or contract.
 (h)(k) A child-caring facility shall retain an employee personnel record for at least five (5) years after termination of employment.
 (i)(l) An employee shall document compliance with a requirement for meeting state or national professional standards, as set forth in the job description.
 (j)(m) The child-caring facility shall have a record of

participation and successful completion of an ongoing staff and volunteer development program.

(k)(n) The staff development program shall be under the supervision of a designated staff member; and

(l)(e) Full-time direct child care staff shall have at least forty (40) hours, and part-time direct child care staff shall have at least twenty-four (24) hours, of training specific to the tasks to be performed and of annual training in the following:

1. Emergency and safety procedure;
2. Principle and practice of child residential care;
3. Behavior management, including de-escalation training;
4. Physical management for a child-caring facility using the technique;
5. First aid;
6. Personnel orientation; and
7. Trauma-informed care.

(m)(p) A volunteer who functions as a professional or direct staff member without compensation shall meet the same general requirements and qualifications.

(n)(q) A child-caring facility using physical management shall:

1. Develop and maintain clearly-written policy and procedure governing the use of physical management of a child, including a requirement for a de-escalation plan, in accordance with Section 8(3) of this administrative regulation;

2. Require a staff member who conducts physical management to complete at least sixteen (16) hours of annual training in approved methods of de-escalation and physical management from a nationally-recognized accreditation organization approved by the cabinet, as part of the annual training required by paragraph (o) of this subsection, to include:

- a. Assessing physical and mental status, including signs of physical distress;
- b. Assessing nutritional and hydration needs;
- c. Assessing readiness to discontinue use of the intervention; and
- d. Recognizing when medical or other emergency personnel are needed.

(o)(r) The program director shall review and analyze instances of physical management in order to:

1. Assure compliance with Section 5(2)(f) through (h) of this administrative regulation and the child-caring facility policy;

2. Provide documentation of a plan of action to prevent injury to a child or staff as a result of the use of physical management; and

3. Review each incident no later than one (1) working day after its use.

(p)(s) A child-caring facility shall develop and maintain clearly written policies and procedures governing professional boundaries for an employee or volunteer working with children.

(q)(t) A child-caring facility shall develop and maintain clearly written policies and procedures governing smoking prohibitions, in accordance with 20 U.S.C. 7183 and 922 KAR 2:120, Section 3(10).

(7) Interstate placement.

(a) Before accepting a child from another state or placing a child in another state, the child-caring facility shall be in compliance with:

1. Applicable provisions of the Interstate Compact on Placement of Children, KRS 615.030 or 615.040; and
2. The Interstate Compact for Juveniles, KRS 615.010.

(b) If a child committed to the cabinet makes a brief visit out of state for age- or developmentally-appropriate activities, not accompanied by child-caring facility personnel, the child-caring facility shall employ reasonable and prudent parenting standards for careful and sensible parental decisions that maintain the health, safety, and best interests of the child prior to determining whether to allow the child to participate in extracurricular, enrichment, cultural, and social activities.

(c) If an emergency placement of a child into a licensed child-caring facility is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040. If the receiving child-caring facility is aware of noncompliance by the placement source, the child-care facility shall notify the cabinet's interstate compact

coordinator.

(8) Record retention. A child-caring facility shall:

(a) Retain all records, books, and reports related to financial conditions and status for auditing purposes for a minimum of five (5) years; and

(b) Make available all books, records, and financial information for review, inspection, auditing, and photocopying by the cabinet or cabinet designee, authorized federal and state agency reviewers and auditors.

(9) A residential child-caring facility shall become accredited by a nationally recognized accreditation organization within two (2) years of initial licensure.

Section 4. Physical Plant. (1) A child-caring facility shall comply with applicable state and local law relating to:

- (a) Construction;
- (b) Sanitation; and
- (c) Building maintenance.

(2) The child-caring facility shall conform to the Kentucky Standards of Safety in accordance with 815 KAR 10:060.

(3) A climate control system shall be provided as follows:

(a) A minimum temperature of sixty-five (65) degrees Fahrenheit maintained in occupied areas in cold weather conditions;

(b) In warm weather conditions and periods of extreme heat, an occupied area shall be properly ventilated;

(c) If not air-conditioned and the temperature in an occupied area exceeds eighty-five (85) degrees Fahrenheit, the child-caring facility director shall assure that the following occurs:

1. A fan is utilized to circulate air;
2. The child-caring facility is properly ventilated to outside air;
3. Ice water is readily available and served to residents; and
4. Staff frequently monitor residents for a sign or symptom of a heat-related illness.

(4) The water supply shall be from an approved source and easily available from the following:

- (a) Drinking fountain;
- (b) Refrigerator; or
- (c) Cold water tap.

(5) The plumbing and waste disposal systems shall comply with applicable provisions of the Uniform State Building Code, KRS 198B.050, and with laws regarding on-site sewage disposal, KRS 211.350 to 211.380, if applicable.

(6) Housekeeping and maintenance service.

(a) The building and its content shall be maintained in a clean and safe condition and in good repair.

(b) A maintenance plan shall be implemented.

(c) The child-caring facility shall ensure that the grounds and outdoor equipment are well kept and the exterior of the building is in good repair.

(d) The interior of the building and its contents shall be in good repair.

(e) Garbage and trash shall be:

1. Stored in an area separate from those used for the preparation and storage of food;
2. Removed from the premises regularly; and
3. Placed in a container that is cleaned regularly.

(f) Insecticides, pesticides, and chemical poisons shall be plainly labeled and stored in a secure, locked area. Access shall be given to:

1. The facility's maintenance personnel; and
2. A pest control company with which the facility has a contract.

(7) Bedroom.

(a) A bedroom shall be:

1. Of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds; and
2. Constructed to allow no more than four (4) residents per room.

(b) A bedroom for a child above age three (3) shall be equipped with an individual bed for each child that shall be:

1. Long and wide enough to accommodate the child's size;
2. Developmentally appropriate for the child; and

3. Equipped with a support mechanism and a clean mattress.
- (c) A bed occupied by a child shall be placed so that the child shall not experience discomfort because of:
 1. Proximity to a radiator or heat outlet; or
 2. Exposure to drafts.
- (d) Siblings may share sleeping quarters, including siblings over the age of five (5) if indicated in an ITP.
- (e) Storage space shall be provided for each child to accommodate his or her personal belongings in a:
 1. Closet and drawers; or
 2. Closet for the child's exclusive use and shelves within the closet.
- (f) A child shall not be housed in a room, detached building, or enclosure that has not previously been inspected and approved for resident use.
- (g) A child shall be provided with clean bed linens, laundered at least once a week, and a waterproof mattress covering.
- (h) An exception to this subsection shall be documented with clear safety reasons for the exception and there shall be a written safety plan in place for the duration.
- (8) Indoor living area. An indoor living area shall have:
 - (a) At least thirty-five (35) square feet per child; and
 - (b) Comfortable furnishings adequate for the number of children served.
- (9) Bathroom.
 - (a) For every six (6) children residing in the living unit, a living unit shall have a minimum of:
 1. One (1) wash basin with hot and cold water;
 2. One (1) flush toilet; and
 3. One (1) bath or shower with hot and cold water.
 - (b) A child shall be provided with access to:
 1. Toilet paper;
 2. Towels;
 3. Soap; and
 4. A wastebasket.
 - (c) Each bathtub and shower shall have an enclosure or screen for individual privacy. If more than one (1) toilet is located in the same bathroom, each toilet shall:
 1. Be partitioned; and
 2. Include a door capable of remaining closed.
 - (d) A bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.
- (10) The use of cameras to monitor youth bedrooms and bathrooms is prohibited except with the written consent of the director of the Division of Protection and Permanency or designee. A request for exception to this subsection shall include the reason for the request that relates to an immediate safety issue for the youth.

Section 5. Health, Safety, and Nutritional Requirements. (1) Health.

- (a) A child-caring facility shall have written policy and procedure for health and medical care, to include provisions for:
 1. The care and disposition of an ill child; and
 2. Emergency care.
- (b) The service of a physician, or other licensed qualified health professional, shall be made available to a child. If the service of a licensed physician or other professional is not available in the community, the child-caring facility shall request the assistance of the:
 1. County health department; or
 2. The Department for Public Health.
- (c) Staff shall follow licensed physician orders for:
 1. Medicine;
 2. Prescription; and
 3. Medical care.
- (d) Except for a weekend or holiday, within forty-eight (48) hours of admission to a child-caring facility, a child shall have:
 1. An initial health screening for illness, injury, and communicable disease or other immediate needs, by a nurse or trained child-care staff;
 2. After the initial health screening, a physical examination by a licensed physician or a qualified person under the supervision of a

licensed physician, within two (2) weeks of admission, unless it has been documented that the child has received an examination during the past twelve (12) months; and

3. The examining professional shall report, in writing, observations and findings including:

- a. Developmental history of the child, illnesses, operations, and immunizations if available to the professional;
- b. A limitation the child may have that may prevent participation in an activity scheduled by the child-caring facility;
- c. Visual and auditory examination results;
- d. Recommendation and order for future care, treatment, and examinations;
- e. TB skin test results, unless contraindicated by a qualified person under the supervision of a licensed physician; and
- f. Other tests for communicable disease as indicated by the medical and social history of the child.

(e) An annual physical examination shall be scheduled and documented as required by paragraph (d)3. of this subsection.

(f) Upon admission, the child-caring facility shall consult with a physician, or other licensed qualified health professional, if there is evidence that the child may require medical attention.

(g) The child-caring facility shall develop a procedure for a child requiring a specific provision for an infectious medical condition.

(h) A separate health record shall be maintained for each child, kept on the premises, and be made available to a:

1. Physician;
2. Nurse; or
3. Designated staff member.

(i) The health record shall contain the following:

1. Copy of each physical examination, including any recommendations for treatment;
2. Previous and continuing health and medical history, if available;
3. Record or report of each test, immunization, periodic reexamination, and physician order and instruction;
4. Report and date of each dental examination and treatment;
5. Authorization for regular and emergency medical, dental, and surgical care, signed at admission by the legal custodian;
6. Documentation of medication administered to the child; and
7. Documentation of a special provision made for the child in accordance with a physician's order.

(j) A child's medical need shall be provided for as recommended by a licensed physician or other licensed qualified health professional.

(k) The facility shall keep an immunization certificate on file for each child, in accordance with KRS 214.034(5).

(l) If a child dies while in the care of a child-caring facility or in a home operated or supervised by the child-caring facility:

1. The child-caring facility shall immediately notify the:
 - a. County coroner;
 - b. Child's parent;
 - c. Guardian or custodian; and
 - d. Cabinet staff;
2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Community Based Services;

3. A written comprehensive report from the executive director outlining the incident shall be forwarded to the Office of the Commissioner, Department for Community Based Services, on the next working day following the verbal report; and

4. If a child's death occurred as a result of alleged abuse or neglect, the executive director of the child-caring facility shall make verbal and written reports as required by KRS 620.030(1) and (2).

(m) Upon discharge, medical information shall follow the child if a release form has been obtained.

(n) Unless a dental examination has been performed in the six (6) months preceding admission, the child-caring facility shall document within one (1) week after a child's admission a scheduled dental examination within thirty (30) days or the reason the dental examination was not obtained within the timeframe. The facility shall ensure the treatment of emergency dental needs by a licensed dentist as they arise.

(o) A child age two (2) years and above shall be examined at least annually by a licensed dentist.

(p) The child-caring facility shall:

1. Document the information required by this subsection; and
2. Assure the confidentiality of the information.

(q) The child-caring facility shall maintain a continuous program of personal hygiene.

(r) Medication shall be stored in a manner that is inaccessible to a child.

(s) A child-caring facility that accepts placement of a child with medical complexity shall:

1. Consult with the cabinet medically complex liaison about the child prior to accepting the placement;

2. Obtain written documentation from a licensed health care provider stating that the direct care staff has received training on meeting the specific needs of the child prior to placement;

3. Submit to the cabinet medically complex liaison written documentation containing the plan to meet the child's specific medical needs based on the licensed health care provider's plan of care and the training required by subparagraph 2. of this paragraph prior to placement;

4. Ensure that the facility is located within one (1) hour of a medical hospital with an emergency room and within thirty (30) minutes of a local medical facility; and

5. Require designated staff to have attended the cabinet training on children with medical complexity.

(2) Safety.

(a) A child shall be instructed in fire prevention, safety, and fire emergency procedures.

1. The child-caring facility shall maintain and post a current, written emergency fire evacuation plan and diagram to include:

- a. An evacuation route and procedure; and
- b. The location of fire extinguishers.

2. Emergency drills shall be performed quarterly and documented for each of the following emergency events;

- a. Fire;
- b. Tornado or severe thunderstorm warning; and
- c. Flash flood, if applicable.

3. An emergency plan shall designate a suitable shelter in the event of an emergency.

(b) A child-caring facility with a swimming pool shall be staffed with a certified lifeguard in accordance with 902 KAR 10:120, Section 13.

(c) Donated home processed foods shall be prohibited.

(d) Transportation.

1. If transportation is provided directly, contracted for, or arranged, a child-caring facility shall require:

- a. Compliance with state laws pertaining to vehicles, drivers, and insurance;
- b. A seat for each child and that the child remain seated while the vehicle is in motion;
- c. A seat belt be used to secure the child;
- d. A vehicle used to transport a child off campus to provide a seat for each passenger as manufactured standard equipment;
- e. That a child never be left unattended in a vehicle; and
- f. Compliance with KRS 605.080(3) pertaining to court-ordered transportation.

2. The maximum number of children a driver shall supervise alone is four (4).

3. A child under the age of eight (8) who is less than fifty-seven (57) inches tall shall not be transported unless restrained in a safety seat that meets the requirements established in KRS 189.125(3).

4. A vehicle shall not pick up and deliver a child under the age of six (6) to a location that requires the child to cross a street or highway unless the child is accompanied by an adult.

5. If transportation is provided by a means other than licensed public transportation:

- a. The vehicle shall be maintained in a safe mechanical and operable condition;
- b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and
- c. If the driver is not in his seat, the motor shall be turned off,

keys removed, and brake set.

(e) A child with a history of aggressive behavior or sexual acting-out shall be assessed by the treatment team to ensure the safety of the child and other children in the facility, including sleeping arrangements, with the appropriate safety measures included in the child's ITP.

(f) If a child-caring facility accepts for placement a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime, the child-caring facility shall have written policies and procedures for the segregation of the child from a child committed to the cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).

1. Segregation shall include sight and sound separation of a child committed to the Department of Juvenile Justice from a child committed to the cabinet for the following functions within the facility or activities supervised by the facility:

- a. Sleeping;
- b. Personal hygiene; and
- c. Toiletry.

2. During other functions within the facility or activities supervised by the facility, segregation shall include separation of a child committed to the Department of Juvenile Justice from a child committed to the cabinet to prohibit any physical contact and verbal communication between the children.

(g) Physical management shall be used in an emergency or a crisis situation only:

1. After attempts to de-escalate the situation have been made;
2. By trained staff; and
3. To prevent:

- a. A child from injury to self or others; or
- b. Serious property damage.

(h) Physical management shall not be used for:

1. Punishment;
2. Discipline;
3. The convenience of staff;
4. Forced compliance;
5. Retaliation; or
6. A substitute for appropriate behavioral support.

(i) Physical management shall be discontinued if a child displays adverse side effects including:

1. Illness;
2. Severe emotional or physical stress; or
3. Physical damage.

(3) Nutritional requirements.

(a) A child shall be served meals that:

1. Meet the nutritional guidelines of the U.S. Department of Agriculture that include foods from the five (5) basic food groups; and

2. Satisfy the quantity required to meet the needs of each child as to age, activity, and prescribed diet or ITP.

(b) A child shall be encouraged to eat the food served, but shall not be subjected to coercion.

(c) An order for a modified diet from a licensed physician shall be followed by the child-caring facility.

(d) A menu shall be planned at least one (1) week in advance, dated, posted, and kept on file for one (1) year.

(e) With the exception of a child receiving a meal at school, three (3) meals a day shall be provided at regular intervals and, except for weekends and holidays, no more than fourteen (14) hours shall lapse between the evening meal and morning meal.

1. A nourishing snack shall be provided and:

- a. May be part of the daily food needs;
- b. Shall not replace a regular meal; and
- c. Shall be recorded on the menu.

2. A meal shall be scheduled at set times each day so that at least one (1) hot meal a day is not hurried, allowing time for conversation.

3. Food, or withholding of food, shall not be used as a punishment.

4. Only pasteurized milk and milk products, and U.S. government inspected meat shall be served to a child.

5. Food shall be prepared to preserve nutritive value and heighten flavor and appearance.

6. The same food shall be served to children under care and to staff members, unless a food is not suitable for a person because of:

- a. The person's age;
- b. A dietary restriction; or
- c. A religious preference.

(f) Table service shall be provided for a child capable of eating at a table.

1. Tables and chairs shall be:

- a. Of a height that corresponds to the size of the child served; and
- b. Constructed of material that can be easily sanitized.

2. A child who has not had an opportunity to learn how to handle food with the usual table service shall be managed in a way that he shall not be embarrassed or subjected to ridicule.

(g) A written report of a food inspection by municipal, county, or federal authorities shall:

- 1. Be kept on file at the child-caring facility; and
- 2. Meet local, state, and federal regulations.

(h) If a child-caring facility subcontracts a food service, applicable federal and state administrative regulations shall apply.

Section 6. General Requirements. (1) An incident of suspected child abuse or neglect, human trafficking, or female genital mutilation shall be reported as required by KRS 620.030.

(2)(a) The facility shall, with regard to suspected child abuse or neglect by an employee:

- 1. Document each incident;
- 2. Keep each incident document on file; and
- 3. Make the files accessible to the cabinet.

(b) A child shall not be exploited for promotional purposes, or in a manner that shall cause the child or family to suffer discomfort or embarrassment.

(c) Except as indicated in paragraph (d) of this subsection, a child shall not be used personally for a fund-raising purpose for the child-caring facility.

(d) If a picture, slide, recording, or other private, personal effect of a child is used in fund-raising or promotional effort of a child-caring facility, written permission shall be obtained from:

- 1. A parent or guardian; or
- 2. An authorized:
 - a. Representative of the cabinet;
 - b. Representative of the Department of Juvenile Justice; or
 - c. Legal representative.

(3) For an activity conducted away from a child-caring facility, the facility shall:

(a) Safeguard the health and safety of the children during the activity;

(b) Have a written policy and procedures governing the activity;

(c) Maintain staff-to-child ratios in accordance with Section 3 of this administrative regulation; and

(d) Provide transportation in a manner that complies with Section 5(2)(d) of this administrative regulation.

(4) Clothing and personal possessions.

(a) Through agreement with the child's legal custodian, the child-caring facility shall provide a child with clothing and footwear that is clean, well-fitting, and seasonal.

(b) A child shall be provided individual articles of personal hygiene.

(c) The child-caring facility shall allow a child to have personal belongings and property consistent with this administrative regulation and child-caring facility policy.

(5) A child's money.

(a) The child-caring facility shall have written policy and procedure relating to money belonging to a child.

(b) A child shall have access to information regarding the balance of the child's fund.

(c) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.

(6) Visitation and communication shall include:

(a) Written policy on visitation and communication;

(b) An arrangement for visitation that is not in conflict with the ITP;

(c) Documentation of each visit in the case record; and

(d) Access to a telephone to make and receive a telephone call consistent with the child's ITP, current court orders, and the facility's child-caring policy.

(e) Allowing a child to contact cabinet staff by telephone within twenty-four (24) hours of the request of the child.

(7) Religion, culture, and ethnic origin.

(a) Facility policy shall demonstrate consideration for and sensitivity to:

1. The racial, cultural, ethnic, and religious background of a child in care; and

2. Availability of activities appropriate to the child's cultural or ethnic origin.

(b) With the exception of a religious practice that is destructive towards property or places a child or others in physical danger, an opportunity shall be provided for a child to:

- 1. Practice the religious belief and faith of the child's individual or family preference; and
- 2. Participate in a religious activity without coercion.

(8) Education.

(a) If a child-caring facility operates its own school program, it shall have written policy and procedure regarding the development and implementation of the educational program. The policy and procedure shall include:

- 1. School attendance;
- 2. Teaching staff;
- 3. School records;
- 4. Educational supplies and equipment;
- 5. Individual educational plans; and
- 6. Use of a community school.

(b) A child-caring facility shall ensure that a child attends an accredited educational program the number of days required by law.

(c) A child shall be enrolled in an accredited educational program within one (1) week of admission.

(d) A school-age child ineligible or unable to attend an accredited school shall have an educational program specific to the individualized need of the child that may include a General Education Diploma or vocational training.

(e) If a child-care facility operates an educational program, maintenance of school records shall comply with state law and administrative regulations of the educational body having jurisdiction.

(f) The child-caring facility shall provide a quiet area and designated time for study.

(9) Work and chore assignment.

(a) An assigned chore or work assignment shall not place the child in physical danger.

(b) A chore assignment shall be posted within the child's living quarters.

(c) A child may be given a job in compliance with child labor laws for which he or she receives payment that shall be clearly differentiated from a chore expected of him to be completed in relation to the routine of daily living.

(d) A work assignment outside of a daily routine chore at the child-caring facility shall not be used as a form of punishment. An additional chore assignment beyond what is regularly assigned to a child may be:

1. Performed as restitution for intentional property damage made by the child; or

2. Given to a child for violation of a child-caring facility rule upon mutual agreement between the child and supervisory child-caring staff without the child being coerced to enter into an agreement.

(e) A child shall be given a rest period of at least ten (10) minutes during each hour worked.

(f) Use of a child to perform a chore or work assignment shall not negate the child-caring facility's ultimate responsibility for the maintenance of the child-caring facility nor the employment of staff sufficient to maintain the child-caring facility.

(10) Discipline.

(a) A child-caring facility shall have written policy and procedure governing disciplinary action.

(b) Discipline shall be:

1. Utilized as an educational tool and be related to the child's actions initiating the disciplinary process; and

2. Consistent with the child's ITP and in response to the child's lack of control or misbehavior.

(c) A group of children shall not be punished due to the misbehavior of one (1) or more individual group members.

(d) The following practices shall not be allowed:

1. Cursing;
2. Screaming;
3. Name calling;
4. Threatening of physical harm;
5. Intimidation;
6. Humiliation;
7. Denial of food or sleep;
8. Corporal physical discipline, except in accordance with KRS 199.640(6);
9. Hitting;
10. Unnecessarily rough handling;
11. Other physical punishment; or
12. Denial of visitation with family or custody holder as punishment.

(e) With the exception of a parent disciplining a child, a child shall not directly discipline another child.

(f) Handcuffs, weapons, mechanical restraints, chemical restraints, or other restraint devices shall not be used.

(g) A child placed in a time-out area shall be:

1. In sight or hearing of staff; and
2. Checked by staff at least every five (5) minutes until it is determined the child is ready to continue normal activity.

Section 7. Child-caring Program Services. (1) Admissions and intake.

(a) The child-caring facility shall have clearly defined written policy and procedure for an admission that identifies the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment that the child's need is one that:

1. The service of the child-caring facility is designed to address; and
2. Cannot be met in a less restrictive setting.

(c) The child-caring facility shall not accept into care a child for whom a service cannot be provided based on the child-caring program's mission statement and its available resources.

(d) The child-caring facility shall have a written placement agreement with the child's custodian.

(e) The child-caring facility shall conduct a:

1. Preadmission interview with the child; or
2. Screening of the child's available information, if a preadmission interview is not possible due to an emergency placement.

(f) The following information regarding the child shall be obtained by the child-caring facility from the child's custodian during intake, or it shall be documented that the information was requested and not available:

1. Commitment order or signed voluntary admission form;
2. Verification of birth;
3. Immunization record; and
4. Social history and needs assessment that includes medical, educational, developmental, and family history.

(g) A written consent pertaining to the child's care shall be obtained from the child's custodian for:

1. Photograph, video, and audio tape;
2. Emergency and routine medical care; and
3. Release of case record information.

(h) Before admission, the child and custodian shall be informed in writing of their rights and the child-caring facility's responsibilities, including policy pertaining to services offered to the child.

(i) A child shall be informed upon admission of the right to file a grievance.

(j) Upon admission, the child shall be oriented to life at the child-caring facility, including rules and consequences for violation

of the rules.

(2) Casework planning.

(a) The child-caring facility shall have written policy and procedure for the ITP process including:

1. Assessment;
2. Assignment;
3. Designation of a case coordinator; and
4. Development, implementation, and evaluation of the ITP and family involvement.

(b) An initial assessment shall be completed by designated staff within twenty-four (24) hours of admission to include:

1. Identifying information;
2. Presenting problem;
3. History (developmental, social, emotional health, education); and
4. Current level of functioning including strengths and weakness.

(c) An initial ITP shall be developed by designated staff and implemented within twenty-four (24) hours of admission.

(3) Comprehensive assessment and treatment plan.

(a) A comprehensive emotional and behavioral assessment of a child shall be completed by the treatment team and entered in the case record within twenty-one (21) days of admission, including the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;
2. The child's current emotional, behavioral, and developmental functioning, including strengths and weakness;
3. A psychiatric or psychological evaluation if recommended by the treatment team;
4. Other functional evaluation of language, self-care, social effectiveness, and visual-motor functioning, if recommended by the treatment team;
5. Social assessment that includes:
 - a. Environment and home;
 - b. Religion;
 - c. Ethnic group;
 - d. Developmental history;
 - e. Family dynamics and composition; and
 - f. Education; and
6. Recommendation for provision of treatment.

(b) A coordinated treatment team approach shall be utilized in the development, implementation, and evaluation of a comprehensive ITP.

(c) A comprehensive ITP shall be developed and implemented, in accordance with KRS 199.640(5)(a)4, to improve child functioning based upon the individual need of the child, and the child's family if appropriate, and shall include at least the following components:

1. Goals and objectives for permanence;
2. Time frame projected for completion of each goal and objective;
3. Method for accomplishing each goal and objective, including utilization of community providers;
4. Person responsible for completion of each goal and objective; and
5. Projected discharge date and placement plan.

(d) The comprehensive ITP shall be developed within twenty-one (21) days of admission.

1. A treatment team review of the child's and family's progress toward meeting each treatment goal shall occur at least monthly.

2. Every effort shall be made to involve the child and his family in the monthly treatment team review.

3. Treatment team evaluation of the comprehensive ITP shall occur at least quarterly.

4. An additional assessment shall be completed upon the recommendation of the treatment team.

5. Evaluation and assessment information shall be documented and maintained in the child's record.

(e) The child shall be offered the opportunity to sign an ITP and ITP review, signifying understanding of the ITP.

1. If the child refuses to sign or is developmentally unable to understand the circumstance, this shall be documented in the

record.

2. The child and his family or custodian shall receive a copy of the ITP.

(4) Treatment environment. The daily child-caring program shall be planned in the following manner in order to create an atmosphere conducive to treatment:

(a) The child-caring facility shall have written policy and procedure describing its daily routine, rules, activity, and child and staff interaction.

(b) The daily child-caring program shall be:

1. Planned to provide a framework for daily living; and

2. Reviewed and revised as the needs of the individual child or living group change.

(c) The daily routine shall be written and available to each child.

(d) Each rule shall be clearly stated in language that a child can understand.

(e) Staff shall interact with a child in a warm, supportive, constructive, and confidential manner and shall treat the child with respect.

(f) Counseling and interviewing a child and the child's family shall be conducted in a private area.

(g) A daily recreational activity shall be available to promote mastery of:

1. Developmental tasks;

2. Development of relationships; and

3. Increase in self-esteem, in accordance with the child's ITP.

(h) The child-caring facility shall provide recreational equipment, maintained in usable and safe condition, to implement the recreational program.

(5) The child-caring facility shall make available a quality program for substance abuse prevention and treatment in compliance with KRS 199.640(5)(a)7.

(6) Discharge and aftercare.

(a) The child-caring facility shall have written policy and procedure that describe the condition under which a child may be discharged, including criteria for an unplanned or emergency discharge and a discharge inconsistent with the ITP.

(b) The approval of the program director shall be required for an unplanned or emergency discharge.

(c) Discharge planning shall begin with the development of the ITP and shall continue throughout subsequent ITP reviews. The treatment team shall consider the following matters related to discharge planning:

1. Identification of placement;

2. Community resources to provide support for youth; and

3. Family services.

(d) When a child is leaving a facility as a planned discharge, a pre-discharge conference shall be held to ensure that the child and family are prepared for successful transition into placement. The parent, guardian or custodian, the child, and the treatment team shall attend this conference.

(e) The child shall have at least one (1) preplacement visit prior to the planned discharge, or the facility shall document unsuccessful efforts to arrange a visit.

(f) The child-caring facility shall prepare a written discharge summary within fourteen (14) days following the date of discharge. A copy shall be provided to the custody holder. The summary shall include:

1. Information related to progress toward completion of each ITP goal;

2. Each barrier to treatment;

3. Each treatment method used in working with the child;

4. Date of discharge;

5. Reason for discharge; and

6. Name, telephone number, and address of person or child-caring facility to whom the child was discharged.

(g) An aftercare service shall be provided to a child where no other agency has responsibility for the child's transition or adjustment to a new environment. Upon discharge, the following needs of the child shall be assessed and a referral made for needed aftercare service:

1. Educational;

2. Medical;

3. Vocational;

4. Psychological;

5. Legal; and

6. Social.

(7) Case record. The child-caring facility shall:

(a) Maintain, in a confidential and secure manner, a current case record on each child, including:

1. Identifying information on the child to include:

a. Name, ethnic origin and gender;

b. Date of birth and Social Security number;

c. Former residence;

d. Name, address, and occupation of each parent, if available;

e. Date of admission; and

f. Type of commitment;

2. Commitment order or custodian's consent form for admission;

3. Birth and immunization certificates;

4. Education;

5. Medical and dental records that may be maintained separately from the case record;

6. Assessment data or social history;

7. ITP and each review;

8. Each incident report, with a paper or electronic copy maintained in a centralized location within the licensed facility;

9. Chronological recording;

10. Correspondence with court, family, and custody holder;

11. Discharge summary; and

12. Written consent;

(b) Document, at least weekly, progress made by the child and his family toward meeting the treatment goal;

(c) Record the aftercare service it provides until the service is terminated;

(d) Have a written policy regarding maintenance, security, and disposal of a case record maintained by, or in possession of, the child-caring facility;

(e) Not disclose information concerning a child or his family to a person not directly involved in the case, without the written consent of the custodian of the child;

(f) Forward, within twenty-four (24) hours, a request made by an individual or an agency to review the case record of a committed child, to the:

1. Commissioner, Department for Community Based Services, if the child is committed to the cabinet; or

2. Other legal custodian, if the child is not committed to the cabinet;

(g) With the exception of a sealed adoptive record, release identifying or personal information including a Social Security card, birth certificate, or driver's license to the child at discharge;

(h) After the discharge of a child:

1. Maintain the case record at the child-caring facility for at least three (3) years; and

2. After three (3) years, the child-caring facility may archive the case record; or

3. Maintain the case record permanently at the child-caring facility;

(i) If the child-caring facility ceases to operate, transfer the case record to the cabinet;

(8) The cabinet shall maintain a file on each record transferred to one (1) of its record centers. The file shall include the following information:

(a) The child's name, case number, date of birth; and

(b) Date the case record was sent to the cabinet.

(9) All records maintained by the child-caring facility shall be made available to the cabinet or designee upon request.

Section 8. Residential Treatment Program. The requirements of this section shall apply to a residential child-caring facility that provides intensive treatment services.

(1) Professional treatment services.

(a) The facility shall secure needed services for a child who has an assessed need for a psychological, psychiatric, or other professional treatment service not provided by the residential child-

caring facility.

(b) The admission decision shall be the responsibility of a treatment team comprised of clinical, social service, and other disciplines designated by the residential child-caring facility's treatment director.

(c)1. After assessment and development of the ITP in accordance with Section 7 of this administrative regulation, the treatment team shall identify services to meet the needs of the child and family.

2. The services shall:

a. Be provided by the residential child-caring facility or arranged through contract with another qualified residential child-caring facility or child-placing agency, as established in 922 KAR 1:310, or a treatment professional; and

b. Include, as developmentally appropriate, a minimum of weekly:

(i) Individual therapy from a qualified mental health professional or other treatment professional; and

(ii) Group therapy conducted by a qualified mental health professional or other treatment professional, as determined appropriate by the treatment team and under the supervision of the treatment director.

(d) Other services identified after the assessment and development of the ITP by the treatment team may include:

1. Psychiatric counseling;

2. Specialized therapy recognized by a mental health credentialing authority; or

3. Family counseling.

(2) Staffing requirement.

(a) Staff-to-child ratios shall be in accordance with Section 3(5) of this administrative regulation.

(b) The treatment director shall:

1. Hold at least a master's degree in a human service discipline; and

2. Have at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

a. Supervision;

b. Evaluation; and

c. Monitoring of the:

(i) Treatment program;

(ii) Social work; and

(iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d)1. A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director if at least fifty (50) percent of his or her duties are spent supervising the treatment program.

2. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.

(3) Seclusion.

(a) If seclusion is used, a residential child-caring facility shall:

1. Before a child is placed in seclusion, develop and maintain clearly-written policy and procedures governing the placement of a child in seclusion, including a requirement for a de-escalation plan in the child's ITP that is consistent with accreditation standards;

2. Provide a copy of the policy and procedures to staff members responsible for the placement of a child in seclusion;

3. Require a staff member who uses seclusion to complete at least sixteen (16) hours of training in approved methods of de-escalation, physical management, and the use of seclusion from a nationally-recognized organization approved by the cabinet. This training shall count toward the forty (40) hours of annual training required by Section 3 of this administrative regulation and shall include the following topics:

a. Assessing physical and mental status, including signs of physical distress;

b. Assessing nutritional and hydration needs;

c. Assessing readiness to discontinue use of the intervention;

and

d. Recognizing when medical or other emergency personnel are needed.

4. Use seclusion only in an emergency or crisis situation when:

a. A child is in danger of harming himself or another; and

b. The effort made to de-escalate the child's behavior prior to placement was ineffective;

5. Prohibit the use of seclusion for:

a. Punishment;

b. Discipline;

c. Convenience of staff;

d. Forced compliance;

e. Retaliation; or

f. A substitute for appropriate behavioral support.

6. Provide that approval from the treatment director or treatment staff designee is obtained prior to or within fifteen (15) minutes of the placement of a child in seclusion.

7. Place no more than one (1) child into the same seclusion room at a time;

8. Remove an object that may be used for self-harm from a child before the child is placed in seclusion;

9. Not remove a child's clothing, except for belt and shoes, while the child is placed in seclusion;

10. Within a twenty-four (24) hour period of time, not to allow a child to remain in latched seclusion for more than:

a. Fifteen (15) minutes if the child is age nine (9) and younger; and

b. One (1) hour, if the child is age (10) and older;

11. If a child's behavior is stabilized, release the child from seclusion prior to the time period specified in this section;

12. Discontinue seclusion if a child displays adverse side effects including:

a. Illness;

b. Severe emotional or physical stress; or

c. Physical damage to self or items in seclusion;

13. Provide a child in seclusion with food, water, and access to a lavatory; and

14. Use a room for seclusion that is:

a. Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-caring facility;

b. Internally observable if the door is closed;

c. At least fifty-six (56) square feet in size; and

d. Free from an object that allows the child to do self-harm.

(b) If a child requires repeated placement in seclusion, the treatment director shall conduct a treatment team meeting to reassess the child's ITP, including referring the child to a higher level of care.

(c) A staff member shall observe visually every five minutes a child who is in seclusion.

(d) Staff shall have visual contact with a child in latched seclusion at all times.

(e) Staff shall document, in the child's record, the following information regarding seclusion of a child:

1. An intervention to de-escalate the child's behavior prior to placement;

2. Date and time of placement;

3. Date and time of removal;

4. Reason for placement;

5. Name of each staff member involved;

6. Treatment director's or designee's approval;

7. Five (5) minute visual observation by staff of the child's placement; and

8. Intervention provided by treatment staff when the child leaves seclusion.

(f) Immediately upon the child's exit from seclusion, treatment staff shall provide therapeutic intervention.

(4) Incident report.

(a) Exclusive of weekends and holidays, within twenty-four (24) hours of the physical management of a child, including a child's placement in seclusion, designated treatment staff shall complete an incident report that shall:

1. Undergo an administrative review no later than seventy-two (72) hours after the use of physical management;

2. Document an assessment by the treatment director or designee that shall include consideration of the:
 - a. Necessity of the physical management or seclusion;
 - b. Congruence of the physical management or seclusion with the residential child-caring facility's policy and procedures; and
 - c. Need for a corrective action;
3. Contain documentation of written feedback provided by the treatment director or designee to all treatment staff involved in the incident; and
4. Be signed by the treatment director or designee and the program director or designee.

(b) The residential child-caring facility shall establish a system to track the frequency, location, and type of critical incidents involving physical management of a child that occurs, including seclusion.

Section 9. Crisis Intervention Unit. (1) An emergency service provided in a crisis intervention unit shall include the following:

- (a) A mental status evaluation and physical health questionnaire of the child upon admission;
 - (b) A treatment planning process;
 - (c) Procedure for crisis intervention; and
 - (d) Discharge and aftercare planning processes.
- (2) A program shall have a written policy concerning the operation of a crisis intervention unit.

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

- a. Four (4) children during normal waking hours; and
- b. Six (6) children during normal sleeping hours.

2. Administrative oversight of the program shall be provided by a staff member who shall be a:

- a. Treatment director; or
- b. Person qualified to be executive director.

(b) A licensed psychiatrist shall be available to evaluate, provide treatment, and participate in the treatment planning.

(c) Intake and service.

1.a. Upon admission, the crisis intervention program shall provide the child and parent, guardian, or other legal representative with a clearly written and legible statement of rights and responsibilities; or

b. If unable to read the statement of rights and responsibilities, the statement shall be read to the child and parent, guardian, or other legal representative.

2. Written policy and procedure developed in consultation with professional and direct-care staff shall provide:

a. For behavior management of a child, including the use of time-out; and

b. An explanation of behavior management techniques to a child and parent, guardian, or other legal representative.

(3) The crisis intervention unit shall prohibit the use of:

- (a) Seclusion; or
- (b) Mechanical restraints.

Section 10. Group Home. The following additional requirements shall apply to a group home program:

(1) Documentation of evidence of publication of a "notice of intent" in an area newspaper, in accordance with KRS Chapter 424, advertising that:

(a) A public hearing shall be held if requested by citizens in the community or an appropriate local governmental entity; and

(b) Information obtained at the hearing shall be made available to the public and the cabinet;

(2) A staff-to-child ratio in accordance with Section 3(5) of this administrative regulation; and

(3) Documentation of the use of community resources and efforts to encourage a child to participate in community activities.

Section 11. Independent Living Services. A child-caring facility shall:

(1) Provide independent living services:

(a) To a child:

1. In the custody of a state agency; and

2. ~~Fourteen (14)~~~~Twelve (12)~~ to twenty-one (21) years of age;

(b) As prescribed in the child's ITP; and

(c) In accordance with 42 U.S.C. 677(a); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and

2. ~~Eighteen (18)~~~~Sixteen (16)~~ years of age and older; and

(b) Developed in accordance with 922 KAR 1:340, Section 3(1)(e).

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 6, 2022

FILED WITH LRC: June 14, 2022 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for private child-caring facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standards for all private child caring facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.640(5) and 199.645 require the cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the standards for private child-caring facilities.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds documentation and training requirements for child-caring facilities that accept the placement of a child with medical complexity who is in the custody of the cabinet. These requirements ensure that communication is taking place between the cabinet and the facility around providing for the child's medical needs. The amendment also includes references to the proposed administrative regulation, 922 KAR 1:290, pertaining to agency staff background check requirements pursuant to KRS 199.642 and makes conforming updates pertaining to 922 KAR 1:340 and the age of youth participating in independent living

services.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that the medical needs of medically complex children who are in the custody of the cabinet are met. Conforming amendments are also necessary for consistency with other recent regulatory amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates standards of care and service provided by child-caring facilities, as required by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures the care of medically complex children who are in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 30 private child-caring facilities licensed in Kentucky and eleven children or youth that are medically complex and placed in a residential setting.

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

Private child-caring facilities subject to this administrative regulation will have increased regulatory requirements ensuring that necessary documentation and training occur prior to the placement of a child with complex medical needs in order to ensure proper care of the child.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment only increases documentation and training that is provided by the cabinet for free; therefore, the cost is minimal, if any.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ensuring the needs of children with medical complexity are met.

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

(a) Initially: The amendment to this administrative regulation has no cost associated, but the administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the child-caring facility.

(b) On a continuing basis: The administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the residential child-caring facility.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment has no cost to the agency, but the administrative regulation will be implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the child-caring facility.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, as the requirements for these facilities are the same.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

(2) State compliance standards. KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

(3) Minimum or uniform standards contained in the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation requires increased documentation and training prior to the placement of children with medical complexity.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This documentation and training will ensure that providers are prepared to care for children with medical complexity who are placed in their care.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services and Office of Inspector General, will be impacted as the regulatory and monitoring agencies overseeing these facilities and the services they provide.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050.

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

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

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

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment seeks to ensure the needs of children with medical complexity are met through increased communication, documentation, and training. The amendment and administrative regulation are not expected to generate cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year? This amendment requires increased communication, documentation, and training related to the placement of children with complex medical needs. The cabinet provides this one-day training at no costs to providers and is only necessary if a regulated facility agrees to accept the placement of a child with medical complexity.

(d) How much will it cost the regulated entities for subsequent years? This amendment requires increased communication,

documentation, and training related to the placement of children with complex medical needs. The training is provided by the cabinet and the placement of a child with these needs are subject to a regulated entity's availability and agreement.

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:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have an economic impact to regulated entities.

NEW ADMINISTRATIVE REGULATIONS

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

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(New Administrative Regulation)

106 KAR 1:141. Emergency management funding.

RELATES TO: KRS 39A.050(2)(i)-(j), 39C.010, 42 U.S.C. 5170(c), 5172, 5173, 5196, 50 U.S.C. 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 U.S.C. 5170(c), 5172, 5173, 5196, 50 U.S.C. 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(i) and (j) require the division to provide funds to a city, county, or charter county government to support a local emergency management agency and comprehensive emergency management program. This administrative regulation establishes eligibility requirements of a city, county, urban-county, or charter county government for emergency management funding.

Section 1. Definitions.

(1) "Applicant" means a local emergency management agency of a city, county, urban-county, or charter county government established pursuant to KRS 39B.010 and 106 KAR 1:231.

(2) "Emergency management funding" means the funds defined in subsections (3), (4), (5), and (6) of this section.

(3) "Chemical Stockpile Emergency Preparedness Program Fund" means the funding established in 50 U.S.C. 1521.

(4) "Federal Disaster and Emergency Assistance Fund" means the funding granted to the division by the Federal Emergency Management Agency, under 42 U.S.C. 5170(c), 5172, and 5173.

(5) "Federal Emergency Management Assistance Fund" means the funding granted to the division by the Federal Emergency Management Agency, under 42 U.S.C. 5196.

(6) "Supplementary State Fund" means the fund established in KRS 39C.010 and 39C.020.

Section 2. Eligibility.

(1) To be eligible for emergency management funding, a city, county, urban-county, or charter-county government shall:

(a) Submit documentation of the establishment of a local emergency management agency pursuant to 106 KAR 1:231;

(b) Submit documentation of the appointment of a local director pursuant to 106 KAR 1:241;

(c) Submit a signed memorandum of agreement issued by the Division of Emergency Management;

(d) Apply for emergency management funding through a local director who shall:

1. Ensure use of an appropriate application form provided by the Division of Emergency Management;

2. Ensure the official name of a local emergency management agency is used to specify the applicant in an application;

3. Exercise signatory authority established in KRS 39B.030(9) to execute an application and a memorandum of agreement issued by the Division of Emergency Management;

4. Maintain a file of an application and supporting material; and

5. Submit applications, memoranda of agreement, and supporting materials prepared for the city, county, urban-county, or charter-government.

(2) A local director shall submit the materials required in subsection (1) of this section to an area manager, or as directed by the Division of Emergency Management, for transmittal to the director.

Section 3. Compliance Requirements.

(1) In maintaining eligibility of a city, county, urban-county, or charter-county government for emergency management funding, a local emergency management agency shall comply with 106 KAR 1:171, 201, 211, and 221.

(2) Failure to comply with applicable federal and state requirements may prevent city, county, urban-county, or charter-governments from receiving reimbursement funding for emergency management programs.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 9:00 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions and eligibility requirements to be met by a city, county, urban-county or charter county government for emergency management funding.

(b) The necessity of this administrative regulation: This administrative regulation facilitates and provides guidance to city, county, urban-county or charter county governments so they may obtain and maintain emergency management funding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes eligibility for city, county, urban-county or charter county governments so they may obtain and maintain emergency management funding. This conforms to KRS 39A.050 which requires the Division of Emergency Management to provide funds for the administration, operation and maintenance of local emergency management agencies created pursuant to KRS Chapters 39A to 39F, and to ensure state and federal funding compliance and local program compatibility with the emergency management system of the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide the Division of Emergency Management the ability to identify city, county, urban-county or charter county governments for emergency management funding

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while ensuring compliance with state and/or federal funding requirements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management and city, county, urban-county or charter county government emergency management agencies that request emergency management funding.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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 must submit the required documentation to establish eligibility of the local emergency management agency and comply with 106 KAR 1:171, 106 KAR 1:201, 106 KAR 1:211 and 106 KAR 1:221 as set forth in those regulations. In short, these entities will submit a proper application and supporting documentation demonstrating the establishment of the local emergency management agency, appoint a local director, submit an application for funding, and maintain eligibility through compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation allows the Division of Emergency Management (and the Department of Military Affairs) to fulfill its' statutory requirement to provide funding and a comprehensive emergency management program. It allows the city, county, urban-county or charter county government emergency management agencies to receive emergency management funding and aid in the local level entities' ability to plan, operate, mitigate and respond to local disasters.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include: the Chemical Stockpile Emergency Preparedness Program Fund established in 50 U.S.C. 1521; The Federal Disaster and Emergency Assistance Fund granted to the division by the Federal Emergency Management Agency (FEMA), under 42 U.S.C. 5170(c), 5172, and 5173; The Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

(7) Provide an assessment of whether an 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 does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the

frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 5170(c), 42 U.S.C. 5172, 42 U.S.C. 5173, 42 U.S.C. 5196 and 50 U.S.C. 1521.

(2) State compliance standards. KRS 39A.050 requires the Division of Emergency Management to provide funds to the cities, counties, and urban-county or charter county governments of the Commonwealth for the administrations, operation and maintenance of local emergency management agencies created pursuant to KRS Chapters 39A to 39F. This same statute permits The Division of Emergency Management to require regular submission of the program administration data, records, material, reports, or documents to conduct reviews and ensure compliance with state and federal funding and to ensure the local program is compatible with the comprehensive emergency management system of the Commonwealth. This regulation requires the local emergency management director to submit a quarterly work activity progress report, develop a local emergency management plan and comply with training requirements for local directors and other local emergency management agency personnel.

(3) Minimum or uniform standards contained in the federal mandate. Funds contributed to a state or local government have limitations for the use of funds depending on the declaration of an emergency. In addition, funds given to state and local governments are limited, in these circumstances, to repair and restore selected public facilities and for debris removal only when accompanied by an unconditional authorization and promise to indemnify the federal government. Funds are not permitted for the procurement of land or for the purchase of personal equipment for state or local emergency preparedness workers and sets wage rates for contractors. These federal statutes also set standards for emergency preparedness plans and compacts.

(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. N/A

FISCAL NOTE

(1) What 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 city, county, urban-county, or charter county government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 U.S.C. 5170(c), 5172, 5173, 5196, 50 U.S.C. 1521

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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 additional revenue.

Expenditures (+/-): This administrative regulation will not create additional expenditures

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred.

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional cost will be incurred.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:171. Local emergency management agency program quarterly report.

RELATES TO: KRS 39A.050(2)(j), 39C.080(2), 42 U.S.C. 5196, 50 U.S.C. 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 U.S.C. 5196, 50 U.S.C. 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(j) and 39C.080(2) require local emergency management directors submit work activity progress reports to the Division of Emergency Management quarterly. This administrative regulation establishes the submission process and procedure for local directors to meet the quarterly reporting requirement.

Section 1. Quarterly report documentation requirements. Local directors shall submit quarterly report documentation to the Division of Emergency Management by January 15, April 15, July 15, and October 15, through the online portal designated by the Division of Emergency Management for this purpose. Quarterly report documentation shall include minimum required documentation for a scheduled work plan objective as specified in The Emergency Management Assistance (EMA) Annual Program Guidance.

Section 2. Incorporation by Reference.

(1) The Emergency Management Assistance (EMA) Annual Program Guidance.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant

General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 9:15 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms and supporting documentation to be submitted by a local director to meet quarterly reporting requirements in KRS 39A.050(2)(j) and 39C.080(2).

(b) The necessity of this administrative regulation: This administrative regulation facilitates and provides guidance to the local director of city, county, urban-county or charter county government so they may obtain and maintain emergency management funding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Division of Emergency Management requires the regular submission of program administration data, records, materials, reports, and documents from local emergency management agencies to ensure compliance with all state and federal funding program requirements. This documentation is to be provided quarterly to substantiate and document the work activity of the local director and agency in performing official duties and work plan objectives. This administrative regulation establishes the forms and documentation described in those statutes previously cited.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides detailed guidance to the local director of city, county, urban-county or charter county governments so they may file quarterly reports and substantiate their program activities in order to obtain and maintain emergency management funding.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency

Management and local emergency management directors and agencies that must comply with KRS 39A.050(2)(j) and KRS 39C.080(2).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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 must submit the required documentation to establish quarterly work activity of the local emergency management agency through an on-line portal designated by the Division of Emergency Management.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation allows entities to receive emergency management funding and substantiate their work plan objectives which aids the entities' ability to plan, operate, mitigate, and respond to local disasters.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include: the Chemical Stockpile Emergency Preparedness Program Fund established in 50 U.S.C. 1521; The Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

(7) Provide an assessment of whether an 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 does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. U.S.C 5196 and 50 U.S.C. 1521.

(2) State compliance standards. KRS 39A.050 requires the Division of Emergency Management to provide funds to the cities, counties, and urban-county or charter county governments of the Commonwealth and to provide funds to these entities for the administrations, operation and maintenance of local emergency management agencies created pursuant to KRS Chapters 39A to 39F. This same statute permits The Division of Emergency Management to require regular submission of program administration data, records, material, reports, or documents from local emergency management agencies to conduct reviews and ensure compliance with state and federal funding programs and to ensure the local program is compatible with the comprehensive emergency management system of the Commonwealth. KRS 39C.080(2) requires the local emergency management director to submit a quarterly work activity progress report to the division. This regulation establishes the submission process and procedure for local directors to meet the quarterly reporting requirement.

(3) Minimum or uniform standards contained in the federal mandate. Funds contributed to a state or local government have limitations for the use of funds depending on the declaration of an emergency. Funds given to state and local governments have

administrative reporting requirements to verify the appropriate funding, account for state and local match contribution requirements and reimbursement.

(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. N/A

FISCAL NOTE

(1) What 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 city, county, urban-county, or charter county government

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 U.S.C. 5170(c), 5196, 50 U.S.C 1521

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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 additional revenue

Expenditures (+/-): This administrative regulation will not create additional expenditures

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional cost will be incurred.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(New Administrative Regulation)

106 KAR 1:181. Project application.

RELATES TO: KRS 39A.050(2)(j), 39C.070(2), 42 U.S.C. 5196
STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3),
39C.100, 42 U.S.C. 5196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(j) and 39C.070(2) direct the Division of Emergency Management to require a local emergency management agency to submit a project application, with supporting material, to request financial assistance from the Emergency Management Assistance (EMA) Fund for administrative or operational equipment and for capital and procurement projects. This administrative regulation establishes an application form to request financial assistance from the EMA fund for a project.

Section 1. Definitions.

(1) "Emergency Management Assistance Fund" or "EMA Fund" means the funds defined in 106 KAR 1:141, Section 1(5) and (6).

(2) "Project" means a purchase or procurement of administrative or operational equipment or capital expenditure, in excess of \$500.

(3) "Project application" means a completed KYEM Form 170, "Division of Emergency Management Project Application."

Section 2. Project Application Requirement. To apply for financial assistance from the Emergency Management Assistance Fund for a project, a local director shall submit a completed project application.

Section 3. Incorporation by Reference.

(1) KYEM Form 170, "Division of Emergency Management Project Application" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable Copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 9:30 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-

3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes an application form to request financial assistance from the Emergency Management Assistance Fund for a project.

(b) The necessity of this administrative regulation: KRS 39A.050(2)(j) and 39C.070(2) direct the Division of Emergency Management to require a local emergency management agency to submit a project application, with supporting material, to request financial assistance from the EMA fund for a project.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the forms and documentation required by KRS 39A.050(2)(j) and 39C.070(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a method for the local director of city, county, urban-county or charter county governments to apply for emergency management project funding.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management and local emergency management directors and emergency management agencies that seek EMA project funding.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Local emergency management directors must submit a completed project application to apply for assistance from the EMA Fund. The Division of Emergency Management will provide guidance and review the application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation allows local emergency management entities to apply for emergency management funding which decreases the local entities' obligations and expenses while allowing an increase in their ability to plan, train, operate, mitigate and respond to local disasters.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include the Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

(7) Provide an assessment of whether an 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 does not require an increase in fees or

funding.

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C 5196

(2) State compliance standards. Local emergency management director will submit a project application with supporting material to request financial assistance as required by KRS 39A.050(2)(m), 39C.070(2) and 39C.100.

(3) Minimum or uniform standards contained in the federal mandate. Funds contributed to a state or local government have limitations for the use of funds depending on the declaration of an emergency. Funds given to state and local governments have administrative reporting requirements to verify the appropriate funding, account for state and local match contribution requirements and reimbursement.

(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. N/A

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 U.S.C. 5170(c), 5196

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No

additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (New Administrative Regulation)

106 KAR 1:191. Project application reimbursement.

RELATES TO: KRS 39A.050(2)(j), 39C.070(2), 42 U.S.C. 5196
STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 U.S.C. 5196

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(j) and 39C.070(2) directs the Division of Emergency Management to require a local emergency management director to submit a reimbursement claim, with supporting documentation, to request financial reimbursement for an approved project application from the Emergency Management Assistance (EMA) Fund. This administrative regulation establishes the reimbursement procedure required to request reimbursement from the EMA fund for an approved project application as established in 106 KAR 1:181.

Section 1. Definitions. "Emergency Management Assistance Fund" or "EMA Fund" means the funds defined in 106 KAR 1:141, Section 1(5) and (6).

Section 2. Reimbursement Documentation. To apply for reimbursement from the EMA Fund, a local emergency management director shall submit a completed KYEM Form 160, "Local Emergency Management Assistance Claim Form," and vendor invoices or receipts to a Division of Emergency Management area manager and per the process directed by the Division of Emergency Management.

Section 3. Incorporation by Reference.

(1) KYEM Form 160 "Local Emergency Management Assistance Claim Form," is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable Copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 9:45 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation requires a local emergency management director to submit a reimbursement claim, with supporting documentation, to request financial reimbursement for an approved project application from the Emergency Management Assistance Fund.

(b) The necessity of this administrative regulation: This regulation establishes a procedure and the required documents to request reimbursement for an approved project from the Emergency Management Assistance Fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.050(2)(j) and 39C.070(2) direct the Division of Emergency Management to require a local emergency management director to submit a reimbursement claim, with supporting documentation. This regulation establishes the reimbursement procedure and documents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a method for the local director of city, county, urban-county or charter county governments to apply for reimbursement from the Emergency Management Assistance Fund for an approved project 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management and local emergency management directors and agencies that seek EMA project application reimbursement.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Local emergency management directors must submit a completed reimbursement form with documentation to apply for reimbursement for an approved project from the EMA Fund. The Division of Emergency Management will provide

guidance and review the reimbursement claim.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation allows local emergency management entities to apply for emergency management project reimbursement which decreases the local entities' obligations and expenses while allowing an increase in their ability to plan, train, operate, mitigate and respond to local disasters.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include the Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

(7) Provide an assessment of whether an 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 does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C 5196

(2) State compliance standards. Local emergency management director will submit a project application with supporting material to request reimbursement from the EMA Fund as required by KRS 39A.050(2)(m), 39C.070(2) and 39C.100.

(3) Minimum or uniform standards contained in the federal mandate. Funds contributed to a state or local government have limitations for the use of funds depending on the declaration of an emergency. Funds given to state and local governments have administrative reporting requirements to verify the appropriate funding, account for state and local match contribution requirements and reimbursement.

(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. N/A

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cities, Counties, urban-counties, or charter county governments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 U.S.C. 5170(c), 5196

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred.

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred. No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:201. Local plan.

RELATES TO: KRS 39A.070(5), 39B.020(3)(d), 39B.030(3), 39B.060, 39C.050(3), 39E.010(1), 39E.110(1)(a)(e),(f), 39E.150, 39F.190, 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39E.040(6), 39E.080(4), 42 U.S.C. 1102(c), 1103(c), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39B.030(3) requires local emergency management directors develop a local emergency management plan consistent with administrative regulations promulgated by the Division of Emergency Management. This administrative regulation establishes the requirements for processing a local plan.

Section 1. Definitions.

(1) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(2) "Local plan" means the written emergency operations plan of a city, county, charter county, or urban-county government

pursuant to KRS Chapters 39A to 39F.

Section 2. Local Plan Requirement.

(1) A local plan shall:

(a) Specify title headings for a basic plan and annexes corresponding to the Kentucky Emergency Management Operation Plan;

(b) Specify known hazards which may impact a local jurisdiction and a detailed analysis of each hazard;

(c) Catalogue emergency management and response personnel, equipment, facilities, supplies, materials, and services;

(d) Identify primary and alternate emergency operations center (EOC) locations by facility names, address, and latitude and longitude;

(e) Identify primary and alternate points of distribution (POD) locations by facility names, address, and latitude and longitude;

(f) Identify public, private, and volunteer agencies, entities, and departments comprising the membership of a local emergency management agency and emergency management functions (ESFs);

(g) Describe the duties and responsibilities of each local emergency management agency and emergency management functions (ESFs) assigned with a local plan; and

(h) Incorporate incident command or management system procedures into the direction and control annex.

(2) Local plan format and content shall comply with:

(a) Division of Emergency Management planning guidance;

(b) Kentucky Emergency Response Commission planning guidance;

(c) Responsibilities of the local emergency planning committee; and

(d) Where applicable, planning guidance published jointly by the Federal Emergency Management Agency and the Department of the Army, "Planning Guidance for the Chemical Stockpile Emergency Preparedness Program."

Section 3. Local Plan Process.

(1) Before July 31 of each federal fiscal year, a local director shall ensure completion of the local plan.

(2) To complete and process a local plan, a local director shall:

(a) Review the existing local plan;

(b) Consult the local emergency planning committee, the local search and rescue coordinator, elected officials, department heads, agency chiefs, and public and private officers and leaders or their designees who are members or participants of the emergency management agency and emergency management functions (ESFs);

(c) Prepare and submit a local plan draft to an area manager by May 1;

(d) Submit corrected, amended, revised, or supplemental plan material specified and requested by an area manager within thirty (30) calendar days following receipt of a written request;

(e) Upon receipt of written concurrence of the Director of the Division of Emergency Management or designee, submit a local plan draft for official adoption as specified in KRS 39B.030(3); and

(f) Distribute an officially adopted local plan to emergency management agency and emergency support functions (ESFs) plan custodians, the chairperson of the local emergency management planning committee, local search and rescue coordinator, area manager, and the Director of the Division of Emergency Management by July 31.

(3) To process a local plan, an emergency management committee, through its chairperson or other authorized representative, shall:

(a) Review the local plan for information reporting consistent with KRS 39E.120, 39E.210, and 39E.220, within thirty (30) calendar days of receipt;

(b) Identify within the local plan's Hazard Analysis section, facilities required to report under EPCRA, SARA Tier III, and input data within the KYEM Tier II reporting software system;

(c) Reference within the local plan's ESF 10 Annex, the Extremely Hazardous Substances (EHS) Facility Emergency Response Plan(s) in accordance with 106 KAR 1:081 and the

Local Emergency Planning Committee (LEPC) Annual Certification Letter (ACL).

(4) A local search and rescue coordinator shall prepare and submit a local search and rescue plan draft to the local director by July 31 of each federal fiscal year, by:

- (a) Reviewing an existing local plan required by KRS 29F.190;
- (b) Preparing and submitting to the local director an updated plan draft or written notice that an existing local plan has been reviewed and is current as of the date of the notice.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General
JEREMY C. SLINKER, Director
CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 10:00 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establish the requirements for processing a local emergency management plan which is one of the requirements to receiving emergency management funding.

(b) The necessity of this administrative regulation: The local plan is required by statute and this regulation establishes the requirements for compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.050 authorizes the Division of Emergency Management to coordinate the development, implementation and maintenance of comprehensive emergency management programs by local emergency management agencies in a city, county, charter county or urban-county government. KRS 39A.050(2)(m) and 39A. 070(3) allow the Division of Emergency Management to promulgate administrative regulations to carry out the provisions of KRS Chapter 39 A to 39F. KRS 39B.030(3) requires local emergency management directors develop a local emergency management plan. This administrative regulation establishes the requirements for processing a local plan. To process a local plan, an emergency management committee must review the local plan and verify that facilities required to report under EPCRA are included. 42 U.S.C. 11002(d) and 11003 (c) and (d) sets forth local plans shall include certain notification provisions if the facilities contains hazardous substances.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This regulation instructs requires local emergency management directors in the requirements for developing and implementing a local plan to comply with statutory requirements.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management and city, county, urban-county or charter county government emergency management agencies that request emergency management funding.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Local emergency management directors must develop a local emergency management plan in accordance with KRS 39B.030(3) and 106 KAR 1:201.

(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 costs to these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A local plan is required for funding which decreases the local entities' obligations and expenses while allowing an increase in their ability to plan, train, operate, mitigate and respond to local disasters. In addition, the local plan is a result from the combines efforts of the local emergency planning committee, the local search and rescue coordinator, elected officials, department heads, agency chiefs, and public and private officers and leaders that are participants of the emergency management agency. The input from these individuals results in a local plan that identifies known hazards which may impact a local jurisdiction, catalogs emergency management personnel and equipment and identifies sets out the duties and emergency management functions. This greatly improves the local communities' ability to respond during an emergency which reduces the loss of life and destruction of property.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include: the Chemical Stockpile Emergency Preparedness Program Fund established in 50 U.S.C. 1521; The Federal Disaster and Emergency Assistance Fund granted to the division by the Federal Emergency Management Agency (FEMA), under 42 U.S.C. 5170(c), 5172, and 5173; The Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or relate to fees.

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and

reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 11002(d) and 42 U.S.C. 11003 (c) and (d).

(2) State compliance standards.

KRS 39B.030(3) requires local emergency management directors develop a local emergency management plan. KRS 39E allows for the implementation of the federal hazardous materials program. KRS 39E.040(6) and KRS 39E.080 (4) give the division the ability to promulgate administrative regulations consistent with the federal statutes which include hazardous substances that require inventory reporting, quantities of each substance covered and the emergency notification procedure and requirements. 106 KAR 1:201 establishes the requirements for processing a local plan. To process a local plan, an emergency management committee must review the local plan and verify that facilities required to report under EPCRA are included and set forth the notification provisions required by federal provisions.

(3) Minimum or uniform standards contained in the federal mandate.

Federal code requires that an emergency plan shall include (but is not limited to) each of the following:

a. Identification of facilities and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.

b. Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of hazardous substances.

c. Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

d. Procedures providing notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release of a hazardous substance has occurred.

e. A description of emergency equipment and facilities in the community and at each facility in the community and the persons responsible for such equipment and facilities.

f. Evacuation plans.

g. Training programs.

e. Methods and schedules for exercising the emergency plan.

(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. N/A

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(j), 39A.070(3), 39E.040 (6), 39E.080(4), 42 U.S.C. 11002(c), 11003(c)(d)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

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

years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred No additional cost will be incurred

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (New Administrative Regulation)

106 KAR 1:211. Local emergency management training.

RELATES TO: KRS 39A.050(2)(l), 39B.020(3)(d), 39C.050(1), (2)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.050(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(l) requires the Division of Emergency Management to institute emergency management training programs. KRS 39C.050(1), (2) require local emergency management agency personnel to complete required training. This administrative regulation establishes training requirements for a local director and other local emergency management agency personnel.

Section 1. Definitions.

(1) "Emergency Management Development Program" means the training curriculum established in Section 2(2) and (3) of this administrative regulation.

(2) "Emergency management training" means a seminar, workshop, course, class, or instruction conducted, sponsored, specified, offered through, or approved by the Division of Emergency Management.

(3) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(4) "Local staff member" means a deputy director, paid or volunteer, or a person appointed to a local emergency

management agency pursuant to KRS 39B.070(3), and specified in KRS 39C.050(2). (5) "Successfully complete" means to attend or participate in emergency management training and to acquire and submit a copy of instructor-provided training completion certificate or record to the Division of Emergency Management.

Section 2. Local Director Training Requirement.

(1) Within thirty (30) calendar days of appointment pursuant to KRS 39B.020(1), a local director shall successfully complete an orientation conducted by the Division of Emergency Management covering Kentucky's emergency management system and programs administered by local directors in Kentucky.

(2) Within the first full federal fiscal year following appointment pursuant to KRS 39B.020(1), a local director shall successfully complete the following:

(a) A course covering incident command and incident management system basic concepts;

(b) A course covering mitigation benefits, methods, resources, and planning;

(c) A course of at least four (4) hours covering emergency operations center basic concepts;

(d) A course conducted by the Division of Emergency Management covering rapid assessment of disaster scenes and proper damage and reporting procedure; and (e) A course of at least eight (8) hours covering hazardous materials and "first responder awareness level" emergency response competencies as defined by the U.S. Occupational Safety and Health Administration, to include instruction on employer and community operating procedures.

(3) By the second full federal fiscal year following appointment, a local director shall begin study to successfully complete the following:

(a) A course conducted or approved by the Division of Emergency Management covering principles in the integrated emergency management system, including interagency teams, coordination methods, and emergency or disaster case studies;

(b) A course conducted by the Division of Emergency Management covering development of a local emergency operation plan consistent with the Kentucky Emergency Operations Plan;

(c) A course of at least twenty-four (24) hours covering exercise assessment, design, delivery, and evaluation skills, including a practical application component;

(d) A course of at least two (2) hours covering local emergency management planning committee member duties and Kentucky's system for implementation of the federal Emergency Planning and the Community Right to Know Act (EPCRA);

(e) A course of at least twelve (12) hours covering hazardous materials and "first responder operations level" emergency response competencies as defined by the U.S. Occupational Safety and Health Administration, to include instruction on Commonwealth of Kentucky hazardous materials response plan;

(f) A course of at least eight (8) hours approved or offered by the Division of Emergency Management covering the eight (8) component elements of an incident command system and incident management system, to include practical application;

(g) A module offered by the Division of Emergency Management covering the incident command system and incident management system competencies for on-the-scene incident commander level as defined by the U.S. Occupational Safety and Health Administration for hazardous materials response; and

(h) A course of at least four (4) hours covering requirements and procedures for obtaining and implementing state and federal disaster assistance programs.

(4) A local director shall complete:

(a) At least two (2) of the courses specified in subsection (3) of this section in each consecutive federal fiscal year until all courses are completed;

(b) All courses of the Emergency Management Development Program within the first five (5) full federal fiscal years following appointment pursuant to KRS 39B.020(1);

(c) Emergency management training conducted annually at the in each federal fiscal year at the Governor's Emergency

Management Workshop; and (d) At least thirty-two (32) hours of emergency management training in each federal fiscal year following appointment or reappointment pursuant to KRS 39B.020(1) or (3).

(5) In meeting the annual training requirement established in subsection (4)(d) of this section, a local director shall receive credit for:

(a) Emergency management training completed in compliance with subsections (2) and (3) of this section;

(b) No more than four (4) hours per emergency management training completed on-line or through a correspondence course, not to exceed twelve (12) hours annually;

(c) No more than four (4) hours per Division of Emergency Management sponsored emergency management training completed on-line or through a correspondence course, not to exceed eight (8) hours annually; and

(d) The training required by subsection (4)(c) of this section.

Section 3. Local Staff Member Training Requirement. In each full federal fiscal year following appointment, a deputy director shall successfully complete at least sixteen (16) hours of training selected from:

(1) Emergency management training listed in subsection (2) of this section;

(2) No more than four (4) hours per emergency management training completed on-line or through a correspondence course, not to exceed a total of eight hours; and

(3) No more than four (4) hours per Division of Emergency Management sponsored emergency management training course a deputy director instructs, not to exceed a total of eight (8) hours. (2) Except as provided in subsection (1) of this section, a local staff member shall successfully complete at least twelve (12) hours of emergency management or administrative training in each full federal fiscal year following appointment.

Section 4. Request for Training Credit.

(1) In meeting the annual emergency management training requirement specified in Section 2(4)(d) or 3 of this administrative regulation, a local director or local staff member may request credit for training not conducted or sponsored by the Division of Emergency Management.

(2) To request credit for training not conducted or sponsored by the Division of Emergency Management, a local director or local staff member shall submit a completed KYEM Form 300, "Request for Training Credit," to an area manager for transmittal to the Director of the Division of Emergency Management for each training course or instructional offering for which credit is requested.

(3) A local director or local staff member may receive credit for emergency management training under this section if:

(a) A completed KYEM Form 300, "Request for Training Credit," is approved in writing by the Director of the Division of Emergency Management; and

(b) The training approved for credit is successfully completed.

Section 5. Training Documentation. A local director or local staff member shall submit documentation of all successfully completed emergency management training to an area manager within thirty (30) calendar days following completion of training.

Section 6. Incorporation by Reference.

(1) KYEM Form 300, "Request for Training Credit" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Emergency Management, Emergency Operations Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 10:15 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(a) What this administrative regulation does: This administrative regulation establishes training requirements for a local director and other local emergency management agency personnel.

(b) The necessity of this administrative regulation: The Division of Emergency Management is required to provide training. This administrative regulation defines training and sets out the training requirements for a local director and other local emergency management agency personnel. Training is one of the requirements of a local emergency management agency to receive state and federal emergency management funding and this regulation sets out standards for compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.050 authorizes the Division of Emergency Management to coordinate the development, implementation and maintenance of comprehensive emergency management programs by local emergency management agencies in a city, county, charter county or urban-county government. KRS 39A.050(2)(m) and 39A.070(3) allow the Division of Emergency Management to promulgate administrative regulations to carry out the provisions of KRS Chapter 39 A to 39F. KRS 39A.050(2)(l) requires the Division of Emergency Management to institute emergency management training programs. KRS 39C.050(1), (2) require local emergency management agency personnel to complete required training. This administrative regulation establishes training requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines training and sets out the training requirements for a local director and other local emergency management agency personnel.

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

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

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

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

(d) How the amendment will assist in the effective

administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management and city, county, urban-county or charter county government emergency management agencies that request emergency management funding.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Local emergency management agency personnel will have to complete the required training and submit the application for training credit as required by 106 KAR 1:210.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Training is required for funding which decreases the local entities' obligations and expenses while allowing an increase in their ability to plan, train, operate, mitigate, and respond to local disasters.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include: the Chemical Stockpile Emergency Preparedness Program Fund established in 50 U.S.C. 1521; The Federal Disaster and Emergency Assistance Fund granted to the division by the Federal Emergency Management Agency (FEMA), under 42 U.S.C. 5170(c), 5172, and 5173; The Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or relate to fees.

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3), 39C.050(1), 39C.050(2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

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

counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred.

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:221. Local exercise.

RELATES TO: KRS 39A.050(2)(l), 39C.050(4), 39E.010(1), 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39E.040(6), 39E.080(4), 42 U.S.C. 11003(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(l) requires the Division of Emergency Management to institute exercise programs. This administrative regulation establishes requirements for exercising a local plan.

Section 1. Definitions.

(1) "Exercise" means a test and evaluation of a local plan.

(2) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(3) "Full-scale exercise" means a comprehensive test and evaluation of a local plan utilizing written objectives that emphasize the practice of multiple emergency management functions and require actual deployment of policy, coordination, and operations personnel, equipment, and resources in response to a simulated emergency.

(4) "Functional exercise" means a limited test and evaluation of a local plan utilizing written objectives that emphasize the practice of direction and control procedures and require actual and simulated utilization of policy, coordination, and operations personnel, equipment, and resources in response to a simulated

emergency.

(5) "Local plan" means the written emergency operations plan of a city, county, charter county, or urban-county government, pursuant to KRS Chapters 39A to 39F.

(6) "Tabletop exercise" means a group discussion led by a facilitator utilizing a written scenario narrative and a set of problem statements, directed messages, or prepared questions designed to test and evaluate a local plan.

Section 2. Tabletop Exercise Requirement. A tabletop exercise shall consist of:

(1) Development and use of a written scenario based on a hypothetical emergency situation; and

(2) Development and use of at least fifteen (15) written problem statements, directed messages, or prepared discussion questions worded specifically to test or evaluate the provisions of the local plan.

Section 3. Functional Exercise Requirement. A functional exercise shall consist of:

(1) At least twenty-five (25) percent staffing of a primary or alternate local emergency operation center;

(2) An operational test of communications and emergency power equipment in a local emergency operations center;

(3) Use of message forms or status boards in a local emergency operations center;

(4) Development and use of a written scenario based upon one (1) or more hazards specified in the local plan;

(5) Development and use of five (5) or more written exercise objectives;

(6) Testing of seven (7) or more disaster and emergency response functions specified in a local plan;

(7) Development and use of written evaluation criteria;

(8) Designation and use of a lead evaluator; and

(9) Conduct of an exercise critique involving exercise participants.

Section 4. Full-scale Exercise Requirement. A full-scale exercise shall consist of:

(1) Completion of the requirements of Section 3 of this administrative regulation, except subsections (1), (5), and (6);

(2) At least seventy-five (75) percent staffing of a primary or alternate local emergency management operations center;

(3) Development and use of ten (10) or more written exercise objectives;

(4) Testing of fifteen (15) or more disaster and emergency services response functions specified in a local plan; and

(5) Field deployment of at least five (5) emergency response and support agencies.

Section 5. Local Exercise Requirement.

(1) Except as provided in subsection (2) of this section, a local director shall:

(a) Schedule, design, conduct, and document one (1) tabletop functional, or full-scale exercise by September 30 of each federal fiscal year; and

(b) At least once during each period of four (4) consecutive federal fiscal years, include in an exercise specified in paragraph (a) of this subsection, testing and validation of a local plan specified in KRS 39E.150.

(2) During each period of four (4) consecutive federal fiscal years, a local director shall schedule, design, conduct, and document at least one (1) functional or full-scale exercise in lieu of one (1) tabletop exercise specified in subsection (1)(a) of this section.

(3) Within thirty (30) days prior to conducting a tabletop exercise specified in subsection (1)(a) of this section, a local director shall submit a final draft of the following to the area manager:

(a) A completed KYEM Form 201, "Exercise Narrative Scenario," or computer-generated equivalent;

(b) A copy of the written exercise discussion problem statements, directed messages, and prepared questions

established pursuant to Section 2(2) of this administrative regulation.

(c) A completed KYEM Form 202, "Exercise Objectives," or computer-generated equivalent.

(4) Within thirty (30) calendar days following completion of a tabletop exercise, a local director shall submit to an area manager a written exercise report consisting of the following:

(a) A completed KyEM Form 201, "Exercise Narrative Scenario" or computer-generated equivalent.

(b) A copy of the written exercise discussion problem statements, directed messages, and prepared questions established pursuant to Section 2(2) of this administrative regulation.

(c) A completed KyEM Form 205, "Exercise Participant Roster" or computer-generated equivalent; and

(d) A completed KyEM Form 206, "Exercise Critique" or computer-generated equivalent.

(5) Within thirty (30) calendar days prior to conducting a scheduled functional or full-scale exercise, a local director shall submit the final draft of the following forms or computer-generated equivalent to the area manager:

(a) A completed KYEM Form 201, "Exercise Narrative Scenario," and

(b) A completed KYEM Form 202, "Exercise Objectives."

(6) Within thirty (30) calendar days following completion of a functional or full-scale exercise, a local director shall submit to a county judge/executive, mayor, or area manager a written local exercise report consisting of the following completed forms or their computer-generated equivalent:

(a) KYEM Form 201, "Exercise Narrative Scenario;"

(b) KYEM Form 202, "Exercise Objectives;"

(c) KYEM Form 203, "Exercise Evaluation Criteria;"

(d) KYEM Form 204, "Master Sequence of Events List;"

(e) KYEM Form 205, "Exercise Participant Roster;"

(f) KYEM Form 206, "Exercise Critique;" and

(g) KYEM Form 207, "Exercise After-Action Report."

Section 6. Exercise Substitution.

(1) In lieu of conducting and documenting a scheduled tabletop, functional, or full-scale exercise in a federal fiscal year, a local director may request to substitute the actual response of a local disaster and emergency services organization to a major emergency situation or disaster occurrence in a local jurisdiction during the federal fiscal year of the actual response.

(2) A local director requesting to substitute an actual response to a major emergency or disaster occurrence, in lieu of conducting and documenting a scheduled tabletop, functional, or full-scale exercise shall, within sixty (60) calendar days following termination of associated emergency response operations, submit to the area manager, for transmittal to the Director of the Division of Emergency Management, an after-action report in memorandum form containing the following information:

(a) A brief description of the type or kind of emergency situation or disaster that occurred in the local jurisdiction;

(b) Date of the emergency situation or disaster occurrence;

(c) The geographic area adversely affected by the emergency situation or disaster;

(d) The estimated population in the adversely affected geographic area;

(e) The major problems experienced and the actions taken by local government to mitigate or respond to the major problems;

(f) Significant assets utilized to mitigate or respond to the emergency situation or disaster; and

(g) Critique comments describing the general effectiveness of the mitigation or response efforts of local government forces, including the adequacy of the local plan and any significant deficiencies noted.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) KYEM Form 201, "Exercise Narrative Scenario;"

(b) KYEM Form 202, "Exercise Objectives;"

(c) KYEM Form 203, "Exercise Evaluation Criteria;"

(d) KYEM Form 204, "Master Sequence of Events List;"

(e) KYEM Form 205, "Exercise Participant Roster;"

(f) KYEM Form 206, "Exercise Critique;" and

(g) KYEM Form 207, "Exercise After-Action Report."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Emergency Management, Emergency Operations Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 10:30 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for exercising a local plan.

(b) The necessity of this administrative regulation: Statute requires the development of a local plan. This regulation establishes the definition of "exercise" and the requirements for an exercise. It instructs the entities how to comply with the local plan exercise requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.050 authorizes the Division of Emergency Management to coordinate the development, implementation and maintenance of comprehensive emergency management programs by local emergency management agencies in a city, county, charter county or urban-county government. KRS 39A.050(2)(m) and 39A.070(3) allow the Division of Emergency Management to promulgate administrative regulations to carry out the provisions of KRS Chapter 39 A to 39F. KRS 39B.030(3) requires local emergency management directors develop a local emergency management plan. KRS 39E allows for the implementation of the federal hazardous materials program. KRS 39E.040(6) and KRS 39E.080 (4) give the division the ability to promulgate administrative regulations consistent with the federal statutes which include hazardous substances that require inventory reporting, quantities of each substance covered and the emergency notification procedure and requirements. 106 KAR

1:221 establishes the requirements for exercising a local plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the exercise of the local plan and requirements for the exercise.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management and city, county, urban-county or charter county government emergency management agencies that request emergency management funding.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Local emergency management agency personnel will have to complete the required exercise for validation as required by 106 KAR 1:221.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

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

Local plan validation through exercise is required for funding which decreases the local entities' obligations and expenses while allowing an increase in their ability to plan, train, operate, mitigate and respond to local disasters.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include: the Chemical Stockpile Emergency Preparedness Program Fund established in 50 U.S.C. 1521; The Federal Disaster and Emergency Assistance Fund granted to the division by the Federal Emergency Management Agency (FEMA), under 42 U.S.C. 5170(c), 5172, and 5173; The Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A.

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 11003(c).

(2) State compliance standards. KRS 39B.030(3) requires local

emergency management directors develop a local emergency management plan. KRS 39E allows for the implementation of the federal hazardous materials program. KRS 39E.040(6) and KRS 39E.080 (4) give the division the ability to promulgate administrative regulations consistent with the federal statutes which include hazardous substances that require inventory reporting, quantities of each substance covered and the emergency notification procedure and requirements. 106 KAR 1:221 establishes the requirements for exercising a local plan set forth in federal provisions.

(3) Minimum or uniform standards contained in the federal mandate. Federal code requires that there be methods and schedules for exercising the emergency plan.

(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. N/A

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(j), (m), 39A.070(3), 39E.040(6), 39E.080(4), 42 U.S.C. 11003(c)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred No additional cost will be incurred

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a

major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:231. Local emergency management agency ordinance requirement.

RELATES TO: KRS 39B.010, 39B.990

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39B.010(1) requires each city, county, charter county, or urban-county government create a local emergency management agency. This administrative regulation establishes the requirements to be met by a governing body of a city, county, charter county, or urban-county government to develop and pass a local emergency management agency ordinance.

Section 1. Ordinance Provisions.

(1) The governing body of a city, county, charter county, or urban-county Government shall pass a local ordinance pertaining to local emergency management agency creation, as established in KRS 39B.010.

(2) A local ordinance passed pursuant to subsection (1) of this section shall:

(a) Include the term "emergency management" in the title of the local ordinance; and

(b) Include provisions which specify:

1. The official name of a local emergency management agency created in the local ordinance;

2. The functional and operational organization of a local emergency management agency consistent with KRS 39B.010;

3. The establishment and use of a local emergency management agency budget account consistent with KRS 39B.010(3);

4. The powers and responsibilities of a local emergency management agency;

5. The powers, authorities, rights, and duties of a local emergency management agency director appointed pursuant to KRS 39B.020, including all the powers, duties, rights, and authorities established in KRS 39B.030; and

6. Ordinance enforcement, including the establishment of penalties for violation of the local ordinance.

Section 2. Documentation Requirements. A full copy of a local emergency management agency ordinance and any amendments, agreements, compacts, or other documents associated with the joint creation of a local emergency management agency pursuant to KRS 39B.010(2)(b) shall be submitted by a local director to the area manager for transmittal to the Director of the Division of Emergency Management within thirty (30) calendar days following final passage or adoption by a local governing body.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 10:45 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(a) What this administrative regulation does: This administrative regulation establishes the requirements to me met by a governing body of a city, county, charter county or urban-county government to develop and pass a local emergency management ordinance.

(b) The necessity of this administrative regulation: The local emergency management ordinance is required by statute and this regulation establishes the requirements for compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.050 authorizes the Division of Emergency Management to coordinate the development, implementation, and maintenance of comprehensive emergency management programs by local emergency management agencies in a city, county, charter county or urban-county government. KRS 39A.050(2)(m) and 39A.070(3) allow the Division of Emergency Management to promulgate administrative regulations to carry out the provisions of KRS Chapter 39 A to 39F. KRS 39B.010(1) requires each city, county, charter county or urban-county government to develop and pass a local emergency management ordinance. This administrative regulation specifies the requirements of that local emergency management ordinance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements to me met by a governing body of a city, county, charter county or urban-county government to develop and pass a local emergency management ordinance.

(2) If 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:

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Local emergency management agency personnel will develop a local emergency management ordinance

as specified by 106 KAR 1:231.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with is required. In addition, compliance is required for funding which decreases the local entities' obligations and expenses while allowing an increase in their ability to plan, train, operate, mitigate, and respond to local disasters.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include: the Chemical Stockpile Emergency Preparedness Program Fund established in 50 U.S.C. 1521; The Federal Disaster and Emergency Assistance Fund granted to the division by the Federal Emergency Management Agency (FEMA), under 42 U.S.C. 5170(c), 5172, and 5173; The Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

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

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the

expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (New Administrative Regulation)

106 KAR 1:241. Local emergency management director appointment process.

RELATES TO: KRS 39B.020

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39B.020 requires the chief executive officer of a local government entity to appoint a local emergency management director. This administrative regulation establishes the process to be followed for the chief executive officer of a local government entity to appoint or reappoint a local emergency management director.

Section 1. Definitions.

(1) "Candidate" means the individual proposed to be appointed pursuant to KRS 39B.020.

(2) "Local appointing authority" means a county judge/executive, mayor, or chief executive officer of a local government entity.

Section 2. Appointment Process. (1) To appoint a local emergency management director, a local appointing authority shall submit:

(a) A completed "Commonwealth of Kentucky Application for Employment;"

(b) A completed KYEM Form 15, "Appointment of Local Emergency Management Director;" and

(c) Written authorization consistent with KRS 39B.020(3)(d)(1) or (2) or (3) or (4).

(2) If a fiscal court, city commission, or other local governing body has adopted administrative procedures that formally establish a personnel merit system, a local appointing authority shall submit a local employment application in lieu of the document specified in subsection (2)(a) of this section. A local employment application shall not be submitted for review by the Personnel Cabinet.

(3) A local appointing authority shall submit the documents, specified in subsections (1) and (2) of this section, to the area manager for transmittal through the Division of Kentucky Emergency Management, Emergency Management Performance Grant ("EMPG") Section Chief, to the Director of the Division of Emergency Management, within the time specified in KRS 39B.020(1).

Section 3. Approval Process.

(1) Within thirty (30) calendar days of receiving materials specified in Section 2 of this administrative regulation, the Director of the Division of Emergency Management shall:

(a) Request the human resources officer of the Department of Military Affairs evaluate the candidate's qualifications for the position of local director; and

(b) Determine the jurisdiction's eligibility for supplementary state funds to support the operations and activities of a local emergency management agency.

(2) Funding shall be suspended when it is determined that a candidate does not meet the qualification required for the position of a local director.

Section 4. Reappointment Process. To reappoint a local director pursuant to KRS 39B.020(3), a local appointing authority shall execute the actions established in Section 2(1)(b) and (c) of this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following materials are incorporated by reference:

(a) "Commonwealth of Kentucky Application for Employment;" and

(b) KYEM Form 15, "Appointment of local Emergency Management Director."

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Division of Emergency Management, Emergency Operations Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 11:00 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process to be followed for the chief executive officer of a local government entity to appoint or

reappoint a local emergency management director.

(b) The necessity of this administrative regulation: The chief executive officer of a local government entity is required by statute to appoint or reappoint a local emergency management director and this regulation establishes the requirements for compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.050 authorizes the Division of Emergency Management to coordinate the development, implementation, and maintenance of comprehensive emergency management programs by local emergency management agencies in a city, county, charter county or urban-county government. KRS 39A.050(2)(m) and 39A.070(3) allow the Division of Emergency Management to promulgate administrative regulations to carry out the provisions of KRS Chapter 39 A to 39F. KRS 39B.020 requires the chief executive officer of a local government entity appoint or reappoint a local emergency management director. This administrative regulation instructs on compliance with that statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements to be met by the chief executive officer of a local government entity to appoint or reappoint a local emergency management director.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management, and the chief executive officer of a local government entity.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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 chief executive officer of a local government entity will be required to comply with 106 KAR 1:241.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to these entities.

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

Compliance is required. In addition, compliance is required for funding which decreases the local entities' obligations and expenses while allowing an increase in their ability to plan, train, operate, mitigate and respond to local disasters.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include: the Chemical Stockpile Emergency Preparedness Program Fund established in 50 U.S.C. 1521; The Federal Disaster and Emergency Assistance Fund granted to the division by the Federal Emergency Management Agency (FEMA), under 42 U.S.C. 5170(c), 5172, and 5173; The Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An

increase in fees or funding will not be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (New Administrative Regulation)

106 KAR 1:251. Workers' Compensation Enrollment Form.

RELATES TO: KRS 39C.110(4), 39F.170(6)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39C.110(4) and 39F.170(6) require workers' compensation insurance coverage for local personnel. This administrative regulation establishes the procedure to be followed by local personnel to enroll in workers' compensation insurance coverage paid by the Division of Emergency Management.

Section 1. Definitions. "Local personnel" means the personnel specified in KRS 39C.110 and 39F.170.

Section 2. Enrollment Procedure. To enroll in workers' compensation insurance coverage, local personnel shall submit a completed KYEM Form 50 to the area manager who shall maintain a hard copy of KYEM Form 50 in the area office and promptly upload a copy of the KYEM Form 50 into the WebEOC database.

Section 3. Incorporation by Reference.

(1) KYEM Form 50, is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Division of Emergency Management, Emergency Operations Center, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 11:15 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to be followed by local personnel to enroll in workers' compensation insurance

coverage paid by the Division of Emergency Management.

(b) The necessity of this administrative regulation: Workers' compensation insurance coverage is required by statute. This regulation establishes the requirements for enrollment for compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.050 authorizes the Division of Emergency Management to coordinate the development, implementation, and maintenance of comprehensive emergency management programs by local emergency management agencies in a city, county, charter county or urban-county government. KRS 39A.050(2)(m) and 39A.070(3) allow the Division of Emergency Management to promulgate administrative regulations to carry out the provisions of KRS Chapter 39 A to 39F. KRS 39C.110(4) and 39F.170(6) require workers' compensation coverage for local personnel. This administrative regulation instructs on the procedure to comply with that statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements to be met by local personnel to enroll in workers' compensation.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management, and local emergency personnel.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The local personnel will have to complete a KYEM Form 50 and submit it to the Division of Emergency Management area manager who will upload the form into a database in compliance with 106 KAR 1:251.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the local personnel.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance is required. In addition, compliance will allow for coverage to local employees working in an emergency management compacity.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and federal funding including grants and cooperative agreements. These include: the Chemical Stockpile Emergency Preparedness Program Fund established in 50 U.S.C. 1521; The Federal Disaster and Emergency Assistance Fund granted to the division by the Federal Emergency Management Agency (FEMA), under 42 U.S.C. 5170(c), 5172, and 5173; The Federal Emergency Management Assistance Fund granted to the division by FEMA, under 42 U.S.C. 5196 and the Supplementary State Fund established in KRS 39C.010 and 39C.020.

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

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

Department of Military Affairs
Division of Emergency Management
(New Administrative Regulation)

106 KAR 1:261. Supplementary state fund expense reimbursement eligibility list.

RELATES TO: KRS 39C.050(9)(a), (b)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39C.050(9)(a) requires the Division of Emergency Management promulgate an administrative regulation specifying officials who may be reimbursed for expenses associated with attendance at emergency management training. This administrative regulation establishes the list of officials eligible to receive expense reimbursement through the supplementary state fund established in KRS 39C.010 and 39C.020.

Section 1. Definitions. "Emergency management training" means a seminar, workshop, course, class, module, or instruction that is conducted, sponsored, specified, offered through, or approved by the Division of Emergency Management.

Section 2. Eligible Officials. In addition to those officials specified in KRS 39C.050(8), the following officials, or their designee, may have the expenses specified in KRS 39C.050(9)(b) reimbursed through the supplementary state fund for attendance at emergency management training subject to the availability of funds:

- (1) A local emergency management agency secretary or administrative support staff;
- (2) A chief of a local fire department;
- (3) A chief of a local law enforcement agency;
- (4) A director of a local ambulance service;
- (5) A director of a local emergency medical service;
- (6) A local public works director;
- (7) A local emergency management agency operations officer;
- (8) A local emergency management communications officer;
- (9) A local emergency management agency public information officer;
- (10) A local emergency management agency hazard mitigation officer;
- (11) A chief of a local rescue squad;
- (12) A local search and rescue coordinator;
- (13) A local twenty-four (24) hour warning point supervisor;
- (14) A local public safety officer; and (15) A chairperson of a local emergency planning committee.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 11:30 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the list of officials eligible to receive expense reimbursement for training through the supplementary state fund established in KRS 39C.010 and 39C.020.

(b) The necessity of this administrative regulation: KRS 39C.050(9)(a) requires the Division of Emergency Management promulgate an administrative regulation specifying officials who may be reimbursed for expenses associated with attendance at emergency management training.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.050 authorizes the Division of Emergency Management to coordinate the development, implementation, and maintenance of comprehensive emergency management programs by local emergency management agencies in a city, county, charter county or urban-county government. KRS 39A.050(2)(m) and 39A.070(3) allow the Division of Emergency Management to promulgate administrative regulations to carry out the provisions of KRS Chapter 39 A to 39F. Statute requires local emergency management agency personnel to complete required training. KRS 39C.050(9)(a) requires the Division of Emergency Management promulgate an administrative regulation specifying officials who may be reimbursed for expenses associated with attendance at emergency management training. This regulation sets forth individuals that may be eligible for reimbursement for that training.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the list of officials eligible to receive expense reimbursement for training through the supplementary state fund.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management, and the eligible officials set forth in 106 KAR 1:261.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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 local personnel will have meet the definition of "eligible official" and there must be funds available in the supplementary state fund.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the local personnel.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance is required. In

addition, compliance will allow for fewer costs to local emergency personnel.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Supplementary State Fund established in KRS 39C.010 and 39C.020.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or relate to fees.

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), (9), 39A.070(3)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (New Administrative Regulation)

106 KAR 1:291. Specialized rescue squad alternative affiliation agreement process.

RELATES TO: KRS 39F.030

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.030(1) authorizes a rescue squad which proposes to provide regional or statewide specialized rescue services to apply to the Director of the Division of Emergency Management for an alternative affiliation agreement and alternative vehicle and equipment requirements. This administrative regulation establishes the process for submitting alternative affiliation requests.

Section 1. Definitions. "Chief rescue officer" means the chief executive officer of a rescue squad.

Section 2. Alternative request.

(1) A chief rescue officer shall submit a written request for alternative affiliation and alternative vehicle and equipment requirements, including all supporting documentation, to a division area manager; and

(2) A request shall include a geographical service area as either statewide or regional. Regional service areas shall list each county in a region.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 11:45 a.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative

Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for submitting a request to the director for an alternative affiliation request.

(b) The necessity of this administrative regulation: KRS 39F.030(1) authorizes a local rescue squad to apply to the director for an alternative affiliation agreement and alternative vehicle and equipment requirements. The administrative regulation is necessary to carry out that statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39F.030 (1) authorizes a rescue squad which proposes to provide regional or statewide specialized rescue services to apply to the Director of the Division of Emergency Management for an alternative affiliation agreement and alternative vehicle and equipment requirements. This administrative regulation establishes the process for submitting alternative affiliation requests which allows compliance with the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation details the process for submitting an affiliation request to the director.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management, and the chief rescue officer set forth in 106 KAR 1:291.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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 chief rescue officer must submit a written request for alternative affiliation and alternative vehicle, and equipment requirements and provide the geographical service area.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the chief or rescue squad.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance is required. In addition, compliance will allow for fewer costs to rescue squads.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The rescue aid fund established in KRS 39F.100(2)

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

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(New Administrative Regulation)

106 KAR 1:341. Rescue aid fund allocation.

RELATES TO: KRS 39F.020(5), 39F.100(2), 39F.110

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3) and 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.020(5) requires the division to administer funds to local rescue squads. This administrative regulation establishes the allocation of rescue aid funds.

Section 1. Definition. "Fund" means the rescue aid fund established in KRS 39F.100(2).

Section 2. Fund allocation. The fund shall be allocated as follows:

(1) Fifteen (15) percent of the total fund appropriated in a state fiscal year shall be allocated for administration and training or may be allocated for minimum equipment or optional equipment at the discretion of the Director, Kentucky Division of Emergency Management.

(2) Fifty (50) percent of the total fund appropriated in a state fiscal year shall be allocated for minimum equipment established in 106 KAR 1:350; and

(3) Thirty-five (35) percent of the total fund appropriated in a state fiscal year shall be allocated for optional equipment.

Section 3. A rescue squad shall not be allocated funds for more than one (1) rescue aid application in a state fiscal year.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 12:00 p.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 39F.020(5) requires the Division of Emergency Management administer funds

to local rescue squads. This administrative regulation establishes the allocation of rescue aid funds.

(b) The necessity of this administrative regulation: To establish the allocation of rescue aid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39F.020(5) requires the Division of Emergency Management administer funds to local rescue squads. This administrative regulation establishes the allocation of rescue aid funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in compliance with statutory direction.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management, and local rescue squads applying for funding under the rescue squad aid fund.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: local rescue squads must allocate funds received pursuant to the rescue aid fund established in KRS 39F.100(2), as set forth in 106 KAR 1:341 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 is no cost to the rescue squad.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance is required. In addition, compliance will allow for fewer costs to rescue squads.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The rescue aid fund established in KRS 39F.100(2).

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

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

(9) TIERING: Is tiering applied? Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred.

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:371. Rescue aid fund expenditure documentation.

RELATES TO: KRS 39F.140(1)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.140(1) requires a rescue squad to document expenditure of rescue aid funds. This administrative regulation establishes a procedure for documenting expenditures of rescue aid funds by a rescue squad.

Section 1. To document expenditure of rescue aid funds, a rescue squad shall submit the documentation specified in KRS 39F.140(1) to a local director.

Section 2. A local director, within ten (10) working days of receipt of the materials specified in Section 1 of this administrative regulation, shall submit to an area manager:

(1) A completed KYEM Form 160, "Local Emergency Assistance Claim Form" incorporated by reference in 106 KAR 1:191.

(2) The documentation received from a rescue squad pursuant to Section 1 of this administrative regulation.

Section 3. Incorporation by Reference

(1) KYEM Form 160 "Local Emergency Management Assistance Claim Form," is incorporated by referenced.

(2) This material may be inspected, copied, or obtained, subject to applicable Copyright law, at Division of Emergency Management, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that The Adjutant General (TAG) has reviewed and approved this administrative regulation prior to its adoption, as required by KRS 39A.070(3).

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

JEREMY C. SLINKER, Director

CHARLES T. JONES, Brigadier General US Army (Ret), Executive Director

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 12:15 p.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for documenting the expenditure of rescue aid funds.

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedure for documenting the expenditure of rescue aid funds required by KRS 39F.140(1).

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

KRS 39F.020(5) requires the Division of Emergency Management administer funds to local rescue squads. KRS 39F.140(1) requires a rescue squad document expenditures of rescue aid funds. This administrative regulation establishes the procedure for documenting the expenditure of rescue aid funds which allows compliance with those statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation

assists in compliance with statutory direction.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Military Affairs, Division of Emergency Management, and local rescue squads that have expended funding under the rescue squad aid fund.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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: Local rescue squads that have expended rescue aid funds must submit KYEM Form 160 and documentation required in 106 KAR 1:371.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the rescue squad.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance is required. In addition, compliance will allow for fewer costs to rescue squads.

(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: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The rescue aid fund established in KRS 39F.100(2).

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

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

(9) TIERING: Is tiering applied? Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated.

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

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

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

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No additional cost savings.

(c) How much will it cost the regulated entities for the first year? No additional cost will be incurred

(d) How much will it cost the regulated entities for subsequent years? No additional cost will be incurred.

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

Cost Savings (+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will have no economic impact.

DEPARTMENT OF MILITARY AFFAIRS (New Administrative Regulation)

106 KAR 2:021. Military Family Assistance Trust Fund.

RELATES TO: KRS 36.470, 36.474, 36.476

STATUTORY AUTHORITY: KRS 36.474(3), (5)

NECESSITY, FUNCTION AND CONFORMITY: KRS 36.470 establishes the military family assistance trust fund. KRS 36.474(3), (5) require the board to promulgate an administrative regulation establishing the maximum amount of grant assistance a person may receive in a twelve (12) month period and to establish a need-based application for trust fund grants. This administrative regulation establishes the application process and the maximum amount of grant assistance as required by KRS 36.474.

Section 1. Military Family Assistance Trust Fund Board. The board shall receive a report on all funds expended on applications and shall be informed on the reason for any application being disapproved.

Section 2. Application for Trust Funds. Any qualified service member or the service member's Kentucky resident spouse may submit a "Kentucky Military Family Assistance Trust Fund Application, DMA Form 43-1" for application of grant funds for a need-based emergency.

Section 3. Payment of Grants.

(1) Except as provided in subsection (2) of this section, the following limits shall apply:

(a) A maximum of twenty-five (25) percent of the annual Kentucky state median income (SMI) as prepared by the U.S. Census Bureau using the most current Census may be approved for a single application as identified on DMA Form 43-1; and

(b) A maximum of twenty-five (25) percent of the annual Kentucky state median income (SMI) as prepared by the U.S. Census Bureau using the most current Census may be approved per fiscal year per service member. An award made to the family of a service member shall be included in the amount calculated as awarded to the service member.

(2) Amounts greater than twenty-five (25) percent of the annual Kentucky state median income (SMI) as prepared by the U.S. Census Bureau using the most current Census for a fiscal year maximum cap may be approved by a majority vote of the board members if there is:

(a) A catastrophic event, including a tornado, fire, earthquake, or other disastrous event; or

(b) At least a twenty-five (25) percent loss of annual income by the service member or spouse that is caused by the deployment compared to what the service member's or spouse's annual income was prior to deployment.

(3) The applicant shall submit appropriate documentation to verify:

(a) The applicant's financial need; and

(b) Other assistance that is provided or not provided by other sources.

Section 4. Incorporation by Reference. (1) "Kentucky Military Family Assistance Trust Fund Application, DMA Form 43-1", May 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Administrative Services Division, Office of Management and Administration, Department of Military Affairs, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168, or by calling the Office at phone (502) 607-1738, Monday through Friday, 8 a.m. to 4:30 p.m.

JUDITH A. BROWN, Director and Fund Administrator
DR. DALLAS F. KRATZER II, Lt. Col. Retired (KYNG), Board Chair
HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 12:45 p.m. Eastern Time at 100 Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the

Department of Military Affairs' Military Family Assistance Trust (MFAST) Fund, specifically application procedures and required documentation.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this trust fund pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the application procedure and application form necessary to receive assistance under the MFAST fund and the maximum amount of grant assistance allowed as required by KRS 36.474.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Military Family Assistance Trust Fund Board and the Adjutant General in the execution of this program for approving applications.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation involves the Kentucky National Guard (KYNG) Adjutant General's Office, the Department of Military Affairs' (DMA) Administrative Services Division and the MFAST Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation is written to provide guidance in assisting a qualified service member (or spouse) with a home of record in Kentucky with an application for grant funds due to need-based emergency. The Department of Military Affairs' (DMA) Administrative Services Division processes all applications ensuring required documents are included. The KYNG Adjutant General or the Director of the KYNG family services program approves the completed applications with all required documents. The MFAST board approve applications that exceed the fiscal year cap.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will allow for the establishment of guidance on how to execute this trust fund and assist an eligible service member or spouse with a grant for a need-based emergency.

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

(a) Initially: The KYNG MFAST fund will utilize funding available in the Kentucky MFAST Fund, operated under the Kentucky Department of Military Affairs, which was initially funded \$500,000 per HB 380 2006 RS (Ky Acts 252), and retains a current balance of approximately \$275,000, to establish and provide grants to applicants.

(b) On a continuing basis: The Kentucky General Assembly has provided Funding is anticipated to be allotted to the Military Family Assistance Trust Fund on an as-needed basis by the Kentucky General Assembly. The Kentucky General Assembly 2022 regular session allotted \$100, 000 to the Military Family Assistance Trust Fund for each fiscal year in the biennium FY 2022-2024.

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

The source of this trust fund is general fund dollars as well as any grants, contributions, appropriations, or other moneys made available for the purpose of the trust fund either public or private.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current historic use of the MFAST fund for service members (or spouses) with a home of record in Kentucky is approximately \$3700 annually from SFY07 through SFY17. However, this fund was restricted to service members in a federal active status and has not paid a grant since SFY17. This fund also expends funds for the KYNG Adoption benefit program. This program was updated by HB 206 on March 15, 2021 to match the adoption reimbursement of state employees. KYNG members are now able to receive \$5000 for reimbursement of adoption of children without special needs and \$7000 for children with special needs. Therefore, there is the anticipated increase in reimbursement for future adoption reimbursement applications. Additionally, the KRS 36.474 was amended to make eligible all currently serving members of the KYNG and Reserve components with a home of record in Kentucky and this will likely create increase in grants to eligible service members or spouses.

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

(1) What 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 Department of Military Affairs, which administers the Military Family Assistance Trust Fund through its Division of Administrative Services at Boone National Guard Center, Frankfort, KY.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 36.470 (Overview); KRS 36.472 (Board); KRS 36.474 (Eligibility); KRS 36.476 (Annual Report).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? Historical cost to administer this program is 10% of salary plus benefits for the Trust Fund Administrator. In SFY 2021, the cost was ~\$9500. The proposed changes to this administrative regulation will have little to no impact on that cost.

(d) How much will it cost to administer this program for subsequent years? Expectation is that administrative costs will remain consistent from year to year, currently approximately \$10,000 annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the

expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. N/A

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? N/A

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? N/A

(c) How much will it cost the regulated entities for the first year? N/A

(d) How much will it cost the regulated entities for subsequent years? N/A

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] N/A

DEPARTMENT OF MILITARY AFFAIRS (New Administrative Regulation)

106 KAR 2:031. National Guard Adoption Benefit Program.

RELATES TO: KRS 36.474, 36.477, 199.555(1)

STATUTORY AUTHORITY: KRS 36.477(8)

NECESSITY, FUNCTION AND CONFORMITY: KRS 36.477(8) requires the Department of Military Affairs to promulgate administrative regulations to implement the Kentucky National Guard Adoption Assistance Program. This administrative regulation establishes the requirements for the Kentucky National Guard employee adoption assistance program.

Section 1. Kentucky National Guard Adoption Benefit Program Application Procedures.

(1) An eligible member of the Kentucky National Guard applying for funds under KRS 36.477 shall submit a completed Kentucky National Guard Adoption Benefit Program Application.

(2) The application shall be submitted to the Department of Military Affairs, along with:

(a) The documentary evidence required by KRS 36.477(5);

(b) A copy of the Affidavit of Expenses related to the adoption filed with and approved by the court at the finalization of the adoption; and

(c) The Adoption Reimbursement Request Letter.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky National Guard Adoption Benefit Program Application", May 2022;

(b) "Affidavit of Expenses", May 2022; and

(c) "Adoption Reimbursement Request Letter", May 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, 100 Minutemen Parkway, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JUDITH A. BROWN, Director and Fund Administrator

DR. DALLAS F. KRATZER II, Lt. Col. Retired (KYANG), Board Chair

HALDANE B. LAMBERTON, Major General, KYNG, Adjutant General

APPROVED BY AGENCY: June 7, 2022

FILED WITH LRC: June 15, 2022 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2022, at 12:30 p.m. Eastern Time at 100

Minuteman Parkway, Bldg. 100, Room 202 (EOC 2nd Floor Conference Room) 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 August 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Corey Ann Howard Jackson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Kentucky National Guard (KYNG) employee adoption assistance program, specifically application procedures and required documentation.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the application procedure and application form, Affidavit of Expenses, and the Adoption Reimbursement Request Letter necessary to receive assistance under the KYNG Adoption Benefit Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Military Family Assistance Trust (MFAST) Fund Board and the Adjutant General in the execution of this program for approving applications.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation involves the KYNG Adjutant General's Office, and the Department of Military Affairs' (DMA) Administrative Services Division.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation is written to provide guidance in assisting actively serving members of the KYNG with request for reimbursement of adoption costs associated with the adoption process. DMA's Administrative Services Division processes all applications ensuring required documents are included. The KYNG Adjutant General approves the completed applications with all required documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will allow for the establishment of guidance on how to execute this trust fund and assist the KYNG member in obtaining reimbursement of adoption fees to assist in the adoption process.

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

(a) Initially: The KYNG Adoption Assistance Program will utilize funding available in the MFAST Fund, operated under DMA, which was initially funded \$500,000 per HB 380 2006RS (KyActs 252), and retains a current balance of approximately \$275,000, to establish and provide grants to applicants.

(b) On a continuing basis: The Kentucky General Assembly has provided Funding is anticipated to be allotted to the MFAST Fund on an as-needed basis by the Kentucky General Assembly. The Kentucky General Assembly 2022 regular session allotted \$100, 000 to the MFAST Fund for each fiscal year in the biennium FY 2022-2024.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of this trust fund is general fund dollars as well as any grants, contributions, appropriations, or other moneys made available for the purpose of the trust fund either public or private.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current historic use of the adoption benefit program for KYNG members is approximately \$11,000 annually. However, this program was updated by HB 206 on March 15, 2021 to match the adoption reimbursement of state employees. KYNG members are now able to receive \$5000 for reimbursement of adoption of children without special needs and \$7000 for children with special needs. Therefore, there is the anticipated increase in reimbursement for future applications.

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

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE

Contact Person: Corey Ann Howard Jackson

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 36.477

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. N/A

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? N/A

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? N/A

(c) How much will it cost the regulated entities for the first year? N/A

(d) How much will it cost the regulated entities for subsequent years? N/A

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

Cost Savings(+/-):
Expenditures (+/-):
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] N/A

**FINANCE AND ADMINISTRATION CABINET
Commonwealth Office of Technology
(New Administrative Regulation)**

200 KAR 1:016. Data breach notification forms.

RELATES TO: KRS 61.932, 61.933

STATUTORY AUTHORITY: KRS 42.726(2)(b), 61.932(2)(b)2., 61.933

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.726(2)(b) authorizes the Finance and Administration Cabinet, Commonwealth Office of Technology ("COT") to promulgate administrative regulations relating to COT's duties. KRS 61.933 specifically authorizes COT to promulgate administrative regulations prescribing the notification form to be used by state agencies and nonaffiliated third parties when they suspect or have determined that a breach of personal information has occurred with respect to personal information that the state agency or nonaffiliated third party maintains or otherwise possesses on behalf of another agency. KRS 61.932(2)(b)2. specifically authorizes COT to promulgate administrative regulations prescribing the form to be used if a law enforcement agency has requested a delay in notification of a security breach to allow for investigation of the breach.

Section 1. Administrative – Required Forms.

(1) Finance Form FAC-001, Suspected and Determined Breach Notification Form, or a form substantially similar thereto, shall be completed by a state agency or nonaffiliated third party to provide written notification of a suspected or determined security breach of personal information collected, maintained, or stored by the agency or nonaffiliated third party.

(2) Finance Form FAC-002, Delay Notification Record, or a form substantially similar thereto, shall be completed by a state agency or nonaffiliated third party if the notification of a suspected or determined breach of personal information collected, maintained, or stored by the agency or nonaffiliated third party has been delayed pursuant to a request from a law enforcement agency or with the approval of the Office of the Attorney General.

Section 2. Incorporation by Reference.

(1) The following materials are incorporated by reference:

(a) Finance Form FAC-001, Suspected and Determined Breach Notification Form, Effective Date June 15, 2022; and

(b) Finance Form FAC-002, Delay Notification Record, Effective Date June 15, 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commonwealth Office of Technology, 101 Cold Harbor Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m., and on the Finance and Administration Cabinet's Web site, <https://finance.ky.gov/office-of-the-secretary/Pages/finance-forms.aspx>.

RUTH DAY, Chief Information Officer

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: June 20, 2022

FILED WITH LRC: June 15, 2022 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022, at 10 a.m. Eastern Time, in Room C-117, Kentucky Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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 Goodlett, Administrative Specialist III, Office of General Counsel, Finance and Administration Cabinet, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622, phone (502) 564-6660, fax (502) 564-9875, email RobinM.Goodlett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Goodlett

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 42.726(2)(b) authorizes the Finance and Administration Cabinet, Commonwealth Office of Technology ("COT"), to promulgate regulations relating to COT's duties. KRS 61.933 specifically authorizes COT to prescribe forms to be used by state agencies and nonaffiliated third parties when they suspect or have determined that a breach of personal information has occurred with respect to personal information that the state agency or nonaffiliated third party maintains or otherwise possesses on behalf of another agency. KRS 61.932 specifically authorizes COT to prescribe forms to be used when a law enforcement agency has requested a delay in notification of a security breach to allow for investigation of the suspected or determined breach. This regulation prescribes those forms.

(b) The necessity of this administrative regulation: This regulation is necessary in order for COT to satisfy KRS Chapter 13A.110 which states that forms required to be submitted by a regulated entity shall be included in an administrative regulation as well as the specific directives of KRS 61.932 and KRS 61.933.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.932 and KRS 61.933 specifically direct COT to prescribe these forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The forms prescribed herein will provide necessary notice to agencies, law enforcement, the Auditor of Public Accounts and the Attorney General as required by House Bill 5 of the 2014 Regular Session of the General Assembly.

(2) If 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: All state agencies or private entities (identified as nonaffiliated third parties) which maintain or otherwise possess personal information for state agencies will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities must complete the prescribed forms when they suspect or determine that a breach of personal information has occurred.

(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 a minimal cost to complete the forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will comply with the requirements of KRS 61.931-934.

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

(a) Initially: COT will not incur any initial costs as the result of this regulation.

(b) On a continuing basis: COT will not incur any additional, continuing costs as the result of this regulation.

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

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

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

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

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entities will be affected, but COT and any state agency which suspects or experiences a security breach of personal information will be required to submit the required forms.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 42.726; KRS 61.932; and KRS 61.933.

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

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:010. Definitions.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136 et. seq.

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the department to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes the definitions that apply to 302 KAR Chapter 26, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions.

(1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects man or the environment.

(2) "Additional Training Dicamba" means any 3,6-Dichloro-2-methoxybenzoic acid, inclusive of any variant formulation or product name, that requires annual mandatory training pursuant to the product label.

(3) "Agricultural commodity" means any plant or part thereof, or animals or animal products, produced:

(a) By farmers, ranchers, grape growers, plant propagators, Christmas tree growers, aquaculturists, orchardists, foresters, or other comparable persons; and

(b) Primarily for sale.

(4) "Application" means placing of a pesticide or pesticide impregnated fertilizers for effect, including mixing and loading.

(5) "Calibration" means adjustment of dispersal or output of application equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(6) "Certification" or "certified" means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of certification.

(7) "Compatibility" means that chemical property of a pesticide that permits use with other chemicals without undesirable results being caused by the combination.

(8) "Competence" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity, and the associated responsibility.

(9) "Continuing education unit" means one (1) contact instructional hour of fifty (50) minutes.

(10) "Customer" means a person who makes a contract, either written or verbal, with an applicator to make an application.

(11) "Department," unless otherwise specified, means the Kentucky Department of Agriculture.

(12) "Environment" means water, air, land, plants, man and other animals living therein, and the interrelationships that exist among them.

(13) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

(14) "Forest" means a concentration of trees and related vegetation in nonurban areas characterized by natural terrain and drainage patterns.

(15) "Golf course" means land, including a lawn, on which an application is made for the purpose of maintaining that land for use in the game of golf.

(16) "Hazards" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation with the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

(17) "Interior landscapes" means ornamentals in the interior of

a building.

(18) "In the business of" means the practice of charging a customer for a pesticide application, either as a whole or by a unit of area.

(19) "Inactive status" means holding in reserve a license held by a person not actively engaged in pesticide sales or application.

(20) "Integrated pest management program" means a strategy of controlling pests, general pests, and wood destroying organisms by combining biological, chemical, cultural, mechanical, and physical control methods in a way that minimizes economic, health, and environmental risks.

(21) "Lawn" means land covered with turf, including ornamental plants, maintained for the purpose of human use and enjoyment of outdoor areas.

(22) "Lawn Care" means the use of pesticides to prevent, control, repel, or eliminate pests for the purpose of mitigating threats to the human use and enjoyment of outdoor areas.

(23) "Non-certified applicator" means any person who has not been certified by training or examination and uses pesticides under the direct supervision of a private applicator.

(24) "Non-target organism" means a plant or animal other than the one against which the pesticide is applied.

(25) "Ornamental" means trees, shrubs, and other plantings, except agricultural commodities, in and around habitations generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial, and institutional buildings.

(26) "Outside areas" means the property associated with commercial, industrial, or residential structures where a commercial structural pest management license holder, under KRS 217B.515, is authorized to control pests, general pests, and wood destroying organisms by means other than chemicals used for lawn care or agricultural pests.

(27) "Practical knowledge" means the comprehension of and ability to identify and use pertinent facts in dealing with specific problems and situations.

(28) "Private applicator" means a person certified to use any pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer, or to the lands of a farmer-neighbor, if applied without compensation other than trading of personal services between producers of agricultural commodities.

(29) "Protective equipment" means clothing or any other materials or devices that shield against unintentional exposure to pesticides.

(30) "Regulated pest" means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, man, or the environment.

(31) "Standard" means the level of knowledge and ability demonstrated as a requirement for certification.

(32) "State" means the Commonwealth of Kentucky.

(33) "Structure" means any building, regardless of its design or type of construction, public or private, vacant or occupied.

(34) "Toxicity" means the property of a pesticide that causes any adverse physiological effects on a living organism.

(35) "Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 filing creates the definitions for the new consolidated pesticides chapter.

(b) The necessity of this administrative regulation: his filing is necessary to create a uniform set of definitions for the regulation of the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of definitions for the regulation of the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of definitions creates a uniform set of terms for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, Federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost

savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:020. Pesticide certification and licensing.

RELATES TO: KRS Chapter 217B, 40 C.F.R. 156, 170, 171, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification by examination for persons required to be licensed under KRS Chapter 217B.

Section 1. Applicability.

(1) A person shall not be issued a commercial or noncommercial licensed to apply pesticides unless he or she is:

(a) At least eighteen (18) years of age; and

(b) Certified by examination in a category consistent with the pesticide application.

(2) A person shall not purchase restricted use pesticides unless licensed in a category consistent with the purchase.

(3) A person shall qualify for a commercial or noncommercial license after passing an examination confirming competency in the category of license consistent with the intended application of pesticides. The license examinations shall serve as the examinations necessary to fulfill federal commercial pesticide applicator certification requirements.

(4) A pesticide operator, pesticide applicator, noncommercial applicator, or private applicator shall not apply any pesticide unless he or she has certified competency and licensed in a category consistent with the application, as established in this administrative regulation, with the exception of a registered trainee acting under the direct supervision of a licensed person.

(5) The department may, after payment of all applicable fees, waive the certification requirement and issue a license to any person who holds a valid license issued by another state, tribal, or federal agency, if the person is employed by a dealer registered in Kentucky and if the other state, tribal or federal agency:

(a) Has requirements substantially similar to that of Kentucky; and

(b) Agrees to reciprocate with Kentucky.

(6) An application "Pesticides License-Certification Application" submitted for a reciprocal license shall be accompanied by a twenty-five (25) dollar reciprocal fee.

(7) Exceptions. The requirements in this regulation do not apply to the following persons:

(a) Persons conducting laboratory research involving restricted use pesticides.

(b) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

Section 2. General Requirements. To obtain certification to qualify for a license, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested.

(1) The applicant shall submit form "Pesticides License-Certification Application".

(2) Competency in the use and handling of pesticides shall be determined and based upon standards established in Sections 4 and 5 of this administrative regulation.

(3) The examination shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified.

(4) Examination standards. Examinations shall conform to all of the following standards:

(a) The examination must be presented and answered in writing.

(b) The examination must be proctored by an individual designated by the department and who is not seeking certification at any examination session that he or she is proctoring.

(c) Each person seeking certification must present at the time of examination valid, government-issued photo identification or a declaration of identity and age as proof of identity and age to be eligible for certification.

(d) Candidates must be monitored throughout the examination period.

(e) Candidates must be instructed in examination procedures before beginning the examination.

(f) Examinations must be kept secure before, during, and after the examination period so that only the candidates have access to the examination, and candidates have access only in the presence of the proctor.

(g) Candidates must not have verbal or non-verbal communication with anyone other than the proctor during the examination period.

(h) No portion of the examination or any associated reference materials may be copied or retained by any person other than a person authorized by the department to copy or retain the examination or any associated reference materials.

(i) The only reference materials used during the examination

are those that are approved by the department and provided and collected by the proctor.

(j) Reference materials provided to examinees are reviewed after the examination is complete to ensure that no portion of the reference material has been removed, altered, or destroyed.

(k) The proctor reports to the department any examination administration inconsistencies or irregularities, including but not limited to cheating, use of unauthorized materials, and attempts to copy or retain the examination.

(l) The examination must be conducted in accordance with any other requirements of the department related to examination administration.

(m) The department must notify each candidate of the results of his or her examination.

(5) A person taking the certification examination shall:

(a) Pay an examination fee of twenty-five (25) dollars; and

(b) Submit to the department prior to taking the examination:

1. A valid government-issued photo identification; or

2. A declaration of identity and age.

(6) Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination.

(7) Upon successfully passing an examination, a person shall have thirty (30) days from the date of testing to pay the license fees for the requested licenses. Failure to pay the license fee (twenty-five (25) dollars for applicators, \$100 for operator) within thirty (30) days after the test date by any qualifying person shall require that person to retake and pass the examination and pay all required fees before issuance of a license may occur.

Section 3. License Categories. Commercial and non-commercial pesticide licenses shall be obtained in the categories of pesticide use or application as established in subsections (1) through (13) of this section. A private applicator license shall be obtained from the department pursuant to Section 7 of this administrative regulation.

(1) Agricultural pest control. This category shall be divided into the following subcategories:

(a) Plant. This subcategory shall include persons applying or supervising the application of pesticides in production of agricultural commodities including, but not limited to, tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, grasslands, non-crop agricultural lands, and greenhouses;

(b) Animal. This subcategory shall include persons applying or supervising the application of pesticides on animals including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock; and to places on or in which animals are confined.

(2) Forest pest control. This category shall include persons applying or supervising the application of pesticides in forests, forest nurseries, and forest seed producing areas.

(3) Ornamental, turf and lawn care. This category shall include persons applying pesticides or impregnated fertilizer to control insects, weeds, and diseases in turf, lawns, and maintenance of ornamental trees, shrubs and flowers, including the control of pests that do not normally invade structures, such as bagworms, grubs, and moles. Licensure in this category shall qualify an applicator to make applications to interior landscapes, sports turf and golf courses.

(4) Seed treatment. This category applies to commercial applicators using or supervising the use of restricted use pesticides on seeds in seed treatment facilities.

(5) Aquatic pest control. This category shall include persons applying or supervising the application of any pesticide purposefully applied to standing or running water. Applicators holding a public health pest control license and engaged in public health-related activities may make applications requiring an aquatic pest control license.

(6) Right-of-way pest control. This category shall include persons applying or supervising the application of pesticides in the maintenance of public roads, utility lines, pipelines, railway rights-of-way, or other similar areas.

(7) Industrial, institutional, and structural pest control. This

category shall apply to persons who use or supervise the use of pesticides in, on, or around the following: food handling establishments, packing houses, and food-processing facilities; human dwellings; institutions, such as schools, hospitals and prisons; and industrial establishments, including manufacturing facilities, warehouses, grain elevators, and any other structures and outside areas, public or private, for the protection of stored, processed, or manufactured products. Industrial, institutional, and structural, pest control shall be divided into the following subcategories:

(a) Structural pest management. Structural pest management shall include persons who use pesticides, other than fumigants, to control pests, general pests and wood-destroying organisms that threatens the structural integrity, the human occupancy, or the contents of such structures. Persons licensed under this section shall be exempt from the certification license requirements of other categories if using or supervising the use of pesticides to control pests, general pests, and wood-destroying organisms in outside areas related to a structure.

(b) Structural fumigation. Structural fumigation shall include persons who use or supervise the use of a pesticide to fumigate anything other than soil and specifically including structures intended for human occupancy.

(c) Wood preservatives. This subcategory shall include persons who apply pesticides to wood and wood products to protect from wood-destroying organisms. Excluded from this category shall be persons engaged in structural pest control.

(8) Public health pest control. This category shall include state, tribal, federal or other governmental employees and contractors who use or supervise the use of pesticides in government-sponsored public health programs for the management and control of pests having medical and public health importance. Applicators holding a public health pest control license and engaged in public health-related activities may make applications requiring an aquatic pest control license.

(9) Regulatory pest control. This category shall include state, tribal, federal, or other local governmental employees and contractors who use or supervise the use of pesticides in government-sponsored programs for the control of regulated pests. Licensure in this category does not authorize the purchase, use, or supervision of use of products for predator control authorized under federal law.

(10) Demonstration and research pest control. This category shall include individuals who demonstrate to the public the proper uses and techniques of applying pesticides or supervise the demonstration. Included in this group shall be persons such as extension specialists and county agents, individuals demonstrating methods used in public programs, and persons conducting field research with pesticides, and in so doing, apply or supervise the application of pesticides. This group shall include state and federal employees and other persons conducting field research on pesticides.

(11) Aerial. This category shall include persons applying pesticides using fixed or rotary wing aircraft or unmanned aerial vehicles. Persons obtaining this category shall also be required to possess an additional license in another category that relates to the location of the intended target pest.

(12) Soil fumigation. This category shall include persons who use or supervise the use of a pesticide to fumigate soil.

(13) Non-soil fumigation. This category shall include persons who use or supervise the use of a pesticide to fumigate anything other than soil, specifically excluding structures intended for human occupancy.

Section 4. Core Standards of Competency. Examinations shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and shall include the following areas of competency:

(1) Label and labeling comprehension. Familiarity with pesticide labels and labeling and their functions, including all of the following:

(a) The general format and terminology of pesticide labels and labeling.

(b) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.

(c) Understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling.

(d) Understanding labeling requirements that a certified applicator must be physically present at the site of the application.

(e) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator.

(f) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application.

(g) Understanding the meaning of product classification as either general or restricted use and that a product may be unclassified.

(h) Understanding and complying with product-specific notification requirements.

(i) Recognizing and understanding the difference between mandatory and advisory labeling language.

(2) Safety. Measures to avoid or minimize adverse health effects, including all of the following:

(a) Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides.

(b) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.

(c) Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.

(d) Common types and causes of pesticide mishaps.

(e) Precautions to prevent injury to applicators and other individuals in or near treated areas.

(f) Need for, and proper use of, protective clothing and personal protective equipment.

(g) Symptoms of pesticide poisoning.

(h) First aid and other procedures to be followed in case of a pesticide mishap.

(i) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(3) Environment. The potential environmental consequences of the use and misuse of pesticides, including the influence of all of the following:

(a) Weather and other indoor and outdoor climatic conditions.

(b) Types of terrain, soil, or other substrate.

(c) Presence of fish, wildlife, and other non-target organisms.

(d) Drainage patterns.

(4) Pests. The proper identification and effective control of pests, including all of the following:

(a) The importance of correctly identifying target pests and selecting the proper pesticide product(s) for effective pest control.

(b) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).

(5) Pesticides. Characteristics of pesticides, including all of the following:

(a) Types of pesticides.

(b) Types of formulations.

(c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.

(d) Hazards and residues associated with use.

(e) Factors that influence effectiveness or lead to problems such as pesticide resistance.

(f) Dilution procedures.

(6) Equipment. Application equipment, including all of the following:

(a) Types of equipment and advantages and limitations of each type.

(b) Use, maintenance, and calibration procedures.

(7) Application methods. Selecting appropriate application methods, including all of the following:

(a) Methods used to apply various forms and formulations of

pesticides.

(b) Knowledge of which application method to use in a given situation and that use of a fumigant and aerial application requires additional certification.

(c) How selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse.

(d) Prevention of drift and pesticide loss into the environment.

(8) Laws and regulations. Knowledge of all applicable state, tribal, and federal laws and regulations.

(9) Responsibilities of supervisors of noncertified applicators. Knowledge of the responsibilities of certified applicators supervising noncertified applicators, including all of the following:

(a) Understanding and complying with requirements in 302 KAR 26:050 for commercial applicators who supervise noncertified applicators using pesticides.

(b) The recordkeeping requirements of pesticide safety training for noncertified applicators who use pesticides under the direct supervision of a certified applicator.

(c) Providing use-specific instructions to noncertified applicators using pesticides under the direct supervision of a certified applicator.

(d) Explaining pertinent state, tribal, and federal laws and regulations to noncertified applicators who use pesticides under the direct supervision of a certified applicator.

(10) Professionalism. Understanding the importance of all of the following:

(a) Maintaining chemical security for restricted use pesticides.

(b) How to communicate information about pesticide exposures and risks with customers and the public.

(c) Appropriate product stewardship for certified applicators.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as established in subsections (1) through (12) of this section.

(1) Agricultural. This category shall be subdivided as follows:

(a) Plant. Persons requesting agricultural plant certification shall demonstrate practical knowledge of crops and specific pests of those crops for which they could be using pesticides. Practical knowledge shall be required concerning soil and water problems, pre-harvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, drift and non-target injury, and community problems resulting from the use of pesticides in agricultural areas.

(b) Animal. Persons requesting agricultural animal certification shall demonstrate practical knowledge of agricultural animals and their associated pests and the relative hazards associated with such factors as formulation, application techniques, the age of animal, stress, and extent of treatment. Practical knowledge shall also be required concerning specific pesticide toxicities and residue potentials because host animals will frequently be used for food.

(2) Forestry. Persons requesting forest certification shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production within the jurisdiction of the department and the pests involved. The required knowledge includes the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications, the relevant organisms causing harm and their vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of application method and proper use of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.

(3) Ornamental, turf and lawn care. Persons requesting ornamental and turf certification shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf,

including cognizance of potential phytotoxicity due to a wide variety of plant material and non-target organisms, drift, and persistence beyond the intended period of pest control. Practical knowledge shall also be required concerning the following: fungi, weeds, insect infestation, disease control, and fertility; the safe handling and proper application of pesticides and fertilizers; toxicity of pesticides to human and nontarget organisms; proper cleaning, disposal and containment techniques for pesticides; effects of pesticides on ground water; and the use of conveying or handling equipment. Because of the frequent proximity of application to human habitations, applicators in this category shall demonstrate practical knowledge of application methods that shall minimize or prevent hazards to humans, pets, and other domestic animals.

(4) Seed treatment. Persons requesting seed treatment certification must demonstrate practical knowledge including recognizing types of seeds to be treated, the effects of carriers and surface active agents on pesticide binding and germination, the hazards associated with handling, sorting and mixing, and misuse of treated seed, the importance of proper application techniques to avoid harm to non-target organisms, and the proper disposal of unused treated seeds.

(5) Aquatic. Persons requesting aquatic certification shall demonstrate practical knowledge of the characteristics of various aquatic use situations, the potential for adverse effects on non-target plants, fish, birds, beneficial insects and other organisms in the treated aquatic environment and downstream, and the principles of limited area application.

(6) Right-of-way. Persons requesting right-of-way certification shall demonstrate practical knowledge of the types of environments (terrestrial and aquatic) traversed by rights-of-way, recognition of target pests, and techniques to minimize non-target exposure, runoff, drift, and excessive foliage destruction. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants and pests to be controlled, and for persistence beyond the intended period of pest control.

(7) Industrial, institutional, and structural pest control. This category shall be subdivided as follows:

(a) Structural pest management. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood destroying organisms. This practical knowledge shall include their life cycles, habits, types of formulations, insecticides appropriate for their control, minimum standards of application, and methods of application that avoid contamination of habitat and exposure of people and pets and a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper sanitation, structural repair, mechanical control techniques, and pesticide application. Because human exposure is frequently a potential problem, an applicant shall demonstrate practical knowledge of the specific factors that may lead to a hazardous condition. Because structural pest control may involve outdoor applications, an applicant shall also demonstrate practical knowledge of environmental conditions.

(b) Structural fumigation. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control, and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, especially in structures intended for human occupancy, the applicant shall demonstrate knowledge of all the following:

1. Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.

2. Safety. Measures to minimize adverse health effects, including all of the following:

a. Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants;

- b. Common problems and mistakes that can result in direct exposure to fumigants;
- c. Signs and symptoms of human exposure to fumigants;
- d. Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely;
- e. Steps to take if a fumigant applicator experiences sensory irritation;
- f. Understanding air monitoring, when it is required, and where and when to take samples;
- g. Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone;
- h. First aid measures to take in the event of exposure to a fumigant; and
- i. Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.
- 3. Non-soil fumigant chemical characteristics. Characteristics of non-soil fumigants, including all of the following:
 - a. Chemical characteristics of non-soil fumigants;
 - b. Specific human exposure concerns for non-soil fumigants;
 - c. How fumigants change from a liquid or solid to a gas;
 - d. How fumigants disperse in the application zone; and
 - e. Compatibility concerns for tanks, hoses, tubing, and other equipment;
- 4. Application. Selecting appropriate application methods and timing, including all of the following:
 - a. Application methods and equipment commonly used for non-soil fumigation;
 - b. Site characteristics that influence fumigant exposure;
 - c. Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions;
 - d. Conducting pre-application inspection of application equipment and the site to be fumigated;
 - e. Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use;
 - f. Calculating the amount of product required for a specific treatment area;
 - g. Understanding the basic techniques for calibrating non-soil fumigant application equipment; and
 - h. Understanding when and how to conduct air monitoring and when it is required.
- 5. Pest factors. Pest factors that influence fumigant activity, including all of the following:
 - a. Influence of pest factors on fumigant volatility;
 - b. Factors that influence gaseous movement through the area being fumigated and into the air;
 - c. Identifying pests causing the damage and verifying they can be controlled with fumigation;
 - d. Understanding the relationship between pest density and application rate; and
 - e. The importance of proper application rate and timing.
- 6. Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:
 - a. Following labeling directions for required personal protective equipment;
 - b. Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment;
 - c. Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters; and
 - d. Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.
- 7. Fumigant management plans and post-application summaries. Information about fumigant management plans and when they are required, including all of the following:
 - a. When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the

- application, and who must have access to it;
- b. The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan;
- c. The person responsible for verifying that a fumigant management plan is accurate; and
- d. The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed;
- 8. Posting requirements. Understanding posting requirements, including all of the following:
 - a. Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas;
 - b. Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each; and
 - c. Proper choice and placement of warning signs.
- (c) Wood preservative. Persons requesting certification in this category shall demonstrate practical knowledge in the use of wood preservatives, air monitoring procedures, personal protective clothing and equipment, hygiene, related health and safety measures, emergency procedures, and practices necessary to prevent environmental contamination.
- (8) Public health. Persons requesting public health certification shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences pesticide application programs. A wide variety of pests are involved and pests shall be known and recognized. Appropriate life cycles and habitats shall be understood as a basis for control strategy. An applicant shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. An applicant shall have knowledge of how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures. An applicant shall also have a practical knowledge of the importance and employment of nonchemical control methods as sanitation, waste disposal, and drainage.
- (9) Regulatory pest control. Persons requesting certification in this category shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made.
- (10) Demonstration and research. Persons requesting certification in this category shall demonstrate practical knowledge of the potential problems, pests, and population levels reasonably expected to occur in a demonstration situation and the effects of pesticides on target and non-target organisms. In addition, they must demonstrate competency in each pest control category applicable to their demonstrations. The person shall demonstrate an understanding of techniques to mitigate effects of pesticides on non-target organisms. In general, persons conducting demonstration pest control work shall possess a practical knowledge in each pest control category applicable to their demonstrations.
- (11) Aerial pest control. Persons requesting certification in this category shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of pesticides, including all the following:
 - (a) Labeling. Labeling requirements and restrictions specific to aerial application of pesticides including:
 - 1. Spray volumes;
 - 2. Buffers and no-spray zones; and
 - 3. Weather conditions specific to wind and inversions.
 - (b) Application equipment. Understand how to choose and maintain aerial application equipment, including all of the following:
 - 1. The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application;

2. Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift;
 3. Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles;
 4. Interpreting a nozzle flow rate chart;
 5. Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width;
 6. How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence;
 7. Where to place nozzles to produce the appropriate droplet size;
 8. How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, and checking nozzles for excessive wear;
 9. How to calculate required and actual flow rates;
 10. How to verify flow rate using fixed timing, open timing, known distance, or a flow meter; and
 11. When to adjust and calibrate application equipment.
- (c) Application considerations. The applicator must demonstrate knowledge of factors to consider before and during application, including all of the following:
1. Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation;
 2. How to determine wind velocity, direction, and air density at the application site; and
 3. The potential impact of thermals and temperature inversions on aerial pesticide application.
- (d) Minimizing drift. The applicator must demonstrate knowledge of methods to minimize off-target pesticide movement, including all of the following:
1. How to determine drift potential of a product using a smoke generator;
 2. How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration;
 3. Selecting techniques that minimize pesticide movement out of the area to be treated; and
 4. Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift.
- (e) Performing aerial application. The applicator must demonstrate competency in performing an aerial pesticide application, including all of the following:
1. Selecting a flight altitude that minimizes streaking and off-target pesticide drift;
 2. Choosing a flight pattern that ensures applicator and bystander safety and proper application;
 3. The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern;
 4. Tools available to mark swaths, such as global positioning systems and flags; and
 5. Recordkeeping requirements for aerial pesticide applications including application conditions if applicable.
- (12) Soil Fumigation. Persons requesting certification in this category shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including all the following:
- (a) Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all of the following:
1. Labeling requirements specific to soil fumigants;
 2. Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under their direct supervision;
 3. Entry-restricted periods for tarped and untarped field application scenarios;
 4. Recordkeeping requirements; and
 5. Labeling provisions unique to fumigant products containing certain active ingredients;
- (b) Safety. Measures to minimize adverse health effects,

including all of the following:

1. Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants;
 2. Common problems and mistakes that can result in direct exposure to fumigants;
 3. Signs and symptoms of human exposure to fumigants;
 4. Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely;
 5. Steps to take if a fumigant applicator experiences sensory irritation;
 6. Understanding air monitoring, when it is required, and where and when to take samples;
 7. Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone;
 8. First aid measures to take in the event of exposure to a soil fumigant; and
 9. Labeling requirements for transportation, storage, spill clean-up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.
- (c) Soil fumigant chemical characteristics. Characteristics of soil fumigants, including all of the following:
1. Chemical characteristics of soil fumigants;
 2. Specific human exposure concerns for soil fumigants;
 3. How soil fumigants change from a liquid or solid to a gas;
 4. How soil fumigants disperse in the application zone; and
 5. Compatibility concerns for tanks, hoses, tubing, and other equipment.
- (d) Application. Selecting appropriate application methods and timing, including all of the following:
1. Application methods, including but not limited to water-run and non-water-run applications, and equipment commonly used for each soil fumigant;
 2. Site characteristics that influence fumigant exposure;
 3. Understanding temperature inversions and their impact on soil fumigant application;
 4. Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions;
 5. Conducting pre-application inspection of application equipment;
 6. Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use;
 7. Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair;
 8. Calculating the amount of product required for a specific treatment area; and
 9. Understanding the basic techniques for calibrating soil fumigant application equipment.
- (e) Soil and pest factors. Soil and pest factors that influence fumigant activity, including all of the following:
1. Influence of soil factors on fumigant volatility and movement within the soil profile;
 2. Factors that influence gaseous movement through the soil profile and into the air;
 3. Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application;
 4. Identifying pests causing the damage and verifying they can be controlled with soil fumigation;
 5. Understanding the relationship between pest density and application rate; and
 6. The importance of proper application depth and timing.
- (f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:
1. Following labeling directions for required personal protective

equipment;

2. Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment;

3. Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters; and

4. Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(g) Fumigant management plans and post-application summaries. Information about fumigant management plans, including all of the following:

1. When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it;

2. The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan;

3. The person responsible for verifying that a fumigant management plan is accurate; and

4. The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(h) Buffer zones and posting requirements. Understanding buffer zones and posting requirements, including all of the following:

1. Buffer zones and the buffer zone period;

2. Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period;

3. Using the buffer zone table from the labeling to determine the size of the buffer zone;

4. Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits;

5. Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each; and

6. Proper choice and placement of warning signs.

(13) Non-Soil Fumigation. Non-soil fumigation. Persons requesting certification in this category shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications of pesticides to sites other than soil and specifically excluding structures intended for human occupancy, including all the following:

(a) Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.

(b) Safety. Measures to minimize adverse health effects, including all of the following:

1. Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants;

2. Common problems and mistakes that can result in direct exposure to fumigants;

3. Signs and symptoms of human exposure to fumigants;

4. Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely;

5. Steps to take if a fumigant applicator experiences sensory irritation;

6. Understanding air monitoring, when it is required, and where and when to take samples;

7. Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone;

8. First aid measures to take in the event of exposure to a fumigant; and

9. Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.

(c) Non-soil fumigant chemical characteristics. Characteristics of non-soil fumigants, including all of the following:

1. Chemical characteristics of non-soil fumigants;

2. Specific human exposure concerns for non-soil fumigants;

3. How fumigants change from a liquid or solid to a gas;

4. How fumigants disperse in the application zone; and

5. Compatibility concerns for tanks, hoses, tubing, and other equipment;

(d) Application. Selecting appropriate application methods and timing, including all of the following:

1. Application methods and equipment commonly used for non-soil fumigation;

2. Site characteristics that influence fumigant exposure;

3. Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions;

4. Conducting pre-application inspection of application equipment and the site to be fumigated;

5. Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use;

6. Calculating the amount of product required for a specific treatment area;

7. Understanding the basic techniques for calibrating non-soil fumigant application equipment; and

8. Understanding when and how to conduct air monitoring and when it is required.

(e) Pest factors. Pest factors that influence fumigant activity, including all of the following:

1. Influence of pest factors on fumigant volatility;

2. Factors that influence gaseous movement through the area being fumigated and into the air;

3. Identifying pests causing the damage and verifying they can be controlled with fumigation;

4. Understanding the relationship between pest density and application rate; and

5. The importance of proper application rate and timing.

(f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

1. Following labeling directions for required personal protective equipment;

2. Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment;

3. Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters; and

4. Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(g) Fumigant management plans and post-application summaries. Information about fumigant management plans and when they are required, including all of the following:

1. When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it;

2. The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan;

3. The person responsible for verifying that a fumigant management plan is accurate; and

4. The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed;

(h) Posting requirements. Understanding posting requirements, including all of the following:

1. Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas;

2. Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each; and

3. Proper choice and placement of warning signs.

Section 6. Competency Certification Maintenance.

(1) To maintain eligibility for licensure renewal, each person certified and licensed under this administrative regulation, other than a private applicator or a non-certified applicator described in

302 KAR 26:070, shall in the three (3) year period prior to the annual renewal application submission, attend at least twelve (12) continuing education units (CEU) of training, approved by the department, in the use and application of pesticides.

(2) All continuing education units approved by the department shall consist of at least one (1) topic from the core standards of competency listed in Section 4 of this administrative regulation and at least one (1) topic from the specific standards of competency listed in Section 5 of this administrative regulation.

(3) At least one (1) CEU credit must be obtained from the Specific Standards of Competency listed in Section 5 of this administrative regulation related to each category of license held by the person.

(4) Credit shall be awarded in full continuing education units only.

(5) Failure to obtain at least twelve (12) CEU credits within three (3) year period prior to renewal shall result in the licensee not being granted a new license until:

(a) The former license holder successfully passes the competency examination for the license associated with the CEU deficiency; and

(b) All required fees and any associated fines are paid.

Section 7. Private Applicators.

(1) Private applicator certification and licensing.

(a) Before using or supervising the use of a restricted use pesticide as a private applicator, a person must obtain a license after being certified as having the necessary competency to use restricted use pesticides for pest control in the production of agricultural commodities.

(b) There shall be no fee for this license.

(c) Persons seeking certification as private applicators must demonstrate practical knowledge of the principles and practices of pest control associated with the production of agricultural commodities and effective use of restricted use pesticides, including all of the following:

1. Label and labeling comprehension. Familiarity with pesticide labels and labeling and their functions, including all of the following:

a. The general format and terminology of pesticide labels and labeling.

b. Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.

c. Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling.

d. Understanding when a certified applicator must be physically present at the site of the application based on labeling requirements.

e. Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator.

f. Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling.

g. Understanding that additional certification and licensing is required to use restricted use pesticides for fumigation or aerial application.

h. Understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified.

i. Understanding and complying with product-specific notification requirements.

j. Recognizing and understanding the difference between mandatory and advisory labeling language.

2. Safety. Measures to avoid or minimize adverse health effects, including all of the following:

a. Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long term effects of pesticides.

b. Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.

c. Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.

d. Common types and causes of pesticide mishaps.

e. Precautions to prevent injury to applicators and other individuals in or near treated areas.

f. Need for, and proper use of, protective clothing and personal protective equipment.

g. Symptoms of pesticide poisoning.

h. First aid and other procedures to be followed in case of a pesticide mishap.

i. Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

3. Environment. The potential environmental consequences of the use and misuse of pesticides, including the influence of the following:

a. Weather and other climatic conditions.

b. Types of terrain, soil, or other substrate.

c. Presence of fish, wildlife, and other non-target organisms.

d. Drainage patterns.

4. Pests. The proper identification and effective control of pests, including all of the following:

a. The importance of correctly identifying target pests and selecting the proper pesticide product(s).

b. Verifying that the labeling does not prohibit the use of the product to control the target pest(s).

5. Pesticides. Characteristics of pesticides, including all of the following:

a. Types of pesticides.

b. Types of formulations.

c. Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.

d. Hazards and residues associated with use.

e. Factors that influence effectiveness or lead to problems such as pesticide resistance.

f. Dilution procedures.

6. Equipment. Application equipment, including all of the following:

a. Types of equipment and advantages and limitations of each type.

b. Uses, maintenance, and calibration procedures.

7. Application methods. Selecting appropriate application methods, including all of the following:

a. Methods used to apply various forms and formulations of pesticides.

b. Knowledge of which application method to use in a given situation and that use of a fumigant or aerial application requires additional certification.

c. How selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse.

d. Prevention of drift and pesticide loss into the environment.

8. Laws and regulations. Knowledge of all applicable state, tribal, and federal laws and regulations, including understanding the Worker Protection Standard in 40 C.F.R. Part 170 and the circumstances where compliance is required.

9. Responsibilities for supervisors of noncertified applicators. Certified applicator responsibilities related to supervision of noncertified applicators, including all of the following:

a. Understanding and complying with requirements in 304 KAR 27:005 for private applicators who supervise noncertified applicators using restricted use pesticides.

b. Providing use-specific instructions to noncertified applicators using restricted use pesticides under the direct supervision of a certified applicator.

c. Explaining appropriate State, Tribal, and Federal laws and regulations to noncertified applicators working under the direct supervision of a certified applicator.

10. Stewardship. Understanding the importance of all of the following:

a. Maintaining chemical security for restricted use pesticides.

b. How to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons.

11. Agricultural pest control. Practical knowledge of pest

control applications to agricultural commodities including all of the following:

- a. Specific pests of relevant agricultural commodities.
- b. How to avoid contamination of ground and surface waters.
- c. Understanding pre-harvest and restricted entry intervals and entry restricted periods and areas.
- d. Understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities.
- e. Relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.

(2) Private applicator minimum age. A private applicator must be at least eighteen (18) years old.

(3) Private applicator competency. The certification of competency for each private applicator candidate must be established based upon the standards set forth in paragraph (a) of this subsection in order to assure that private applicators have the competency to use and supervise the use of restricted use pesticides in accordance with applicable state, tribal, and federal laws and regulations. Either a written examination process as described in paragraph (a) of this subsection or a non-examination training process as described in paragraph (b) of this subsection shall be used to assure the competency of private applicators.

(a) Determination of competency certification by examination. If an examination process is used to determine the competency of private applicators, the examination process must meet all of the requirements of Section 2(4) of this administrative regulation.

(b) Training for competency certification without examination. Any candidate for certification as a private applicator may complete a training program approved by the department to establish competency. A training program to establish private applicator competency must conform to all of the following criteria:

1. Identification. Each person seeking certification must present a valid, government-issued photo identification, or a declaration of identity and age at the time of the training program to be eligible for certification.

2. Training programs for private applicator certification. The training program for private applicator certification must cover the competency standards outlined in paragraph (a) of this subsection in sufficient detail to allow the private applicator to demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides.

(4) Exceptions. The requirements in this section do not apply to the following persons:

(a) Persons conducting laboratory research involving restricted use pesticides.

(b) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

(5) Renewals. A private applicators license shall be deemed automatically renewed at the moment of issuance for the following two (2) calendar years from the calendar year of issuance.

Section 8. Credentials. If a person meets all the requirements to obtain a category-specific license under KRS Chapter 217B and this administrative regulation, the department shall issue a document signifying that he or she is licensed and certified in the category for which he or she qualifies.

(1) Inactive status.

(a) If an applicator or operator, for any reason, changes status and is no longer employed by a dealer or a structural pest management company but elects to maintain his or her license, the licensee shall do so by advising the department of the change and the reason for the change.

(b) The department shall then issue to that person a notification that the license shall be held in inactive status.

(c) The license holder shall be required to maintain certification and pay the annual renewal fee.

(d) The licensee shall not be required to register as a dealer or be permitted to perform any type of regulated activity until the license is reactivated and properly assigned to a dealer.

(2) Kentucky Department of Agriculture employee license and certification. An employee of the department shall not obtain or maintain any pesticide license other than a noncommercial or private applicator license during the term of employment with the department unless required by the department in the performance of official duties.

Section 9. License Renewal and Employment Reporting.

(1) Each license issued by the department shall expire on December 31 of each calendar year.

(2) Failure to renew a license, after January 31 of each year, shall result in the former license holder being required to retest as an initial applicant, after any applicable fines are paid.

(3) At the time of license renewal, each dealer or structural pest management company shall submit to the department a list with the following information on each employee:

(a) Name;

(b) Address; and

(c) Primary telephone number.

(4) Within thirty (30) days of the addition or termination of an employee, the dealer or structural pest management company shall submit to the department the information required in subsection (3) of this section for each new or terminated employee.

Section 10. Conversion of License Categories and Qualifying Certifications. Upon final adoption of this administrative regulation the following conversion of categories and qualifying certifications will become effective.

(1) A licensee holding a current Category 1(a) Agricultural Pest Control, Plant and Animal will convert to holding both a Category 1(a) Agricultural Pest Control, Plant and a Category 1(b) Agricultural Pest Control, Animal, without any additional qualification by examination or training certification. Upon expiration of any license category the licensee must obtain qualification by examination or training certification.

(2) A licensee holding a current Category 1(b) Agricultural Pest Control, Agricultural Fumigation will convert to holding both a Category 12, Soil Fumigation, and a Category 13, Non-Soil Fumigation, without any additional qualification by examination or training certification. Upon expiration of any license category the licensee must obtain qualification by examination or training certification.

(3) A licensee holding a current Category 18, Golf Course, Category 19, Interior Plantscapes, or Category 20, Sports Turf, will convert to holding a Category 3 Ornamental, Turf and Lawn Care, without any additional qualification by examination or training certification. Upon expiration of any license category the licensee must obtain qualification by examination or training certification.

(4) A licensee holding a current Category 17, Wood Preservatives, will convert to holding a Category 7(c), Wood Preservatives, without any additional qualification by examination or training certification. Upon expiration of any license category the licensee must obtain qualification by examination or training certification.

Section 11. Structural Pest Control and Fumigation Licenses. A person holding a general pest and wood-destroying organism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This shall not relieve them from obtaining certification under the federal law as contained in the Federal Insecticides, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136 et seq. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 26:150. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 26:020.

Section 12. Material Incorporated by Reference.

(1) "Pesticides License-Certification Application" (2019), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601,

Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 filing creates the rules and process for pesticide certification and licensing.

(b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of rules and processes for pesticide certification and licensing

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set rules and processes for pesticide certification and licensing for the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of definitions creates a uniform set of terms for rules and processes for pesticide certification and licensing ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the Commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity choses to participate in. No costs are involved for this particular

definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, Federal grants, and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: A reciprocal fee and a testing fee of twenty-five (25) dollars are created.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: A reciprocal fee and a testing fee of twenty-five (25) dollars are created.

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and

pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:030. Recordkeeping.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.105(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.105 requires the department to promulgate recordkeeping administrative regulations pertaining to KRS Chapter 217B. This administrative regulation establishes requirements for recordkeeping.

Section 1. Recordkeeping for Restricted Use Pesticide Distribution.

(1) Applicability. The provisions of this section shall apply to any person, including pesticide sales agents and dealers, distributing restricted use pesticides for use in an application.

(2) Any person who distributes restricted use pesticides shall maintain the following records with respect to the distribution of each restricted use pesticide:

(a) Purchaser's name and address;

(b) Date of the distribution;

(c) License number, license expiration date, and license category of the person obtaining the restricted use pesticide;

(d) Brand name, EPA registration number, quantity, and type of restricted use pesticide distributed;

(e) Emergency exemption or state special local need registration number, if applicable; and

(f) Name of target pest.

(3) Retention.

(a) All persons required to maintain records under this chapter shall retain the records for a period of at least three (3) years from the date of distribution.

(b) Maintenance of duplicate records shall not be required.

(4) Availability. All persons required to maintain records required under this section shall make such records available to the department upon request.

Section 2. Recordkeeping for Restricted Use and General Use Pesticide Applications.

(1) Applicability.

(a) The provisions of this section shall apply to any private applicator, dealer, structural pest management company, licensed operator, licensed applicator or trainee applying restricted use pesticides.

(b) The provisions of this section shall also apply to any private applicator, dealer, licensed operator, licensed applicator or trainee applying general use pesticides.

(c) Structural pest management companies and their associated licensed operators, licensed applicators and trainees shall keep records for applications of general use pesticides according to 302 KAR 26:030, Section 3.

(2) Private applicators, dealers, structural pest management companies, licensed operators, licensed applicators or trainees who apply pesticides shall maintain the following records:

(a) Name and address of person receiving application services;

(b) Location of application;

(c) Size of area treated;

(d) Crop, commodity, stored product, or type of area treated;

(e) Time and date of application;

(f) Brand name or product name of pesticides applied;

(g) EPA registration number;

(h) Total amount of each pesticide applied per location per application;

(i) Name of person making the pesticide application.

(j) If application is made by a trainee, the name of the trainee;

(k) If application is made by a trainee, name and license number of the supervising applicator;

(l) Records required under 302 KAR 26:050 related to trainee

supervision;

- (m) Purpose of application; and
 - (n) Any other record as required by the label.
- (3) Retention.

(a) All persons required to maintain records under this section shall retain the records for a period of at least three (3) years from the date of use or application.

(b) Maintenance of duplicate records shall not be required.

(c) If an application of a pesticide is made in the name of a person or business entity, then maintenance of only one (1) set of records for each application shall be required by that person or business entity, even though one (1) or more persons may have used or applied pesticides.

(4) Availability. All persons required to maintain records required under this section shall make such records available to the department upon request.

Section 3. Recordkeeping for Structural General Use Pesticide Applications.

(1) Applicability.

(a) The provisions of this section shall apply to any structural pest management company and associated licensed operator, licensed applicator or trainee using general use pesticides in structural applications.

(b) Structural pest management companies and their associated licensed operators, licensed applicators and trainees shall keep records for applications of restricted use pesticides according to 302 KAR 26:030, Section 2.

(2) Structural pest management companies and associated licensed operators, licensed applicators or trainees who apply general use pesticides in structural applications shall maintain the following records:

- (a) Name and address of person receiving application services;
- (b) Location of application;
- (c) A description of the use of the area where the pesticide application is made;
- (d) Time and date of the pesticide application;
- (e) Beginning and ending time of an application, if made in a school;
- (f) Brand or product name of pesticides applied;
- (g) Estimated amount of each pesticide applied
- (h) The target pests to be treated;
- (i) Name of person making the pesticide application.
- (j) If application is made by a trainee, the name of the trainee;
- (k) If application is made by a trainee, name and license number of the supervising applicator; and
- (l) Records required under 302 KAR 26:050 related to trainee supervision.

(3) Retention.

(a) All persons required to maintain records under this section shall retain the records for a period of at least three (3) years from the date of use or application.

(b) Maintenance of duplicate records shall not be required.

(c) If an application of a pesticide is made in the name of a person or business entity, then maintenance of only one (1) set of records for each application shall be required by that person or business entity, even though one (1) or more persons may have used or applied pesticides.

(4) Availability. All persons required to maintain records required under this section shall make such records available to the department upon request.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 filing creates the recordkeeping requirements for the new consolidated pesticides chapter.

(b) The necessity of this administrative regulation: his filing is necessary to create a uniform set of recordkeeping requirements for the regulation of the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of recordkeeping requirements for the regulation of the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of definitions creates a uniform set of recordkeeping requirements for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the Commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

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

A combination of fees and fines, federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings

for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:040. Storage and handling of pesticides.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for the storage and handling of pesticides.

Section 1. Applicability. This administrative regulation shall apply to pesticide sales agents, dealers, structural pest management companies, licensed operators, licensed applicators

or trainees who store restricted use or general use pesticides.

Section 2. Storage and Handling of Pesticides. Standards for storage of pesticides.

(1) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas.

(2) Storage sites shall be cool, dry, and airy or have a ventilation system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If a ventilation system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people.

(3) Storage sites shall be adequately lighted so that labels and label information can be easily read.

(4) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions.

(5) Restricted use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked while authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison".

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 filing creates the storage and handling rules for pesticides for the new consolidated pesticides chapter.

(b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of storage and handling rules for pesticides for the regulation of the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of storage and handling rules for pesticides for the regulation of the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of storage and handling rules for pesticides creates a uniform set of terms for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the Commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, Federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in

some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:050. Trainee Registration and Supervision Requirements.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.187, 217B.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.187 and KRS 217B.560 requires the department to promulgate administrative regulations pertaining to registration and supervision of trainees under KRS Chapter 217B. This administrative regulation establishes requirements trainee registration and supervision.

Section 1. Applicability. This administrative regulation applies to any dealer, structural pest management company, licensed commercial operator or licensed commercial applicator who allows or relies on a trainee to use a restricted use or general use pesticide under direct supervision.

Section 2. Non-commercial Supervision of Trainees Prohibited. Trainees shall not use pesticides under supervision of a non-commercial license holder.

Section 3. Registration of Structural Pest Management Company Trainees.

(1) A structural pest management company shall not employ a trainee to apply pesticides without registering the trainee with the department. It shall be unlawful for any person to act as a trainee without being registered.

(2) Each application to register a trainee under this section shall be accompanied by a twenty-five (25) dollar trainee registration fee.

(3) Trainee registration issued pursuant to this section shall be valid for ninety (90) days and shall not be reissued or renewed.

Section 4. General Requirements.

(1) Requirements for the supervising operator or applicator.

(a) The supervising operator or applicator shall have a practical knowledge of applicable requirements contained in this regulation and any requirements on the product label and labeling, regarding the use of restricted use or general use pesticides by trainees.

(b) The supervising operator or applicator shall be licensed in each category as set forth in 302 KAR 26:020 applicable to the supervised pesticide use.

(2) Requirements for the trainee. The supervising operator or applicator shall ensure that each trainee using any pesticide under

his or her direct supervision meets all of the following requirements before using the pesticide:

- (a) The trainee has been trained in accordance with Section 6 of this administrative regulation applies prior to making an application of any pesticide;
- (b) The trainee has been instructed in the safe operation of any equipment he or she will use before mixing, loading, transferring, or applying pesticides; and
- (c) The trainee is at least eighteen (18) years old.

Section 5. Use-specific Conditions That Must Be Met in Order for a Trainee to Use a Pesticide. The supervising operator or applicator shall ensure that all of the following requirements are met before allowing a trainee to use a pesticide under his or her direct supervision:

- (1) The supervising operator or applicator shall ensure that the trainee has access to the applicable product labeling at all times during its use.
- (2) Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the supervising operator or applicator shall ensure that the trainee has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.
- (3) The supervising operator or applicator shall provide to each trainee, before use of a pesticide, instructions specific to the site and pesticide used. These instructions shall include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population) and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The supervising operator or applicator shall provide this information in a manner that the trainee can understand.
- (4) The supervising operator or applicator shall ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the trainee, other persons, or the environment.
- (5) The supervising operator or applicator shall ensure that a means to immediately communicate with the supervising operator or applicator is available to each trainee using pesticides under his or her direct supervision.
- (6) The supervising operator or applicator shall be physically present at the site of the use being supervised when required by the product labeling.
- (7) The supervising operator or applicator shall create or verify the existence of the records required by Section 6 of this administrative regulation.

Section 6. Training Program.

- (1) General training shall be presented to trainees either orally from written materials or audio-visually. The information shall be presented in a manner that the trainees can understand, such as through a translator. The person conducting the training shall be present during the entire training program and must respond to the trainees' questions.
- (2) The person who conducts the training shall be currently licensed by the department as an operator or applicator.
- (3) The training materials shall include the information that trainees need in order to protect themselves, other people, and the environment before, during, and after making a pesticide application. The training materials shall include, at a minimum, the following:
 - (a) Potential hazards from toxicity and exposure that pesticides present to trainees and their families, including acute and chronic effects, delayed effects, and sensitization.
 - (b) Routes through which pesticides can enter the body.
 - (c) Signs and symptoms of common types of pesticide poisoning.

- (d) Emergency first aid for pesticide injuries or poisonings.
- (e) Routine and emergency decontamination procedures, including emergency eye flushing techniques. Trainees must be instructed that if pesticides are spilled or sprayed on the body, to immediately wash or to rinse off in the nearest clean water. Trainees must also be instructed to wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible.
- (f) How and when to obtain emergency medical care.
- (g) After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.
- (h) Wash or shower with soap and water, shampoo hair and change into clean clothes as soon as possible after working with pesticides.
- (i) Potential hazards from pesticide residues on clothing.
- (j) Wash work clothes before wearing them again and wash them separately from other clothes.
- (k) Do not take pesticides or pesticide containers used at work to your home.
- (l) Potential hazards to children and pregnant women from pesticide exposure.
- (m) After working with pesticides, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.
- (n) How to report suspected pesticide use violations to the appropriate state or tribal agency responsible for pesticide enforcement.
- (o) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, including the location and meaning of the restricted use product statement, how to identify when the labeling requires the certified applicator to be physically present during the use of the pesticide, and information on personal protective equipment.
- (p) Need for, and appropriate use and removal of, personal protective equipment.
- (q) How to recognize, prevent, and provide first aid treatment for heat-related illness.
- (r) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
- (s) Environmental concerns such as drift, runoff, and wildlife hazards.
- (t) Restricted use and general use pesticides may be used only by a licensed operator or licensed applicator, or by a trainee working under the direct supervision of a licensed operator or licensed applicator.
- (u) The supervising operator's or applicator's responsibility to provide to each trainee instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population, and risks) and the conditions of application (e.g., equipment, method of application, formulation, and risks) might increase or decrease the risk of adverse effects. The supervising operator or applicator must provide these instructions in a manner the trainee can understand.
- (v) The supervising operator's or applicator's responsibility to ensure that each trainee has access to the applicable product labeling at all times during its use.
- (w) The supervising operator's or applicator's responsibility to ensure that where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each trainee has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.
- (x) The supervising operator's or applicator's responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the trainee, other persons, or the environment.
- (y) The supervising operator's or applicator's responsibility to

ensure that a means to immediately communicate with the supervising operator or applicator is available to each trainee using any pesticides under his or her direct supervision.

Section 7. Recordkeeping. Supervising operators or applicators must create or verify the existence of records documenting that a trainee has the qualifications required in Section 3(2) of this administrative regulation.

(1) If the trainee was trained in accordance with Section 3(2) of this administrative regulation, the record must contain all of the following information:

- (a) The trainee's printed name and signature;
- (b) The date the training requirement was met;
- (c) The name of the person who provided the training; and
- (d) The title and a description of the training provided.

(2) The supervising operator or applicator shall create or verify the existence of the record containing the information in subsection (1) of this section before allowing the trainee to use any pesticides under his or her direct supervision.

(3) The dealer or structural pest management company employing the trainee shall provide the supervising operator or applicator of any trainee access to records documenting the information required subsection (1) section at the supervising operator's or applicator's principal place of business for three (3) years from the date the trainee used the pesticide.

Section 8. Exceptions. The requirements in Sections 1 through 6 of this administrative regulation do not apply to the following persons:

- (1) Persons conducting laboratory research involving restricted or general use pesticides.
- (2) Doctors of medicine and doctors of veterinary medicine applying restricted or general use pesticides to patients during the course of the ordinary practice of those professions.

Section 9. Material Incorporated by Reference (1) "Trainee Registration Application", (2022), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 filing creates the definitions for the new consolidated pesticides chapter.
- (b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of definitions for the regulation of

the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of definitions for the regulation of the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of definitions creates a uniform set of terms for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

- (a) Initially: The KDA estimates \$2,180,000 total annually.
- (b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, Federal grants, and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: A twenty-five (25) dollar fee is applicable for those wishing to register.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: twenty-five (25) dollar fee is applicable for those wishing to register.

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide

applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:060. Identification of service vehicles.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for the identification of service vehicles.

Section 1. Applicability. This administrative regulation shall apply to pesticide sales agents, dealers, structural pest management companies, licensed operators, licensed applicators or trainees who use service vehicles in the application of pesticides.

Section 2. Identification of Service Vehicles. Each vehicle actively engaged in service work in support of the application of pesticides shall be marked for easy identification with the company name registered with the department or an easily identifiable logo primarily used by the company for identification. Identification of vehicles may be permanent or removable; however, signs shall accompany the vehicle at all times for purpose of identification.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their

intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 filing creates the rules for identification of service vehicles for the new consolidated pesticides chapter.

(b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of rules for identification of service vehicles for the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of rules for identification of service vehicles the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of definitions creates a uniform set of rules for identification of service vehicles for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the Commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE

Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:070. Non-certified applicator training and supervision.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.050 requires the department to promulgate administrative regulations pertaining to necessary to carry out the purpose and intent of this chapter, the administrative

regulations may relate to the time, place, manner, and method of storage and application of pesticides and fertilizers. This administrative regulation establishes supervision, training, and recordkeeping requirements for private applicators using non-certified applicators to apply pesticides.

Section 1. Applicability. This administrative regulation applies to any private applicator who allows or relies on a non-certified applicator to use a general use pesticide under direct supervision. "Non-certified applicator" means any person who has not been certified by training or examination and uses pesticides under the direct supervision of a private applicator.

Section 2. General Requirements.

(1) Requirements for the supervising private applicator.

(a) The supervising private applicator shall have a practical knowledge of applicable requirements contained in this administrative regulation and any requirements on the product label and labeling, regarding the use of general use pesticides by non-certified applicators.

(b) The supervising private applicator shall be licensed in each category as set forth in 302 KAR 26:020 applicable to the supervised pesticide use.

(2) Requirements for the non-certified applicator. The supervising private applicator shall ensure that each non-certified applicator using a general use pesticide under his or her direct supervision meets all of the following requirements before using the pesticide:

(a) The non-certified applicator has been trained in accordance with Section 4 of this administrative regulation of this administrative regulation within the last twelve (12) months;

(b) The non-certified applicator has been instructed in the safe operation of any equipment he or she will use for mixing, loading, transferring, or applying pesticides; and

(c) The noncertified applicator is at least eighteen (18) years old, except that a noncertified applicator may be at least sixteen (16) years old if all of the following requirements are met:

1. The noncertified applicator is using the pesticide under the direct supervision of a private applicator who is an immediate family member;

2. The pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate; and

3. The noncertified applicator is not applying the pesticide aerially.

Section 3. Use-specific Conditions That Must Be Met in Order for a Non-certified Applicator to Use a Pesticide. The supervising private applicator shall ensure that all of the following requirements are met before allowing a non-certified applicator to use a pesticide under his or her direct supervision:

(1) The supervising private applicator shall ensure that the non-certified applicator has access to the applicable product labeling at all times during its use.

(2) Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the supervising private applicator shall ensure that the non-certified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.

(3) The supervising private applicator shall provide to each non-certified applicator, before use of a pesticide, instructions specific to the site and pesticide used. These instructions shall include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population) and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The supervising private applicator shall provide this information in a manner that the non-certified applicator can understand.

(4) The supervising private applicator shall ensure that before each day of use, equipment used for mixing, loading, transferring,

or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the non-certified applicator, other persons, or the environment.

(5) The supervising private applicator shall ensure that a means to immediately communicate with the supervising private applicator is available to each non-certified applicator using pesticides under his or her direct supervision.

(6) The supervising private applicator shall be physically present at the site of the use being supervised when required by the product labeling.

Section 4. Training Program.

(1) General training shall be presented to non-certified applicators either orally from written materials or audio-visually. The information shall be presented in a manner that the non-certified applicators can understand, such as through a translator. The person conducting the training shall be present during the entire training program and must respond to the non-certified applicators' questions.

(2) The person who conducts the training shall be currently licensed by the department as a private applicator or in a category listed in 302 KAR 26:020.

(3) The training materials shall include the information that non-certified applicators need in order to protect themselves, other people, and the environment before, during, and after making a pesticide application. The training materials shall include, at a minimum, the following:

(a) Potential hazards from toxicity and exposure that pesticides present to non-certified applicators and their families, including acute and chronic effects, delayed effects, and sensitization.

(b) Routes through which pesticides can enter the body.

(c) Signs and symptoms of common types of pesticide poisoning.

(d) Emergency first aid for pesticide injuries or poisonings.

(e) Routine and emergency decontamination procedures, including emergency eye flushing techniques. Non-certified applicators must be instructed that if pesticides are spilled or sprayed on the body, to immediately wash or to rinse off in the nearest clean water.

(f) How and when to obtain emergency medical care.

(g) After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(h) Wash or shower with soap and water, shampoo hair and change into clean clothes as soon as possible after working with pesticides.

(i) Potential hazards from pesticide residues on clothing.

(j) Wash work clothes before wearing them again and wash them separately from other clothes.

(k) Do not take pesticides or pesticide containers used at work to your home.

(l) Potential hazards to children and pregnant women from pesticide exposure.

(m) After working with pesticides, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(n) How to report suspected pesticide use violations to the appropriate state or tribal agency responsible for pesticide enforcement.

(o) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, how to identify when the labeling requires the certified applicator to be physically present during the use of the pesticide, and information on personal protective equipment.

(p) Need for, and appropriate use and removal of, personal protective equipment.

(q) How to recognize, prevent, and provide first aid treatment for heat-related illness.

(r) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(s) Environmental concerns such as drift, runoff, and wildlife hazards.

(t) General use pesticides may be used only by a licensed operator, a licensed applicator, a private applicator or by a non-certified applicator working under the direct supervision of a licensed operator or licensed applicator.

(u) The supervising private applicator's responsibility to provide to each non-certified applicator instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population, and risks) and the conditions of application (e.g., equipment, method of application, formulation, and risks) might increase or decrease the risk of adverse effects. The supervising private applicator must provide these instructions in a manner the non-certified applicator can understand.

(v) The supervising private applicator's responsibility to ensure that each non-certified applicator has access to the applicable product labeling at all times during its use.

(w) The supervising private applicator's responsibility to ensure that where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each non-certified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and use correctly for its intended purpose.

(x) The supervising private applicator's responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the non-certified applicator, other persons, or the environment.

(y) The supervising private applicator's responsibility to ensure that a means to immediately communicate with the supervising private applicator is available to each non-certified applicator using pesticides under his or her direct supervision.

Section 5. Recordkeeping. The supervising private applicator must create or verify the existence of records documenting that a non-certified applicator has the qualifications required in Section 2(2) of this administrative regulation.

(1) If the non-certified applicator was trained in accordance with Section 2(2) of this administrative regulation, the record must contain all of the following information:

(a) The non-certified applicator's printed name and signature;

(b) The date the training requirement was met;

(c) The name of the person who provided the training; and

(d) The title and a description of the training provided.

(2) The supervising private applicator shall create or verify the existence of the record containing the information in subsection (1) of this section before allowing the non-certified applicator to use any pesticides under his or her direct supervision.

(3) The supervising private applicator shall maintain all required records documenting the information for three (3) years from the date the non-certified applicator used the pesticide.

Section 6. Exceptions. The requirements in Sections 1 through 5 of this administrative regulation do not apply to the following persons:

(1) Persons conducting laboratory research involving pesticides.

(2) Doctors of medicine and doctors of veterinary medicine applying pesticides to patients during the course of the ordinary practice of those professions.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this

agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 filing creates the rules for non-certified applicator training and supervision for the new consolidated pesticides chapter.

(b) The necessity of this administrative regulation: his filing is necessary to create a uniform set of rules for non-certified applicator training and supervision for the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of rules for non-certified applicator training and supervision in the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of rules for non-certified applicator training and supervision creates a uniform set of rules for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the Commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least

\$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, Federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full

year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:080. Lawn, turf, ornamental and interior plantscape notice posting.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes turf, ornamental, and interior plantscape posting requirements.

Section 1. (1) Any operator or applicator who engages in lawn care by making applications to lawns shall:

(a) Provide a customer at the time of entering into a contract, with written information concerning pesticides or pesticide impregnated fertilizers, application procedures, and other general guidelines about making safe applications;

(b) Immediately following an application to a lawn, the applicator shall place a lawn marker at a prominent location in the lawn;

(c) The lawn marker shall consist of, at a minimum, a 4 in. x 5 in. white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;

(d) Lettering on the lawn marker shall be in a contrasting color and shall read on one side "LAWN CARE APPLICATION - PLEASE STAY OFF GRASS UNTIL DRY" in letters easily readable and not less than three-eighths (3/8) inches in height. The lawn marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;

(e) The lawn marker shall be removed and discarded by the property owner or resident, or other person authorized by the property owner or resident, the day following an application;

(f) For applications to residential properties of three (3) families or less, the applicator shall place one (1) lawn marker per property; and

(g) For applications to properties other than residential property of three (3) families or less, the applicator shall place lawn markers at primary points of entry to the property to provide notice that an application has been made to the lawn.

(2) At the time of an application to a lawn, an applicator shall provide the information listed in subsection (1)(a) of this section to the customer, either homeowner or landlord, for each pesticides or pesticide impregnated fertilizers used.

(3) Any customer or employer of an applicator, or a neighbor whose residence is adjoining to a customer or employer of an applicator, may request prior notification twenty-four (24) to forty-eight (48) hours in advance of an application by contacting the applicator and providing his name, address, and telephone number. In this event, the applicator shall provide notification in writing, in person, or by telephone, of the date and approximate time of application. If an applicator is unable to provide prior notification to a customer or neighbor because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

Section 2. (1) The following shall be required by an applicator making applications to a golf course relating to records, notification, and information requirements:

(a) Immediately following an application on a golf course, the applicator shall place a golf course marker on the number-one (1) and number-ten (10) tees;

(b) The golf course marker shall consist of, at a minimum, a 4 in. x 5 in. white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;

(c) Lettering on the golf course marker shall be in a contrasting color and shall read on one side "PLANT-REGULATING MATERIALS HAVE BEEN APPLIED. IF DESIRED, YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION" in letters easily readable and not less than three-eighths (3/8) inches in height. The golf course marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;

(d) The golf course marker may be removed by the applicator or other personnel authorized by the golf course management the day following application;

(e) Any person whose residence directly adjoins a golf course may request prior notification of an application by contacting the golf course superintendent's office and providing his or her name, address, and telephone number. If requested, the golf course shall provide notification in writing, in person, or by telephone. In the event the golf course cannot provide advance notice, the person shall be contacted at the time of application. If the golf course is

unable to provide prior notification or direct notification to a resident because of the absence or unavailability of the resident, the golf course shall leave a written notice at the residence; and

(f) Material safety data sheets for each pesticide or pesticide impregnated fertilizer used in an application shall be in an area of the superintendent's office where they can be easily read and accessible by patrons of the golf course.

(2) Records listed in Section 5 of this administrative regulation shall be maintained in the golf course superintendent's office and shall be readily available to review on request. This record shall be retained for three (3) years and be subject to inspection by the department.

Section 3. Any applicator who makes an application to interior landscapes shall:

(1) Immediately following an application to interior landscapes, place a marker at a prominent location in the interior landscapes. The sign shall read "PESTICIDES HAVE BEEN APPLIED - PLEASE STAY OUT OF TREATED AREA" in letters easily readable and not less than three-eighths (3/8) inches in height. The marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator. Posting requirements shall not apply if plants that are in interior landscapes are taken off-site for an application and not returned until the plants have adequately dried; and

(2) Provide prior notification to the customer or adjoining residents in writing, in person, or by telephone if requested, of the date and approximate time of the application. If an operator is not able to provide prior notification to a customer or adjoining residence due to the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

Section 4. (1) The following shall be required by an applicator making applications to sports turf relating to records, notification, and information requirements:

(a) Immediately following an application to turf on a sports field, the applicator shall place a marker at usual entry points to the field;

(b) The marker shall consist of, at a minimum, a 4 in. x 5 in. white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;

(c) Lettering on the marker shall be in a contrasting color and shall read on one (1) side "PESTICIDES HAVE BEEN APPLIED - PLEASE STAY OUT OF TREATED AREA" in letters easily readable and not less than three-eighths (3/8) inches in height. The marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;

(d) The marker may be removed by the applicator or other personnel authorized by the sports field management the day following application;

(e) Any person whose residence directly adjoins a sports field may request prior notification of an application by contacting the sports field manager's office and providing his or her name, address, and telephone number. If requested, the manager shall provide notification in writing, in person, or by telephone. In the event the sports field manager cannot provide advance notice, the person shall be contacted at the time of application. If the manager is unable to provide prior notification or direct notification to a resident because of the absence or unavailability of the resident, the manager shall leave a written notice at the residence; and

(f) Material safety data sheets for each pesticide used in an application shall be in an area of the manager's office where they can be easily read and accessible by patrons of the sports field.

(2) Records listed in Section 5 of this administrative regulation shall be maintained in the manager's office and shall be readily available to review on request. This record shall be retained for three (3) years and be subject to inspection by the department.

Section 5. An applicator shall provide the following information upon request to all persons requesting notice under Sections 1, 2, and 3 of this administrative regulation, and shall record and maintain at the applicator's business address the following information relating to the application of each pesticide used:

(1) The brand name or common name of the pesticide applied;

(2) The pesticide type;

(3) The fertilize rate and analysis;

(4) The reason for use;

(5) The concentration of end use product applied;

(6) The rate of application,

(7) The total gallons of end use product applied;

(8) Any special instruction appearing on the label of the pesticide product applicable to the use of the treated area following application;

(9) Any other precautionary or hazard information appearing on the label as applicable to the end use concentration;

(10) The name and the state applicator license or certificate number of the individual actually making the application;

(11) Customer name, address, and date of application;

(12) The location area of area treated; and

(13) Total area treated.

Section 6. Violations. The department may assess civil penalties as provided by KRS 217B.193, or may suspend, revoke, delay issuing, or modify the provision of any license or registration issued under this chapter, if it finds that any person has committed any of the following acts, each of which is declared to be a violation of this chapter:

(1) Failed to provide direct on-the-job supervision of a trainee by a licensed operator or applicator in the application of a pesticide;

(2) Failed to maintain records required under Section 5 of this administrative regulation;

(3) Failed to follow notification and information requirements in accordance with Section 1, 2, 3, or 4 of this administrative regulation, including:

(a) Failure to provide customer written information prior to application;

(b) Failure to place required marker;

(c) Failure to meet minimum requirements for required marker;

(d) Failure to furnish customer required information at application; or

(e) Failure to furnish prior notification of application when requested.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 filing creates the rules for notice postings for the new consolidated pesticides chapter.

(b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of rules for notice postings for the regulation of the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of rules for notice postings for the regulation of the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of rules for notice postings creates a uniform set of terms for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the Commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, Federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

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(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:090. Wood destroying organism treatments and integrated pest management in schools.

RELATES TO: KRS 217B.190, 217B.515, 217B.520, 217B.525, 217B.545

STATUTORY AUTHORITY: KRS 217B.050, 217B.530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Definitions. (1) "Children are present" means the designated time period between two (2) hours before the start time and forty-five (45) minutes after the dismissal time of the regularly scheduled school day as determined by the school authority under the calendar set by the school board.

(2) "Graph" means a drawing of a structure that:

- (a) Identifies the type of structure;
- (b) Provides an outline of the structure indicating approximate length and width;
- (c) Records the location of any current visible wood-destroying organism activity;
- (d) Records the location of any current visible damage caused by any wood-destroying organism; and
- (e) Records the location of all treatment methods applied, including all partial treatments applied to any selected areas of the structure.

(3) "Integrated pest management program" means a strategy of controlling pests, general pests, and wood destroying organisms by combining biological, chemical, cultural, mechanical, and physical control methods in a way that minimizes economic, health, and environmental risks.

(4) "Notification" means information distributed to persons who request a notice of a pesticide application.

(5) "Outside areas" means the property associated with commercial, industrial, or residential structures where a commercial structural pest management license holder, under KRS 217B.515, is authorized to control pests, general pests, and wood destroying organisms by means other than chemicals used for lawn care or agricultural pests.

(6) "Posted" means a sign measuring at least 8.5 in. x 11 in. displaying the words "Pesticide Treatment Area" and "Do Not Enter" along with listing an identified time for re-entry after the pesticide application is made.

(7) "Registry" means a list, maintained by a school authority, of individuals that request advance notification of pesticide application.

(8) "School" means an institution for teaching children such as, but not limited to, preschool, kindergarten, child day care centers, primary, and secondary schools.

(9) "School authority" means superintendent, assistant superintendent, principal, assistant principal, headmaster, or a designee.

Section 2. Documentation of Treatment for Wood-destroying Organisms. At the time of treatment application for control or prevention of wood-destroying organisms, a graph shall be issued to the owner of the property.

Section 3. Integrated Pest Management in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling pests, general pests, and wood-destroying organisms with the judicious use of pesticides.

(1) Pesticides may be applied without notification indoors and to outside areas when children are not present.

(2) Pesticides may be applied without notification when children are present but shall be limited to:

(a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities;

(b) Personal insect repellents;

(c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians;

(d) Manufactured paste, gel, or other formulations designated on the product label as bait and applied according to label instructions where humans do not have reasonable access to the application area; and

(e) Rodent control products placed in industry identified tamper-resistant bait stations or rodenticides placed in wall voids or other rodent harborage sites that are inaccessible to humans.

(3)(a) Each school authority shall maintain a registry of electronic mail or telephone contact numbers of parents or guardians who have requested notification prior to the application of pesticides in schools when children are present, and shall provide written notice to parents or guardians at the beginning of each school year of the existence of the registry and the process for being placed on the registry. The written notice shall be as follows:

"Dear Parent or Guardian:

Each school district in the Commonwealth is required to implement a program of "integrated pest management" with the primary goal of preventing and controlling pests through strategies that may include judicious use of pesticides. The application of pesticides in the school or on school grounds during times when children are present is limited by state regulation, but there may be occasions when, after consulting with a certified pesticide applicator, the school administration determines that a pesticide application is necessary when children are present in the school. As required by state regulation, we have created a registry for parents or guardians who wish to receive an electronic message or telephone call prior to the application of pesticides in the school when children are present. Please provide the school administration your email address or phone number if you wish to be placed on this registry."

(b) Notification by the school to parents or guardians on the registry shall be required if the school authority, after consultation with the certified applicator, determines that a pesticide application other than those listed in subsection (2) of this section, is necessary when children are present in the school.

(c) For pesticide applications made when children are present, the school authority shall provide the notification to persons listed on the registry at least one (1) hour prior to the making of the application.

(4) The notification required by subsection (3)(b) of this section shall include:

(a) The date and time of the pesticide application;

(b) The target pests to be treated;

(c) A description of the use of the area treated;

(d) The brand name of the pesticides applied and the pesticide application method; and

(e) A telephone number that persons requesting prior notification can use to contact the school authority for more information.

(5) A copy of the notification shall be maintained by the school authority for twenty-four (24) months after the notification is issued and shall be subject to inspection upon request by Kentucky Department of Agriculture personnel.

(6) The certified applicator shall only be required to provide to the school authority the information required in subsection (4)(a) to (d) of this section on an Integrated Pest Management School Acknowledgement form provided by the department. The certified applicator shall retain a copy of the completed form.

(7) The completed form required by subsection (6) of this section shall:

(a) Include the information required in subsection (4)(a) to (d) of this section; and

(b) Be signed by the school authority acknowledging that the required information was received from the certified applicator prior to the application of pesticides when children are present.

(8) A copy of the completed form shall be maintained for thirty-six (36) months by the certified applicator after it is received and shall be subject to inspection upon request by Kentucky Department of Agriculture personnel.

(9) The area where the point of application of a pesticide occurred shall be posted by the certified applicator regardless of the absence or presence of children.

Section 4. Incorporation by Reference. (1) "Integrated Pest Management School Acknowledgement", 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Environmental Services, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, 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 filing creates the definitions for the new consolidated pesticides chapter.

(b) The necessity of this administrative regulation: his filing is necessary to create a uniform set of definitions for the regulation of the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of definitions for the regulation of the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of definitions creates a uniform set of terms for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the Commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity choses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, Federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

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(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

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FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE
Office of Consumer and Environmental Regulation
(New Administrative Regulation)

302 KAR 26:100. Structural pest control settlement proceedings.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 13B.070(3), 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes procedures for the settlement of administrative complaints brought pursuant to KRS 217B.545.

Section 1. Commencement of Settlement Proceedings. At any time after the service of an administrative complaint upon a licensee and before hearing, the responding licensee may seek a settlement of any pending allegation with the department.

Section 2. Presentation of Proposal to Board. If a settlement has not been reached, the licensee may present the department's settlement offer to the Structural Pest Management Advisory Board for a written recommendation for settlement. The written recommendation for settlement shall be signed by the chairman and forwarded to the department for consideration.

Section 3. Action by the Department. The department may

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settle the matter taking the Board's written recommendation into consideration. If the department chooses not to adopt the Board's recommendation for settlement and the licensee rejects the department's offer for settlement, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

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Contact person: Clint Quarles

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(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 C.F.R. 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately

\$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of Consumer and Environmental Regulation (New Administrative Regulation)

302 KAR 26:150. Penalties.

RELATES TO: KRS 217B.120, KRS 217B.550, 7 U.S.C. 136 et seq., 40 C.F.R. 170

STATUTORY AUTHORITY: KRS 217B.050, 217B.193, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.193 requires the Commissioner of the Department of Agriculture to promulgate an administrative regulation establishing a schedule of civil penalties for violations of KRS Chapter 217B, including those established in KRS 217B.120 and 217B.550. This administrative regulation establishes a system of regulatory fines pursuant to the violations established in KRS 217B.120 and 217B.550.

Section 1. Notice of Violation and Abatement of Violation Pursuant to KRS 217B.193.

(1) The Department of Agriculture shall, in accordance with KRS 217B.193(1), cause a notice of violation to be issued to persons, license holders, or registration holders found to be in violation of KRS 217B.120, 217B.550, 302 KAR 31:040, or 40 C.F.R. 170.

(2) In addition to the information required to be set out in the notice of violation pursuant to KRS 217B.193, the department shall notify the person, license holder, permit holder, registration holder, or certificate holder that:

(a) Except for good cause shown, an administrative fine in the amount established in Sections 2 and 6 of this administrative regulation shall be assessed if the violation is not corrected within the time specified in the notice of violation;

(b) He or she shall have thirty (30) days to request a hearing on assessment of the fine pursuant to KRS 217B.203 and 217B.990(2); and

(c) The request for hearing shall be mailed to the Kentucky Department of Agriculture, Director, Division of Environmental Services, Frankfort, Kentucky 40601.

(3) The period for abatement of a violation shall commence on the day the notice of violation is issued pursuant to KRS 217B.193(1).

(4) The department may allow additional time for abatement of a violation, not to exceed the maximum time established in KRS 217B.193, if it is determined that the violation cannot be corrected within the time period specified in the notice of violation.

(5) The Enforcement Response Policy shall act as the guide for implementation of enforcement actions, mitigation and penalty adjustments in all actions of this section.

Section 2. (1) Except as established in Section 3 of this administrative regulation, administrative fines for each first violation of KRS 217B.120, 302 KAR 26:080; 302 KAR 31:040, 40 C.F.R. 170, and any other administrative regulation promulgated by the department shall be:

- (a) \$300 for a violation of KRS 217B.120(1);
- (b) \$100 for a violation of KRS 217B.120(2);
- (c) \$200 for a violation of KRS 217B.120(3);
- (d) \$200 for a violation of KRS 217B.120(4);
- (e) \$200 for a violation of KRS 217B.120(5);
- (f) \$200 for a violation of KRS 217B.120(6);
- (g) \$100 for a violation of KRS 217B.120(7);
- (h) \$100 for a violation of KRS 217B.120(8);
- (i) \$100 for a violation of KRS 217B.120(9);
- (j) \$100 for a violation of KRS 217B.120(10);
- (k) \$200 for a violation of KRS 217B.120(11);
- (l) \$200 for a violation of KRS 217B.120(12);
- (m) \$200 for a violation of KRS 217B.120(13);
- (n) \$200 for a violation of KRS 217B.120(14);
- (o) \$200 for a violation of KRS 217B.120(15);

- (p) \$200 for a violation of 302 KAR 26:080, Section 6(1);
- (q) \$200 for a violation of 302 KAR 26:080, Section 6(2);
- (r) \$100 for a violation of 302 KAR 26:080, Section 6(3);
- (s) \$200 for a violation of 302 KAR 31:040;
- (t) \$200 for a violation of 40 C.F.R. 170; and
- (u) \$200 for a violation of any regulation promulgated pursuant to KRS 217B.050, not otherwise designated in this section.

(2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.

(3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.

(4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension, revocation or modification of a license pursuant to KRS 217B.120.

(5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period set by the department pursuant to KRS 217B.193.

(6)(a) Nothing in this section shall prohibit the department from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 217B.120.

(b) The department shall review for possible denial, suspension, or revocation, the license or certification of any person if that person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

Section 3. Notwithstanding the monetary penalty provided in Section 2(1)(a) of this administrative regulation, a violation of KRS 217B.120(1) for each application of products containing Additional Training Dicamba shall result in a fine of \$100 per acre based on the acres where the application was made, with a maximum administrative fine of \$1,000 for the first offense.

Section 4. Failure to pay any fine, within thirty (30) days of the end of the time period established in Section 1 of this administrative regulation, shall result in a suspension or revocation of a license, permit, registration, or certification pursuant to KRS 217B.120.

Section 5. (1) Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions established in Section 2 of this administrative regulation.

(2) The fines or penalties shall not be enhanced unless the subsequent violations in Section 2 of this administrative regulation are committed in the same branch or office in which the first violation occurred.

Section 6. (1) Administrative fines for a first violation of KRS 217B.550 and any other administrative regulation promulgated by the department shall be:

- (a) \$200 for a violation of KRS 217B.550(1);
- (b) \$200 for a violation of KRS 217B.550(2);
- (c) \$200 for a violation of KRS 217B.550(3);
- (d) \$100 for a violation of KRS 217B.550(4);
- (e) \$100 for a violation of KRS 217B.550(5);
- (f) \$300 for a violation of KRS 217B.550(6);
- (g) \$200 for a violation of KRS 217B.550(7);
- (h) \$200 for a violation of KRS 217B.550(8);
- (i) \$200 for a violation of KRS 217B.550(9);
- (j) \$200 for a violation of KRS 217B.550(10);
- (k) \$100 for a violation of KRS 217B.550(11);
- (l) \$200 for a violation of KRS 217B.550(12);
- (m) \$100 for a violation of KRS 217B.550(13);
- (n) \$100 for a violation of KRS 217B.550(14);
- (o) \$100 for a violation of KRS 217B.550(15);
- (p) \$200 for a violation of KRS 217B.550(16);
- (q) \$200 for a violation of KRS 217B.550(17); and

(r) \$200 for a violation of any administrative regulation promulgated pursuant to KRS 217B.050, not otherwise designated in this section.

(2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.

(3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.

(4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension, revocation or modification of a license pursuant to KRS 217B.545.

(5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period set by the department pursuant to KRS 217B.193.

(6)(a) Nothing in this section shall prohibit the department from suspending, revoking, or modifying a license or certificate at any time pursuant to KRS 217B.545.

(b) The department shall review for possible denial, suspension, or revocation, the license or certification, whether issued as a result of qualification by examination or reciprocity, of any person if that person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

Section 7. Failure to pay any fine within thirty (30) days of the end of the time period prescribed in Section 1 of this administrative regulation shall result in a suspension, revocation, or modification of a license or certification pursuant to KRS 217B.545.

Section 8. (1) Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions contained in Section 6 of this administrative regulation.

(2) The fines or penalties shall not be enhanced unless the subsequent violations in Section 6 of this administrative regulation are committed in the same branch or office in which the first violation occurred.

Section 9. Incorporation by Reference.

(1) "Enforcement Response Policy", June 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2022

FILED WITH LRC: June 14, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

FISCAL NOTE

Contact person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates the penalties for the new consolidated pesticides chapter.

(b) The necessity of this administrative regulation: This filing is necessary to create a uniform set of penalties for the regulation of the pesticide industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This filing creates a uniform set of penalties for the regulation of the pesticide industry. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Having a single consolidated chapter and set of penalties creates a uniform set of terms for ease of use by all entities, the KDA included.

(2) If 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: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the Commonwealth shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost depends on the activity the regulated entity chooses to participate in. No costs are involved for this particular definitions filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will safely and legally sell and apply pesticides in Kentucky.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees and fines, Federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No, all entities are treated the same.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 CFR 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? For state government, particularly the Kentucky Department of Agriculture, revenue will increase minimally due to elimination of the \$15 discount on test fees for each additional license category. Revenue from fines may increase minimally, due to increases in some fine amounts. Revenue from fines in 2021 was approximately \$13,000. No additional revenue is anticipated for local government agencies.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. Some savings may occur due to reduced requirements for continuing education units, reduced cost for multiple licenses due to combining license categories, and reduction of the test fee for one license category.

(c) How much will it cost the regulated entities for the first year? Costs will increase minimally on regulated entities due to

elimination of the \$15 discount on test fees for each additional license category. Individual costs are determined based on how many categories an entity requires.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] Testing fees and fines associated with this regulation will not exceed the major economic impact cost threshold, and therefore will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 U.S.C. 136 et. seq.

(2) State compliance standards. KRS Chapter 217B, and new 302 KAR Chapter 26

(3) Minimum or uniform standards contained in the federal mandate. The federal act and regulations create the minimum guidelines for the regulation of pesticides.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Kentucky law and the federal standards are almost indistinguishable. Kentucky law makes requirements very clear for all entities.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The KDA does not believe that stricter or any additional standards are created.

DEPARTMENT OF AGRICULTURE Office of the Consumer and Environmental Protection (Repealer)

302 KAR 79:009. Repeal of 302 KAR 79:010.

RELATES TO: KRS CHAPTER 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306.12, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program. This administrative regulation repeals 302 KAR 79:010 because 302 KAR 79:011 and 302 KAR 79:012 are now active and cover the materials that were covered in that filing.

Section 1. 302 KAR 79:010. Testing and inspection program, is hereby repealed.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: March 28, 2022

FILED WITH LRC: June 10, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601.

Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, 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 repeals unneeded motor fuel regulations.

(b) The necessity of this administrative regulation: This regulation repeals unneeded motor fuel regulations. Other filings prior in time created our current program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363 commands the KDA to establish administrative regulations for a motor fuel program. That command is now being met with two other filings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for motor fuel marketing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,800 retailers and 100 other fuel entities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, 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 remaining applicable regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fees are not included in this repealer.

(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: No costs are associated with this filing.

(b) On a continuing basis: No costs are associated with this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated by participants in other regulations.

(7) Provide an assessment of whether an 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 costs are associated with this filing.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No costs are associated with this filing.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture 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 363.900-908

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No income will be generated by this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this repealer.

(c) How much will it cost to administer this program for the first year? Program costs are approximately \$700,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the egg program as a whole.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(c) How much will it cost the regulated entities for the first year? Cost increases for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The KDA expects no economic impact from this repealer.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 14, 2022

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 14, 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 Julie Raque Adams and Ralph Alvarado. Representatives Randy Bridges and Deanna Frazier Gordon.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Todd Allen, General Counsel, Education Professional Standards Board; Kelly Jenkins, Executive Director, Jeffrey Prather, General Counsel, Kentucky Board of Nursing; Ashley Clark, Chair, Kentucky Applied Behavioral Analysis and Licensing Board; Kevin Winstead, Commissioner, Department for Professional Licensing; John Wood, Attorney, Kentucky Board of Emergency Medical Services; Jenny Gilbert, Legislative Liaison, Rich Storm, Commissioner, Kentucky Department for Fish and Wildlife Resources; Brenn Combs, Staff Attorney, Justice and Public Safety Cabinet; Captain Bradley Arterburn, Commander, Criminal Identification and Records Branch; Adrian Jacob, Staff Attorney, Cora McNabb, Executive Director, Dondra Meredith, Deputy General Counsel, Office of Vocational Rehabilitation; Robin Maples, OSH Standards Specialist, Department of Workplace Standards; Rebecca Rodgers Johnson, Executive Director, Oran McFarlan, Deputy Executive Director, Labor Cabinet; Marc Guilfoil, Executive Director, Shan Dutta, Deputy General Counsel, Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission; Adam Mather, Inspector General, Kara Daniel, Deputy Inspector General, Stephanie Brammer-Barnes, Regulations Coordinator, Office of Inspector General; Misty Sammons, Division Director, Stacy Carey, Branch Manager, Laura Begin, Staff Assistant, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, June 14, 2022, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Education Professional Standards Board: Administrative
Certificates

016 KAR 003:080. Career and technical education school principals. Todd Allen, counsel, represented the board.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 020:070E. Licensure by examination. Kelly Jenkins, executive director, and Jeff Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendment: to amend Section 6 to comply with Senate Bill 2 from the 2021 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 020:085. Licensure periods and miscellaneous requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:110. Licensure by endorsement.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 5 to comply with Senate Bill 10 from the 2022 Regular Session; and (2) 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.

201 KAR 020:370. Applications for licensure.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to change from six (6) months to one (1) year, the date that an application for licensure by endorsement shall lapse if the application is not completed during that time frame for consistency with changes made to 201 KAR 20:240; and (2) 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.

Applied Behavior Analysis Licensing Board

201 KAR 043:010. Application procedures for licensure. Ashley Clark, chair, and Kevin Winstead, commissioner, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 043:020. Application procedures for temporary licensure.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) establish a two (2) year licensure period for temporary licenses with a one (1) time renewal option; and (b) cross-reference the renewal fees in 201 KAR 43:030; and (2) to amend the RELATES TO 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.

201 KAR 043:030. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3 to establish: (a) a two (2) year licensure period for temporary licenses with a one (1) time renewal option; and (b) a renewal fee of \$200 for temporary licensed behavior analysts and \$100 for temporary licensed assistant behavior analysts; and (2) to amend the STATUTORY AUTHORITY paragraph and Sections 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 043:040. Code of ethical standards and standards of practice.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete unnecessary definitions; (2) to amend Section 4 to incorporate the ethics code by reference; and (3) to amend the RELATES TO paragraph and Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 043:050. Requirement for supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify and add definitions; (2) to amend Section 2 to require a supervisor to be listed as completing supervision training on the Behavior Analyst Certification Board's Certificant Registry; (3) to amend Section 3 to establish requirements for the supervisory plan; (4) to amend Section 14 to establish requirements for trainees; (5) to amend

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Section 15 and the material incorporated by reference to conform with regulatory changes; and (6) to amend the RELATES TO paragraph and Sections 1 through 6 and 10 through 16 to: (a) clarify various provisions; (b) streamline requirements; and (c) 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 043:060. Complaint and disciplinary process.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 043:071. Repeal of 201 KAR 043:070.

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.

201 KAR 043:080. Renewals.

A motion was made and seconded to approve the following amendment: to update material incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 043:090. Voluntary inactive and retired status.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 043:100. Telehealth and telepractice.

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.

Board of Emergency Medical Services

202 KAR 007:545E. License classifications. John Wood, counsel, represented the board.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Wildlife

301 KAR 004:001. Selection of Fish and Wildlife Resources Commission nominees. Rich Storm, commissioner, represented the department.

In response to a question by Co-Chair Hale, Mr. Storm stated that changes were nonsubstantive and included technical corrections and revisions to align with Senate Bill 217 from the 2022 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A and Senate Bill 217 from the 2022 Regular Session of the General Assembly. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Criminal History Record Information System

502 KAR 030:010. Criminal History Record Information System. Captain Bradley Arterburn, commander, Criminal Identification and Records Branch, and Brenn Combs, staff attorney, represented the department.

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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 030:020. Arrest and disposition reporting procedure.

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 030:030. Audit of Criminal History Record Information System.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 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 030:050. Security of centralized criminal history record information.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 030:060. Dissemination of criminal history record information.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 030:070. Inspection of criminal history record information by record subject.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Vocational Rehabilitation

781 KAR 001:010. Office of Vocational Rehabilitation appeal procedures. Dondra Meredith, deputy general counsel, and Cora McNabb, executive director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add Section 8 to incorporate by reference the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual. Without objection, and with agreement of the agency, the amendments were approved.

781 KAR 001:020. General provisions for operation of the Office of Vocational Rehabilitation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 7 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

781 KAR 001:030. Order of selection and economic need test for vocational rehabilitation services.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

781 KAR 001:040. Rehabilitation technology services.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) add one (1) definition; (b) clarify two (2) definitions; and (c) delete one (1) definition; and (3) to amend Section 4 commensurate with the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual. Without objection, and with agreement of the agency, the amendments were approved.

781 KAR 001:050. Carl D. Perkins Vocational Training Center.

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.

Office for the Blind

782 KAR 001:010. Kentucky Business Enterprises.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3 and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to add a definition for “vendor training program”; and (3) to amend Section 3 to add agency criteria for granting a leave of absence from a vending facility. Without objection, and with agreement of the agency, the amendments were approved.

782 KAR 001:070. Certified driver training program.

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.

LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health

803 KAR 002:402. General safety and health provisions. Robin Maples, occupational safety and health standards specialist, and Oran McFarlan, deputy general counsel, represented the department.

803 KAR 002:411. Scaffolds.

803 KAR 002:419. Demolition.

803 KAR 002:445. Confined spaces in construction.

Administration

803 KAR 005:005. Employee access to or use of federal tax information; required criminal background check. Oran McFarlan, deputy general counsel, and Rebecca Rogers-Johnson, executive director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 7 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Licensing

810 KAR 003:020. Licensing of racing participants. Shan Dutta, deputy general counsel, and Marc Guilfoil, executive director, represented the commission.

In response to a question by Co-Chair West, Mr. Guilfoil stated that a stable agent was licensed to prepare administrative reports, such as a record of a horse’s medications and treatment.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to add provisions for military spouses in accordance with House Bill 91 from the 2022 Regular

Session of the General Assembly; (2) to amend Section 15 to establish that licensure denial, suspension, or revocation based on a prior criminal conviction shall comply with the limitations in KRS Chapter 335B; and (3) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 6, 11, 15, 19, and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Flat and Steeplechase Racing

810 KAR 004:010. Horses.

810 KAR 004:030. Entries, subscriptions, and declarations.

810 KAR 004:060. Objections and complaints.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Health Services and Facilities

902 KAR 020:018. Operation and services; end-stage renal disease facilities. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the department.

In response to questions by Senator Alvarado, Mr. Mather stated that this administrative regulation did not require that a physician be present during dialysis. Ms. Daniel stated that a nurse was required to be present. The impetus for the changes was to establish provisions for dialysis at long-term care facilities and to align with federal changes. The federal requirement allowed a board-eligible member to be a provider.

In response to a question by Co-Chair West, Mr. Mather stated that these provisions would make it easier to provide dialysis for those in long-term care facilities. Senator Alvarado stated that this policy would have been beneficial during the coronavirus (COVID-19) pandemic.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete an obsolete term; (2) to amend Section 3 to update standards for emergency coverage commensurate with federal changes; (3) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 and 3 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to add a Section 6 to incorporate material by reference. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Child Welfare

922 KAR 001:360. Private child care placement, levels of care, and payment. Laura Begin, regulation coordinator; Stacy Carey, branch manager; and Misty Sammons, division director, represented the department.

922 KAR 001:530. Post-adoption placement stabilization services.

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.

Adult Services

922 KAR 005:070. Adult protective services.

In response to questions by Senator Alvarado, Ms. Begin stated that the definition for “mental injury” had been broadened in response to a request by Kentucky Protection and Advocacy. This definition provided a basis for further assessment and investigation. Ms. Carey stated that the definition for “mental injury” was used by intake and investigative staff in conjunction with the statutory definition for “abuse” to determine if further action was necessary. Senator Alvarado stated that there were concerns regarding false reports of mental injury.

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The following administrative regulations were deferred or removed from the June 14, 2022, subcommittee agenda:

PERSONNEL CABINET: Classified

101 KAR 002:095E. Classified service general requirements.

General

101 KAR 006:020E. Kentucky Employees Charitable Campaign.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:430. Emergency orders and hearings.

Board of Dentistry

201 KAR 008:600. Mobile dental facilities and portable dental units.

Board of Embalmers and Funeral Directors

201 KAR 015:030E. Fees.

201 KAR 015:040E. Examination.

201 KAR 015:050E. Apprenticeship and supervision requirements.

201 KAR 015:110E. Funeral establishment criteria.

201 KAR 015:125E. Surface transportation permit.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Driver Training

502 KAR 010:010. Definitions.

502 KAR 010:020. Department facilities; facility inspection; conflict of interest.

502 KAR 010:030. Instructor's license.

502 KAR 010:035. Commercial driver's license skill testing.

502 KAR 010:040. Training school facilities.

502 KAR 010:050. Contracts and agreements.

502 KAR 010:060. School advertising.

502 KAR 010:070. Training vehicle, annual inspection.

502 KAR 010:080. License suspension, revocation, denial.

502 KAR 010:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

502 KAR 010:110. Third-party CDL skills test examiner standards.

502 KAR 010:120. Hazardous materials endorsement requirements.

Concealed Deadly Weapons

502 KAR 011:010. Application for license to carry concealed deadly weapon.

502 KAR 011:060. License denial and reconsideration process.

502 KAR 011:070. License revocation and suspension notice and reinstatement process.

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.

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.

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.

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.

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.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Kentucky Commission on Proprietary Education

791 KAR 001:010. Applications, permits, and renewals.

791 KAR 001:020. Standards for licensure.

791 KAR 001:025. Fees.

791 KAR 001:027. School record keeping requirements.

791 KAR 001:030. Procedures for hearings.

791 KAR 001:035. Student protection fund.

791 KAR 001:040. Commercial driver license training school curriculum and refresher course.

791 KAR 001:050. Application for license for commercial driver license training school.

791 KAR 001:060. Application for renewal of license for commercial driver license training school.

791 KAR 001:070. Commercial driver license training school instructor and agency application and renewal procedures.

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

791 KAR 001:100. Standards for Kentucky resident commercial driver training school facilities.

791 KAR 001:150. Bond requirements for agents and schools.

791 KAR 001:155. School closing process.

791 KAR 001:160. Transfer of ownership, change of location, change of name, revision of existing programs.

LABOR CABINET: Department of Workplace Standards: Labor Standards; Wages and Hours

803 KAR 001:005. Employer-employee relationship.

803 KAR 001:025. Equal pay provisions, meaning and

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application.

803 KAR 001:060. Overtime pay requirements.

803 KAR 001:063. Trading time.

803 KAR 001:065. Hours worked.

803 KAR 001:066. Recordkeeping requirements.

803 KAR 001:070. Executive, administrative, supervisory or professional employees; salesmen.

803 KAR 001:075. Exclusions from minimum wage and overtime.

803 KAR 001:080. Board, lodging, gratuities and other allowances.

803 KAR 001:090. Workers with disabilities and work activity centers' employee's wages.

Department of Workers' Claims

803 KAR 025:195E. Utilization review, appeal of utilization review decisions, and medical bill audit.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

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

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: State Health Plan

900 KAR 005:020E. State Health Plan for facilities and services.

900 KAR 005:020. State Health Plan for facilities and services.

Certificate of Need

900 KAR 006:075E. Certificate of need nonsubstantive review.

900 KAR 006:075. Certificate of Need nonsubstantive review.

Essential Personal Care Visitor Program

900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines.

900 KAR 014:010. Essential personal care visitor programs; visitation guidelines.

Department for Public Health: Health Services and Facilities

902 KAR 020:016. Hospitals; operations and services.

902 KAR 020:106. Operation and services; ambulatory surgical center.

Early Intervention System

902 KAR 030:120. Evaluation and eligibility.

Office of Inspector General

906 KAR 001:110. Critical access hospital services.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Institutional Care

908 KAR 003:010. Patient's rights.

Department for Community Based Services: Child Welfare

922 KAR 001:310. Standards for child-placing agencies.

922 KAR 001:315. Standards for child-placing agencies placing children who are not in the custody of the cabinet.

922 KAR 001:340. Standards for independent living programs.

The subcommittee adjourned at 1:30 p.m. The next meeting of this subcommittee was tentatively scheduled for July 14, 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.

**INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS,
AND ADMINISTRATIVE REGULATIONS
Meeting of June 2, 2022**

The Licensing, Occupations, and Administrative Regulations Committee met on June 2, 2022, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on April 6, 2022, pursuant to KRS 13A.290(6):

201 KAR 42:020

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:

201 KAR 42:020

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 June 2, 2022, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS,
& ADMINISTRATIVE REGULATIONS
June 2, 2022**

**Agency Amendment
Board of Licensure for Massage Therapy**

201 KAR 42:020. Fees.

Section 2(2)(c)

After "(61) to", insert "ninety (90)".
Delete "ninety-one (91)".

Section 2(2)(d)

After "expired for", insert "ninety-one (91)".
Delete "ninety (90)".

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of June 2, 2022**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting

of June 2, 2022, having been referred to the Senate Standing Committee on Health and Welfare and the House Standing Committee on Health and Family Services on April 6, 2022, pursuant to KRS 13A.290(6):

April 6, 2022

201 KAR 002:106 Emergency
201 KAR 002:106 Proposed
201 KAR 026:115 Proposed
201 KAR 026:125 Proposed
201 KAR 026:130 Proposed
201 KAR 026:155 Proposed
201 KAR 026:160 Proposed
201 KAR 026:175 Proposed
201 KAR 026:185 Proposed
201 KAR 026:190 Proposed
201 KAR 026:215 Proposed
201 KAR 026:225 Proposed
201 KAR 026:230 Proposed
201 KAR 026:250 Proposed
201 KAR 026:270 Proposed
201 KAR 026:310 Proposed
201 KAR 046:020 Emergency
900 KAR 010:201 Proposed
907 KAR 003:170 Proposed
910 KAR 001:190 Proposed
921 KAR 004:122 Proposed
922 KAR 001:360 Emergency

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 2, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND
ENERGY
Meeting of June 9, 2022**

The Interim Joint Committee on Natural Resources and Energy met on June 9, 2022, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on April 6, 2022, May 4, 2022, and June 1, 2022, pursuant to KRS 13A.290(6):

April 6, 2022

301 KAR 005:001 Definitions for 301 KAR Chapter 5
301 KAR 005:030 Purchasing licenses and permits
301 KAR 005:100 Interstate Wildlife Violator Compact

May 4, 2022

401 KAR 051:010 Attainment status designations

June 1, 2022

301 KAR 004:010 Districts
301 KAR 004:020 Ballard Wildlife Management Area restrictions
301 KAR 004:100 Peabody Wildlife Management Area use requirements and restrictions
301 KAR 004:110 Administration of drugs to wildlife

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 June 9, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON VETERANS, MILITARY
AFFAIRS, AND PUBLIC PROTECTION
Meeting of June 22, 2022**

The Interim Joint Committee on Veterans, Military Affairs, and Public Protection met on June 22, 2022 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on April 13, 2022, pursuant to KRS 13A.290(6):

800 KAR 001:020E

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 June 22, 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 49th year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

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Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this Register year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation.

NOTE: Regulations listed with a "47 Ky.R." or "48 Ky.R." notation are regulations that were originally published in previous years' issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last Register year ended.

KRS Index

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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

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A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

Technical Amendment Index

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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

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A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

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Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 49. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in 48 Ky.R. or 49 Ky.R., please visit our online [Administrative Registers of Kentucky](#).

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates. Other statutes or legislation may affect a regulation's actual end date.

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106 KAR 002:031	49 Ky.R. 188		Amended	48 Ky.R. 2836	
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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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.

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601 KAR 009:135	06-02-2022	Remain in Effect without Amendment
803 KAR 001:035	06-13-2022	Remain in Effect without Amendment
907 KAR 001:044	06-09-2022	Remain in Effect without Amendment
907 KAR 001:350	06-09-2022	Remain in Effect without Amendment
910 KAR 001:170	06-09-2022	To be Amended, Filing deadline 12-09-2023

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49th 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).

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